BỘ NGOẠI GIAO

BỘ NGOẠI GIAO	**CỘNG HÒA XÃ HỘI CHỦ NGHĨA VIỆT NAM** **Độc lập - Tự do - Hạnh phúc**
Số: 56/2016/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 nước Cộng hòa Bê-la-rút, ký tại Min-xcơ ngày 23 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 Republic of Belarus 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 Republic of Belarus, hereinafter referred to individually as a "Party" and collectively as the "Parties";

Preserving adherence to strengthening cooperation between the Socialist Republic of Viet Nam and the Republic of Belarus;

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, done at Burabay on 29 May 2015 (the VN-EAEU FTA), regarding the support of priority investment projects;

Reaffirming the respective rights and obligations of the Parties under the existing international agreements to which the Parties are party;

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:

"joint venture(s)" shall mean the legal entity established by the JSC "Minsk Automobile Plant" – managing company of "BELAUTOMAZ" holding (MAZ) of the Republic of Belarus and the interested enterprise(s) of the Socialist Republic of Viet Nam in the territory of the Socialist Republic of Viet Nam in accordance with the provisions of this Protocol and the laws and regulations of the Socialist Republic of Viet Nam;

"motor transport vehicles" shall mean certain types of trucks (N) and motor transport vehicles for the transport of ten or more persons, including the driver (M2, M3), agreed by MAZ and the interested enterprise(s) of the Socialist Republic 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;

"sets of parts and components of motor transport vehicles" shall mean a set of parts and components, which is imported by the joint venture to the territory of the Socialist Republic of Viet Nam and necessary for industrial assembly of motor transport vehicles, except for the parts and components produced in the territory of the Socialist Republic of Viet Nam;

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

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

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 Socialist Republic 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 associated with the manufacturing process as required by the laws and regulations of the Socialist Republic of Viet Nam;

3. Direct Overhead Cost shall include, but not be limited to commercial and administrative costs; costs of property items associated with the production

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

process (rental and leasing costs, depreciation on buildings, taxes, 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 licenses (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 after deducting all taxes and fees provided for in the laws and regulations of the Socialist Republic of Viet Nam;

5. "Price for End Customer" shall mean the price of the goods on the sales invoice.

Article 2

Specific Requirements

1. MAZ may establish one joint venture for trucks (N) and one joint venture for motor transport vehicles for the transport of ten or more persons, including the driver (M2, M3) to manufacture motor transport vehicles in the territory of the Socialist Republic of Viet Nam.

2. If the Belarusian Party intends to replace or reorganise MAZ it shall send the Vietnamese Party a written proposal and the feasibility study of the newly proposed enterprise or successor of MAZ which includes the type(s) of motor transport vehicles to be produced in the territory of the Socialist Republic of Viet Nam. The Vietnamese Party shall confirm the eligibility of the newly proposed

enterprise or successor of MAZ. Such newly proposed enterprise or successor of MAZ shall be required to have had actual manufacture activities of motor transport vehicles in the territory of the Republic of Belarus 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 by beneficially owning more than 50 percent of the equity interest in the newly proposed enterprise or successor of MAZ; or

b. Controlled by a person(s) of a third country by having the power to name a majority of its directors or otherwise to legally direct the actions of the newly proposed enterprise or successor of MAZ.

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

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

5. MAZ shall not transfer its capital in the joint venture to any third party from a third country.

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

7. Motor transport vehicles manufactured by the joint venture 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 as provided for in Article 1 (Definitions) of this Protocol will be gradually increased to 40 percent by 2020 and 60 percent by 2026. If motor transport vehicles manufactured by the joint venture(s) are not meeting such localisation level requirements by 10 years from the date of entry into force of this Protocol, the Establishment License/ Business Registration Certificate of the joint venture(s) shall be withdrawn.

8. The origin of motor transport vehicles and the origin of sets of parts and components of motor transport vehicles imported by joint venture(s) for industrial assembly in the territory of the Socialist Republic of Viet Nam, if assembled into complete motor transport vehicles in the territory of the Republic of Belarus, shall be subject to origin criteria in accordance with Chapter 4 (Rules of Origin) of the VN-EAEU FTA and approved by Certificate of Origin issued with indication of 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 the value added content.

9. The establishment of the joint venture(s) and the production activities of motor transport vehicles in the territory of the Socialist Republic of Viet Nam shall be in compliance with the agreement(s) concluded by MAZ and the interested enterprise(s) of the Socialist Republic of Viet Nam. Such agreement(s) shall contain provisions which require MAZ providing support for the operation of the joint venture(s) by the following measures:

a. Transferring of technology and/or transferring of industrial property subject matters under a contract(s) of technology transfer and/or industrial property licensing between MAZ and the interested enterprise(s) of the Socialist Republic of Viet Nam;

b. Contributing to the development the industry of spare parts manufacturing and the supporting industry in the territory of the Socialist Republic 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 of motor transport vehicles manufactured by the joint venture(s) for exporting 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 of motor transport

vehicles manufactured in the territory of the Socialist Republic of Viet Nam by the joint venture(s) in the markets of the ASEAN countries.

Article 3

Preferences

1. The Socialist Republic of 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 are included in the production plan(s) in the territory of the Socialist Republic of Viet Nam of such joint venture(s) approved by the Vietnamese Party:

for year 2016: 200 units;

for year 2017: 250 units;

for year 2018: 300 units.

2. The Socialist Republic of Viet Nam shall grant the following tariff rate quotas for duty-free import of sets of parts and components of motor transport vehicles necessary for production of motor transport vehicles imported by the joint venture(s):

for year 2016: 200 sets;

for year 2017: 700 sets;

for year 2018: 1000 sets;

for year 2019: 1050 sets;

for year 2020: 1050 sets.

3. Volume of quota granted in the following year shall be reduced 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 shall be 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 the joint venture(s) will submit an application(s) to Ministry of Industry and Trade of the Socialist Republic of Viet Nam (MOIT of Viet Nam) for duty exemption on motor transport vehicles and/or sets of parts and components of motor transport vehicles, which includes the Certificate of Origin as provided for in paragraph 8 of Article 2 (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 motor transport vehicles parts and components necessary for production of motor transport vehicles, except for the parts and components of motor transport vehicles produced in the territory of the Socialist Republic 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) has the right to import out-of-quota sets of parts and components of motor transport vehicles that will be used in the manufacture 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 laws and regulations of the Socialist Republic of Viet Nam.

6. The Republic of Belarus shall provide insurance, loan and other forms of support which are within the limits of the laws and regulations of the Republic of Belarus for the investment cooperation in the manufacture of motor transport vehicles under this Protocol.

Article 4

Dispute Settlement

1. Any differences relating to the interpretation and/or application of this Protocol shall be settled in accordance with Chapter 14 (Dispute Settlement) of the VN-EAEU FTA, except for Articles 14.1 (Objectives), 14.3 (Scope and Coverage), 14.4 (Information exchange and *Amicus Curiae*) and 14.15 (Compensation and Suspension of Benefits).

2. For the purposes of this Protocol, the dispute settlement procedures and provisions set out in Article 14.2 (Definitions), Articles 14.5 (Good Offices, Conciliation or Mediation) through 14.14 (Implementation), 14.16 (Expenses) and 14.17 (Language) of Chapter 14 (Dispute Settlement) of the VN-EAEU FTA shall apply 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 shall mean "a Party to this Protocol";

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

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

Article 5

Stabilisation Clause

1. During the term of validity of this Protocol, where a new legal normative document that provides less favourable investment incentives than those currently enjoyed by the joint venture(s) is promulgated, the Socialist Republic of Viet Nam

ensures that the joint venture(s) shall 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 the Socialist Republic 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 measures in paragraph 3 of this Article, MAZ 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 the Socialist Republic of Viet Nam.

Article 6

Amendments

This Protocol may be amended by separate protocols agreed by the Parties that shall form an integral part of this Protocol.

Amendments shall enter into force in accordance with Article 7 (Entry into Force and Termination) of this Protocol.

Article 7

Entry into Force and Termination

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.

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 six months before the expiration of the Protocol.

Done at Minsk, this 23rd 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 Republic of Belarus
Vu Huy Hoang Minister of Industry and Trade	Vitaly Vovk Minister of Industry