BỘ NGOẠI GIAO	**CỘNG HÒA XÃ HỘI CHỦ NGHĨA VIỆT NAM** **Độc lập - Tự do - Hạnh phúc**
Số: 57/2016/TB-LPQT	*Hà Nội, ngày 30 tháng 9 năm 2016*

THÔNG BÁO
Về việc điều ước quốc tế có hiệu lực

Thực hiện quy định tại Điều 56 của Luật Điều ước quốc tế năm 2016, Bộ Ngoại giao trân trọng thông báo:

Nghị định thư về hỗ trợ sản xuất phương tiện vận tải có động cơ trên lãnh thổ Việt Nam giữa Chính phủ nước Cộng hòa xã hội chủ nghĩa Việt Nam và Chính phủ Liên bang Nga, ký tại Mát-xcơ-va ngày 21 tháng 3 năm 2016, có hiệu lực kể từ ngày 05 tháng 10 năm 2016.

Bộ Ngoại giao trân trọng gửi Bản sao Nghị định thư theo quy định tại Điều 59 của Luật nêu trên./.

TL. BỘ TRƯỞNG
KT. VỤ TRƯỞNG
VỤ LUẬT PHÁP VÀ ĐIỀU ƯỚC QUỐC TẾ
PHÓ VỤ TRƯỞNG

Nguyễn Văn Ngự

PROTOCOL

between the Government of the Socialist Republic of Viet Nam and the Government of the Russian Federation on supporting the production of motor transport vehicles in the territory of the Socialist Republic of Viet Nam

The Government of the Socialist Republic of Viet Nam and the Government of the Russian Federation, hereinafter referred to individually as a "Party" and collectively as the "Parties";

Preserving adherence to strengthening cooperation between the Socialist Republic of Viet Nam (Viet Nam) and the Russian Federation (Russia);

Implementing Article 1.6 of the Free Trade Agreement between the Socialist Republic of Viet Nam, of the one part, and the Eurasian Economic Union and its Member States, of the other part (the VN-EAEU FTA), signed on 29th May, 2015, regarding the support of priority investment projects;

Reaffirming the respective rights and obligations of Viet Nam and Russia under the Marrakesh Agreement Establishing the World Trade Organization on 15th April, 1994, and other existing international agreements to which both Viet Nam and Russia are parties;

With a view to long-term and mutually beneficial development of industries of both countries;

have agreed as follows:

Article 1

Definitions

For the purposes of this Protocol:

"authorised enterprise(s) of Russia" shall include:

1. "Automobile plant "GAZ", LLC

Legal address: 603004, Russian Federation, Nizhny Novgorod, pr. Ilyicha, 5;

2. KAMAZ Foreign Trade Company Incorporated

Legal address: 423815, Russian Federation, Republic of Tatarstan, Naberezhny Chelny, Avtozavodsky avenue, 2;

3. LLC "Ulyanovsky Avtomobilny Zavod" (UAZ)

Legal address: 432034, Russian Federation, Ulyanovsk, Moskovskoye shosse, 92,

and the newly proposed authorised enterprise(s) of Russia provided for in paragraph 2 of Article 3 (Specific Requirements) of this Protocol,

which are authorised by the Russian Party to establish the joint ventures in the territory of Viet Nam with the interested enterprises of Viet Nam in accordance with the respective laws and regulations of Viet Nam and the provisions of this Protocol;

"joint venture(s)" shall mean the legal entity(ies) established by agreement(s) concluded by the authorised enterprise(s) of Russia and the interested enterprise(s) of Viet Nam in the territory of Viet Nam in accordance with the respective laws and regulations of Viet Nam and the provisions of this Protocol;

"motor transport vehicles" shall mean certain types of SUV of "UAZ" (M1G), motor transport vehicles for the transport of ten or more persons, including the driver (M2, M2G, M3, M3G), trucks (N1, N1G, N2, N2G, N3, N3G) and special purpose motor transport vehicles (SB, SC, SD) agreed by the authorised enterprise(s) of Russia and the interested enterprise(s) of Viet Nam.[1] The list of motor transport vehicles shall be included in the production plan(s) of the joint venture(s) which shall be approved by the Vietnamese Party;

"semi-knocked down (SKD) industrial assembly" shall mean the industrial assembly of motor transport vehicles in the territory of Viet Nam using parts and components both imported by the joint venture(s) to the territory of Viet Nam and produced in the territory of Viet Nam;

[1]The classification of motor transport vehicles by categories is regulated in the United Nations Economic Commission for Europe (UNECE) regulations

"SKD set" shall mean a set of parts and components, which is imported by the joint venture(s) to the territory of Viet Nam and necessary for semi-knocked down industrial assembly of motor transport vehicles, except for the parts and components produced in the territory of Viet Nam;

"level of localisation" is the local value added content which is calculated according to the following formula:

$$\text{Level of localisation} = \frac{\text{Viet Nam Material Cost} + \text{Direct Labour Cost} + \text{Direct Overhead Cost} + \text{Profit}}{\text{EXW Price}} * 100\%$$

For the purposes of calculating the level of localisation:

1. "Viet Nam Material Cost" shall mean value of materials, parts or goods, originating in the territory of Viet Nam, that meet the origin criteria in accordance with Chapter 4 (Rules of Origin) of the VN-EAEU FTA;

2. Direct Labour Cost shall include wages, remuneration and other employee benefits including compulsory social and health insurances associated with the manufacturing process as required by the respective laws and regulations of Viet Nam;

3. Direct Overhead Cost shall include, but is not limited to commercial and administrative costs; costs of property items associated with the production process (rental and leasing costs, depreciation on buildings, taxes, including income tax, interests on mortgage); leasing costs and interest payments for plant and equipment; factory guard costs; insurance costs (plant, equipment and materials used in the manufacture of the goods); utility costs (energy, electricity, water and other costs of utilities directly associated with the production of goods); research and development, design and engineering costs; dies, moulds, tooling and depreciation, maintenance and repair of plant and equipment; royalties or licences (in connection with patented machineries or processes used in the production

process of goods or the right to produce the goods); costs of inspection and testing of materials and goods; costs of storage and handling in the factory; disposal of recyclable waste costs; and cost elements used in calculation of the value of raw materials, i.e. port and clearance charges and import duties paid for dutiable component;

4. "Profit" shall mean net profit of the joint venture(s) after deducting all taxes and fees provided for in the respective laws and regulations of Viet Nam;

5. "EXW Price" shall mean the price of the goods on Ex Works basis which is provided for in Incoterms 2010 by the International Chamber of Commerce.

Article 2

Subject

The subject of this Protocol is the support for the production of motor transport vehicles in the territory of Viet Nam in accordance with the respective laws and regulations of Viet Nam and the policies of Viet Nam and Russia.

Article 3

Specific Requirements

1. Each authorised enterprise of Russia is eligible to establish only one joint venture in the territory of Viet Nam. The authorised enterprises of Russia may establish totally up to four joint ventures to manufacture motor transport vehicles in the territory of Viet Nam.

2. If the Russian Party intends to add or replace the authorised enterprises of Russia indicated in Article 1 (Definitions) of this Protocol, the Ministry of Industry and Trade of Russia (MOIT of Russia) shall send the Ministry of Industry and Trade of Viet Nam (MOIT of Viet Nam) a written proposal and the feasibility study(ies) of the newly proposed authorised enterprises of Russia which include(s) the type(s) of motor transport vehicles to be produced in the territory of Viet Nam. The Vietnamese Party shall confirm the eligibility of the newly proposed authorised enterprise(s) of Russia within 20 working days from the date of receipt

of the proposal and the feasibility study(ies) from the Russian Party. Such newly proposed authorised enterprise(s) of Russia shall be required to have had actual manufacture activities of motor transport vehicles in the territory of Russia for at least 10 consecutive years before the date of entry into force of this Protocol and shall not be:

a. owned by a person(s) of a third country other than Russia by beneficially owning more than 50 percent of the equity interest in this (these) authorised enterprise(s); or

b. controlled by a person(s) of a third country other than Russia by having the power to name a majority of its (their) directors or otherwise to legally direct the actions of these authorised enterprise(s).

3. The capital contribution ratio of Vietnamese enterprise(s) in the joint venture(s) shall be at least 50 percent of the total charter capital of the joint venture(s).

4. The joint venture(s) shall be established for the period of at least 10 years but not more than 30 years.

5. The authorised enterprise(s) of Russia in the joint venture(s) shall not transfer their capital in the joint venture(s) to any third party from a third country.

6. Motor transport vehicles manufactured by the joint venture(s) for using in the territory of Viet Nam shall be required to meet the technical regulations, standards and conformity assessment procedures provided for in the respective laws and regulations of Viet Nam.

7. Motor transport vehicles manufactured by the joint venture(s) have to coincide with ideas expressed in the Decision on Approval of Viet Nam's Automobile Industry Development Master Plan to 2020, Vision to 2030. The level of localisation that the joint venture(s) shall achieve for years 2020 and 2025 is set as follows:

Year	2020	2025
SUV of "UAZ"	30%	40%
Motor transport vehicles for the	35%	50%

transport of ten or more persons, including the driver		
Trucks	30%	45%
Special purpose motor transport vehicles	25%	40%

If the manufacture of motor transport vehicles of the joint venture(s) does not meet such localisation level requirements within 10 years from the date of entry into force of this Protocol, Viet Nam shall have the right to withdraw the Establishment License/Business Registration Certificate of such joint venture(s).

8. The origin of the motor transport vehicles and the origin of the SKD sets imported by the joint venture(s) for the semi-knocked down industrial assembly in the territory of Viet Nam, if assembled into complete motor transport vehicles in the territory of Russia, shall be subject to origin criteria in accordance with Chapter 4 (Rules of Origin) of the VN-EAEU FTA and approved by the Certificate of Origin issued with indication of not less than 55 percent value added content calculated in accordance with Chapter 4 (Rules of Origin) of the VN-EAEU FTA. The value of Vietnamese materials shall be excluded from calculation of value added content.

9. The establishment of the joint venture(s) and the production activities of motor transport vehicles in the territory of Viet Nam shall be in compliance with the agreement(s) concluded by the authorised enterprise(s) of Russia and the interested enterprise(s) of Viet Nam and with the production plan(s) of the joint venture(s) approved by the Vietnamese Party. Such agreement(s) shall contain provisions, which require the authorised enterprise(s) of Russia in the joint venture(s) to provide support for the operation of the joint venture(s) by the following measures:

a. Transferring of technology under the license agreement(s) between the authorised enterprise(s) of Russia and the joint venture(s);

b. Contributing to the development of the automobile parts manufacturing industry in the territory of Viet Nam;

c. Developing the system of automobile maintenance and repair services;

d. Technical personnel training for local workers;

e. Supporting motor transport vehicles, parts and components manufactured by the joint venture(s) for accessing to the markets of other countries including the Eurasian Economic Union;

f. Granting the joint venture(s) an exclusive right to supply the same models of the motor transport vehicles, parts and components manufactured in the territory of Viet Nam by the joint venture(s) in the markets of other ASEAN countries.

Article 4

Preferences

1. Viet Nam shall grant the following tariff rate quotas for duty-free import of the models of motor transport vehicles imported by the joint venture(s), which shall be included in the production plan(s) in the territory of Viet Nam of such joint venture(s) approved by the Vietnamese Party:

for year 2016: 800 units;

for year 2017: 850 units;

for year 2018: 900 units.

2. Viet Nam shall grant the following tariff rate quotas for duty-free import of SKD sets necessary for production of motor transport vehicles in the semi-knocked down industrial assembly imported by the joint venture(s):

for year 2016: 0 set;

for year 2017: 2500 sets;

for year 2018: 3000 sets;

for year 2019: 3000 sets;

for year 2020: 2500 sets;

for year 2021: 2500 sets.

3. Volume of quota granted in the following year shall be subject to the implementation of localisation level of the joint venture(s) in its (their) project

execution schedule(s) and utilisation of quota indicated in paragraphs 1 and 2 of this Article in the previous year:

a. percentage of the granted quota in the following year may be reduced and be equal to the actual percentage of implementation of localisation level in the project execution schedule(s) of the previous year;

b. if the quota indicated in paragraphs 1 and 2 of this Article is not taken up for the previous year, it shall be transferred to the following year;

c. if the joint venture(s) utilise(s) from 50 to 80 percent of the quota indicated in paragraphs 1 and 2 of this Article, the quota for the following year shall be reduced by 30 percent;

d. if the joint venture(s) utilise(s) less than 50 percent of quota indicated in paragraphs 1 and 2 of this Article, the quota for the following year shall be reduced by 50 percent.

4. On the basis of the annual production plan(s) approved by the Vietnamese Party and proposals of MOIT of Russia on the distribution of quotas, the joint venture(s) will submit an application(s) to MOIT of Viet Nam for duty exemption on motor transport vehicles and/or SKD sets, which includes the Certificate of Origin as provided for in paragraph 8 of Article 3 (Specific Requirements) of this Protocol and the indicated quantity for all model(s), expected time schedules of importation and the Harmonized System 8-digit tariff lines corresponding to motor transport vehicles and/or all parts and components necessary for production of motor transport vehicles in the semi-knocked down industrial assembly, except for the parts and components produced in the territory of Viet Nam. Basing on the provisions of this Protocol, MOIT of Viet Nam will consider and issue import licenses for the applying joint venture(s) within 10 working days.

5. A joint venture(s) shall have the right to import out-of-quota sets of parts and components that will be used in the manufacturing of motor transport vehicles and these motor transport vehicles will be exported to the other ASEAN countries

after production with the tax payment deadline in accordance with the respective laws and regulations of Viet Nam.

6. Russia shall provide insurance, credit and other forms of support which are within the limits of Russian respective laws and regulations for the investment cooperation in the manufacture of motor transport vehicles within the framework of this Protocol.

Article 5

Dispute Settlement

1. Any differences relating to the interpretation and/or application of this Protocol shall be settled through consultations and negotiations between the Parties.

2. For the purposes of this Protocol, the dispute settlement procedures and provisions set out in Article 14.2 (Definitions) and Articles 14.5 (Good Offices, Conciliation or Mediation) through 14.14 (Implementation) of Chapter 14 (Dispute Settlement) of the VN-EAEU FTA shall apply *mutatis mutandis* with respect to the settlement of disputes between the Parties to this Protocol regarding the interpretation and/or application of this Protocol with the following modifications:

a. the term "a disputing Party" referred to in Chapter 14 (Dispute Settlement) of the VN-EAEU FTA means "a Party to this Protocol";

b. the request for consultations referred to in paragraph 2 of Article 14.6 (Consultations) of the VN-EAEU FTA shall be submitted in writing to the responding Party through diplomatic channels; and

c. the request for the establishment of an Arbitral Panel referred to in paragraph 3 of Article 14.7 (Establishment of Arbitral Panel) of the VN-EAEU FTA shall be submitted in writing to the responding Party through diplomatic channels.

Article 6

Stabilisation Clause

1. During the term of validity of this Protocol, where a new legal normative document of Viet Nam that provides less favourable investment incentives than those currently enjoyed by the joint venture(s) is promulgated, Viet Nam shall ensure that the joint venture(s) keep enjoying the current incentives for the remaining period of validity of this Protocol.

2. Paragraph 1 of this Article shall not apply if a legal normative document of Viet Nam is changed for reasons of national defense and security, social order and security, public morals, public health, or environmental protection.

3. If the joint venture(s) is no longer eligible for the investment incentives due to reasons prescribed in paragraph 2 of this Article, one or some of the following solutions shall be adopted:

a. Deducting the damage actually suffered by the joint venture(s) from its (their) taxable income;

b. Adjusting the objectives of the investment project(s);

c. Assisting the joint venture(s) in recovery from damage.

4. With regard to the investment assurance measure in paragraph 3 of this Article, the authorised enterprise(s) of Russia in the joint venture(s) shall submit a written request to the Vietnamese Investment Registration Authority within three years from the effective date of the new legal normative document of Viet Nam.

Article 7

Amendments

1. This Protocol may be amended by separate protocols signed by the Parties. Such amendments shall enter into force in accordance with Article 8 (Entry into Force) of this Protocol.

2. Amendments shall be an integral part of this Protocol.

Article 8

Entry into Force

1. This Protocol shall enter into force 10 days after the date of receipt of the latter written notification of the Parties, through diplomatic channels, upon completion of internal procedures necessary for its entry into force.

2. This Protocol shall remain in force for 10 years from the date of entry into force and shall be automatically extended every five years if neither Party declares its intention to terminate it by written notification through diplomatic channels to the other Party not less than three months before the expiration of the Protocol.

Done at Moscow, this 21st day of March 2016, in duplicate in the English language.

For the Government of the Socialist Republic of Viet Nam	For the Government of the Russian Federation
VU HUY HOANG	D. V. Manturov
Minister of Industry and Trade	Minister of Industry and Trade