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Accession of Viet Nam**

ACCESSION OF VIET NAM

Elements of a Draft Report
of the Working Party on the Accession of Viet Nam

Revision

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ELEMENTS OF A DRAFT REPORT

Introduction

1. The Government of the Socialist Republic of Viet Nam applied for accession to the World Trade Organization in January 1995 (document WT/L/1). At its meeting on 31 January 1995, the General Council established a Working Party to examine the application of the Government of the Socialist Republic of Viet Nam to accede to the World Trade Organization under Article XII of the Marrakesh Agreement Establishing the WTO. The terms of reference and the membership of the Working Party are reproduced in document WT/ACC/VNM/1/[Rev.17].

2. The Working Party met on 30-31 July and 3 December 1998; 22-23 July 1999; 30 November 2000; 10 April 2002; 12 May and 10 December 2003; [15 June 2004] and under the Chairmanship of H.E. Mr. Seung Ho (Republic of Korea).

Documentation provided

3. The Working Party had before it, to serve as a basis for its discussions, a Memorandum on the Foreign Trade Regime of Viet Nam (WT/ACC/VNM/2), the questions submitted by Members on the foreign trade regime of Viet Nam, together with the replies thereto, and other information provided by the authorities of Viet Nam (WT/ACC/VNM/3 and Corrigendum 1; WT/ACC/VNM/3 and Addenda 1, 2 and 3; WT/ACC/VNM/5 and Addendum 1; WT/ACC/VNM/6 and Addenda 1 and 2; WT/ACC/VNM/7; WT/ACC/VNM/8; WT/ACC/VNM/9 and Addenda 1 and 2; WT/ACC/VNM/10; WT/ACC/VNM/11 and Revisions 1, 2 and 3; WT/ACC/VNM/12; WT/ACC/VNM/13 and Addenda 1 and 2; WT/ACC/VNM/14 and Addendum 1; WT/ACC/VNM/15 and Addenda 1 and 2; WT/ACC/VNM/16; WT/ACC/VNM/18 and Revision 1; WT/ACC/VNM/19 and Revision 1; WT/ACC/VNM/20 and Revisions 1 and 2; WT/ACC/VNM/21 and Revisions 1 and 2; WT/ACC/VNM/22 and Revision 1; WT/ACC/VNM/23; WT/ACC/VNM/24 and Revisions 1 and 2; WT/ACC/VNM/25 and Revisions 1, 2 and 3; WT/ACC/VNM/29; WT/ACC/VNM/31 and Revision 1; WT/ACC/VNM/32;), including the legislative texts and other documentation listed in Annex I.

Introductory statements

4. The representative of Viet Nam said that Viet Nam had been carrying out economic reforms since 1986 under the "Doi Moi" (Renovation) policy, focussing on market oriented economic management; restructuring to build a multi-sectoral economy; financial, monetary and administrative reforms; and the development of external economic relations. Having joined the Association of Southeast Asia Nations (ASEAN), the Asia-Europe Cooperation (ASEM) and the Asia-Pacific

Economic Cooperation Forum (APEC), Viet Nam was participating in regional institutions which were committed to WTO principles and rules, and preparatory and substantially supportive of Viet Nam's accession to the WTO.

5. Viet Nam recognized the important role and significance of the WTO in the development of the global economy as well as the economic growth of individual countries. Viet Nam had decided to apply for WTO membership with a view to expanding its economic, trade and investment ties with other Members, reflecting a firm resolve to continue the process of integration of Viet Nam's economy into the world trading system. Conscious that WTO membership involved both rights and obligations, Viet Nam was committed to upholding the principles of the WTO as the basis for its trade policies. Viet Nam was revising its legislation to adapt gradually to the rules and principles of the WTO.

6. The Government had established an inter-ministerial National Committee on International Economic Co-operation (NCIEC), responsible for inter-sectoral coordination in policy formulation and economic cooperation, as well as a Governmental Negotiation Team on International Economic and Trade Affairs, comprising senior officials from various Ministries. Viet Nam was prepared to embark on negotiations in all sectors of interest to Members of the WTO. Referring to Viet Nam as a low-income and highly indebted developing country, he hoped and believed that Members would show sympathy and flexibility in the elaboration of the terms and conditions for Viet Nam's membership.

7. Members of the WTO welcomed strongly Viet Nam's application to join the WTO and pledged their full support to the accession process. Members appreciated the significant reforms already undertaken and encouraged Viet Nam to continue the policies towards market-orientation, liberalization and transparency. Viet Nam's integration into the world economy would allow Viet Nam to solidify the gains of its ongoing economic reforms. Some Members noted that Viet Nam would need to make further adjustments in its legal and trade regime to conform to WTO requirements, and looked forward to working actively with Viet Nam towards this objective.

8. The Working Party reviewed the economic policies and foreign trade regime of Viet Nam and the possible terms of a draft Protocol of Accession to the WTO. The views expressed by members of the Working Party on the various aspects of Viet Nam's foreign trade regime, and on the terms and conditions of Viet Nam's accession to the WTO are summarized below in paragraphs 9 to [369].

ECONOMIC POLICIES

Monetary and fiscal policy

9. The representative of Viet Nam said that in accordance with the Law on State Bank of Viet Nam, the main objective of Viet Nam's monetary policy was to stabilize the value of the currency – the Vietnamese Dong, to control inflation and to promote socio-economic development. Credits were channelled into activities making full use of the potentials of various economic sectors. The State Bank of Viet Nam was using monetary policy instruments such as refinancing, reserve requirements, interest rates, exchange rates, open market operations and other supplementary instruments to regulate the money supply. The State Bank of Viet Nam had applied a uniform rediscount rate for all commercial banks since 1999. Credit policy continued to be improved to meet sufficiently the financing requirements for economic growth in line with monetary policy objectives from time to time. The credit mechanism had been amended to become more liberal in order to create a level playing field among various economic sectors, improve the autonomy and accountability of credit institutions, and enhance credit quality.

10. Asked about the level of commercial debt owed by public sector enterprises, he said that State-owned enterprises had owed Vietnamese commercial banks 79.7 trillion Dong, or 42 per cent of total outstanding debt, on 31 December 2001. Financial institutions considered and decided themselves whether to provide loans to State-owned enterprises, on commercial terms.

11. The budget deficit was considered the main cause of inflation. The Government targeted a deficit ratio of maximum 3 per cent of GDP, compared to an average budget deficit of about 8 per cent to GDP in the 1980s. The budget deficit had amounted to 1.3 per cent of GDP in 1999, 2.7 per cent in 2000, 2.9 per cent in 2001, 2.3 per cent in 2002 and 2.1 per cent in 2003. The Government also aimed at maintaining a surplus of current revenue over current expenditure at 4.5 per cent of GDP. The respective ratios had been 5.1 per cent in 1999, 5.2 per cent in 2000, 3.9 per cent in 2001, 5.8 per cent in 2002 and 5.1 per cent in 2003. The first phase of Viet Nam's tax reform programme had helped in raising the total tax collected to GDP ratio from 13.1 per cent in 1991 to 22.6 per cent in 1995. The second phase of the programme had focussed on streamlining the tax rate structure, non-discrimination, a broadening of the tax base, improved tax administration, and the introduction of value-added tax (VAT) to replace a turnover tax. The main taxes levied in Viet Nam were corporate income tax; Agricultural Land Use tax; a Tax on the Transfer of Land Use Rights; Natural Resources tax (Royalties); Land and Housing tax; (Personal) Income tax; VAT; Special Consumption tax (Excise tax); and import and export duties. In addition, the Government levied fiscal charges such as land rent, water charges, a slaughtering tax (abolished in 1999), business licensing tax,

property registration fees and transportation fees. The total revenue from taxes, fees, charges and other levies as a percentage of GDP had amounted to 22.1 per cent in 2002 and 21.9 per cent in 2003.

12. Corporate income tax was levied in accordance with the amended Law on Corporate Income Tax, enacted by the National Assembly on 17 June 2003 and in effect since 1 January 2004, having replaced the Law on Corporate Income Tax of 10 May 1997. The amended Law stipulated a general tax rate of 28 per cent and preferential rates of 10, 15 and 20 per cent, applied to both domestic and foreign invested enterprises. The amended Law had also revoked a provision refunding the amount of corporate income tax corresponding to reinvested income and the amount of withholding tax according to Articles 42 and 43 of the Law on Foreign Investment in Viet Nam. The Agricultural Land Use tax had been levied since 1 January 1994 on all individuals and entities using land in agricultural production. Households using land in excess of established standard acreage paid an additional tax equal to 20 per cent of the basic rate. The land and housing tax was levied on houses, residential land and construction sites. However, the housing tax had remained temporarily uncollected. The amended Law on Corporate Income Tax had revoked a provision on taxes on the transfer of land use rights imposed on trading units according to the Law on Taxes on the Transfer of Land Use Rights. According to the amended Law, income of trading units arising from the transfer of land use rights were now subject to corporate income tax, while income arising from the transfer of non-business land use rights of individuals were subject to personal income tax as stipulated by the laws. The Law on supplements of and amendments to some Articles of the Tax on the Transfer of Land Use Rights, effective since 1 January 2000, provided for a tax rate of 2 per cent on land used in agricultural, forestry and aquatic production, and 4 per cent on land used for residential, construction and other purposes. The natural resources tax was applied in accordance with the amendments to the Ordinance on Natural Resources Tax of 30 March 1990, effective since 1 June 1998. The Ordinance provided for tax rates varying from 1-8 per cent on metal minerals, coal and precious gems, 0-25 per cent on oil and gas, 1-5 per cent on non-metal minerals, 1-10 per cent on natural marine products, 1-40 per cent on natural forest products, 0-10 per cent on natural water, 10-20 per cent on swallow's nests, and 0-10 per cent on other natural resources. The tax was applied to all types of projects, except when the Vietnamese partner in a joint venture had contributed the registered capital in the form of natural resources.

13. Legislation on personal income tax - the Ordinance on Income Tax of High Income Earners of 27 December 1990, amended on 1 June 1994 – distinguished between Vietnamese residents, foreign residents in Viet Nam, and Vietnamese citizens working abroad. Tax rates for Vietnamese residents ranged from zero to 60 per cent with a threshold of 1.2 million Dong, while foreign residents and Vietnamese citizens working abroad were taxed at rates from zero to 50 per cent with a threshold

of five million Dong (8 million Dong since 30 June 1999). Legislation introducing the various types of taxes contained provisions on tax exemption or tax reductions.

14. He added that the Ordinance on Income Tax of High Income Earners of 1990, amended in 1994, had been replaced by a new Ordinance on Personal Income Tax in 2001, which introduced a new threshold for permanently taxable income of 3 million Dong per month for Vietnamese residents and 8 million Dong for foreign residents and Vietnamese citizens working abroad. Tax rates for these subjects would range from 0 to 50 per cent. Other tax laws would also be amended to make them compatible with the Law on Value-Added Tax and the Law on Corporate Income Tax. He confirmed that new tax rulings were not applied retroactively.

15. A Member was concerned about very high personal income tax rates in Viet Nam and considered this a major investment disincentive. The representative of Viet Nam replied that the tax system was under review with a view to removing defects in the current system. The objective was to offer tax paying workers appropriate incentives compatible with international norms and practices.

Foreign exchange and payments

16. The representative of Viet Nam said that Viet Nam had replaced a fixed exchange rate system with a managed float flexible exchange rate mechanism in 1989. Foreign exchange transaction centres had been opened at the end of 1991, and an inter-bank currency market for commercial banks had been established in October 1994. The State Bank of Viet Nam monitored the balance-of-payments and foreign exchange reserves position of Viet Nam, and the State Bank could intervene in the market as necessary. The State Bank published the average transaction exchange rate of the Vietnamese Dong against the U.S. dollar in the inter-bank foreign exchange market on a daily basis. Viet Nam had normalized its financial relations with the International Monetary Fund (IMF) in October 1993. In order to prepare for the acceptance of the obligations under Article VIII of the Fund's Articles of Agreement, Viet Nam had been gradually meeting the requirements mentioned in Article VIII.

17. The convertibility of the Vietnamese Dong had been mentioned as an objective in Government Decree No. 05/2001/ND-CP of 17 January 2001, which had amended and supplemented Government Decree No. 63/1998/ND-CP on Foreign Exchange Management of 17 August 1998. Controls on current account transactions had been liberalized. Pursuant to this Decree, (i) residents and non-residents were allowed to open and maintain foreign exchange accounts with authorized banks in Viet Nam; (ii) Vietnamese citizens residing in Viet Nam were allowed to purchase, transfer and carry foreign exchange abroad for purposes such as tourism, education, medical treatment, payment of membership fees, and other charges for the purposes of providing support or inheritance

to family and relatives abroad, upon presentation of relevant documents in accordance with the regulations of the State Bank; (iii) foreign residents having legal income in foreign currency were permitted to transfer or carry the money out of Viet Nam, and income in Vietnamese Dong could be converted into foreign currency at authorized banks upon presentation of relevant documents and a certificate that all financial obligations in accordance with the laws had been fulfilled. Pursuant to Circular No. 04/2001/TT-NHNN on Foreign Exchange Management of foreign-invested enterprises and parties to business cooperation contracts (BCC) of 18 May 2001, foreign investors would be permitted to transfer abroad profits and other legal income upon presentation of relevant documentation to the authorized banks, i.e. the Memorandum of the Board of Directors (or Project Management Unit in the case of a BCC) on the distribution of profits (or distribution of revenue in case of a BCC) and a certificate from the competent tax authorities testifying that all financial obligations to the State of Viet Nam had been fulfilled. Foreign investors would also be permitted to transfer legal capital or reinvested capital due to termination or liquidation before expiry date upon presentation of relevant documents - i.e. the decision on dissolution of the enterprise (or Decision on termination of a BCC), including a statement of liquidation for terminated projects, and the certificate issued by the competent tax authorities - to the authorized banks.

18. Some Members noted that Viet Nam had imposed obligations to surrender foreign exchange in 1998. Viet Nam also appeared to maintain measures at odds with Articles XI and XVI (footnote 8) of the GATS, and Viet Nam was asked to reconsider these measures.

19. The representative of Viet Nam replied that, due to the impact of regional monetary and financial crises, Viet Nam had introduced temporary obligations to surrender foreign exchange in 1998 with the aim of concentrating foreign currency in the banking system to meet essential needs for foreign currency in the economy. Viet Nam had relaxed this surrender requirement continuously as the economic situation had improved. The requirement had been reduced from 80 per cent to 50 per cent in 1999, 40 per cent in early 2001, and 30 per cent in May 2002. He added that the obligatory foreign currency surrender ratio applicable to current transactions of resident economic and social entities had been set at zero per cent in accordance with the Prime Minister's Decision No. 46/2003/QD-TTg, issued on 2 April 2003. Concerning Article XI and footnote 8 to Article XVI of the GATS, Viet Nam had removed almost all restrictions on current international transfers and payments relating to current transactions. In respect of capital transactions, Viet Nam had relaxed capital transfers by foreign investors and foreign borrowing by resident organisations. The State Bank of Viet Nam was currently working with the International Monetary Fund (IMF) to confirm that Viet Nam had completed fully the obligations under Article VIII of the IMF Charter on current account payments and international remittances.

20. At present, Viet Nam only maintained restrictions on (i) capital transfers abroad for investment by resident organisations, which were subject to approval by the competent agencies and within the amount of foreign currency owned by them; and (ii) payment and repayment of foreign loans by resident organisations, which were permitted only when their loan agreements had been certified by the State Bank of Viet Nam. However, according to Article XII of the GATS (Restrictions to Safeguard the Balance of Payments), such restrictions could be considered acceptable as Viet Nam was facing difficulties in its international balance of payments. The registration with the State Bank was a procedural matter maintained for statistical purposes and in order to manage the overall amount of foreign commercial loans by enterprises. Asked about present requirements and restrictions on the repayment of loans and capital investments abroad by Vietnamese enterprises, he added that according to Decree No. 22/1999/ND-CP enterprises investing abroad were required to (i) obtain an overseas investment licence from the Ministry of Planning and Investment; (ii) open a foreign account with an authorized bank and channel all remittances through this account; and (iii) register the opening of the account and investment capital transfers with a bank branch in the province or city of its head office.

21. Some Members considered a requirement that each foreign company should maintain equilibrium between inflows and outflows of foreign currency, as prescribed in Article 33 of the Law on Foreign Investment, an impediment to the commercial activities of foreign investors and recommended that this requirement be eliminated.

22. The representative of Viet Nam replied that the foreign exchange self-balancing requirement had been eliminated pursuant to the Law on Amendment to and Supplement of some Articles of the Law on Foreign Investment in Viet Nam, approved by the National Assembly on 9 June 2000. He confirmed that Viet Nam had no intention to reintroduce such a requirement. The amendments allowed foreign invested enterprises and parties to business cooperation contracts (BCC) to purchase foreign currency at authorized banks to finance current, capital and other permitted types of transactions.

23. He added that his Government was considering guaranteeing the balancing of foreign currency needs for foreign investors investing in especially important projects identified in government programmes, and supporting foreign currency balancing for infrastructure projects and some other important projects in case the authorized banks could not meet all foreign currency needs. Detailed provisions were specified in Decree No. 24/2000/ND-CP of 31 July 2000 regulating the implementation of the Law on Foreign Investment in Viet Nam and in Government Decree No. 27/2003/ND-CP of 19 March 2003. Under certain circumstances, and subject to approval of the

State Bank of Viet Nam, foreign invested enterprises were permitted to open foreign exchange accounts abroad.

Investment regime

24. The representative of Viet Nam said that the National Assembly had promulgated the Law on Companies and the Law on Private Enterprises in 1990, and that these laws had been considered important milestones in the economic reform process in Viet Nam. During the following ten years, about 40,000 new enterprises with an aggregate registered capital of 21,000 billion Dong (approximately US\$1.5 billion) had been established. These enterprises had created employment for more than 500,000 people. In addition, more than 1.5 million business households, a distinctive type of business guided by Decree No. 66/HDBT of 2 March 1992, employed some 3 million labourers.

25. The legal and regulatory framework had been further improved in the 1990s and, as a result, some provisions of the Law on Companies and the Law on Private Enterprises had become incompatible with other applicable laws, which had hampered the effective enforcement of related regulations. The National Assembly had therefore passed a new Law on Enterprises, superseding the Law on Companies and the Law on Private Enterprise, in June 1999. The Law on Enterprises had entered into force on 1 January 2000. The main changes brought forward by the new Law were broader eligibility to set up and contribute to enterprise capital; simplified administrative procedures, including single-stop registration of new businesses; and more business autonomy. Business sectors were divided into (i) prohibited sectors; (ii) conditional business sectors; (iii) sectors requiring legal capital; (iv) sectors requiring professional licence; (v) sectors reserved for partnerships or private enterprises; and (vi) other sectors. Enterprise registration in other sectors was automatic. Minimum legal capital requirements for the establishment of enterprises stipulated in the Law on Companies had been abolished, except in some financial services sectors, when the Law on Enterprises had entered into force in 2000. The number of newly registered enterprises had been increasing rapidly since the promulgation of the Enterprise Law. By September 2003, some 72,600 new enterprises had been registered, adding to the 45,000 enterprises registered during 1991-1999 and thereby raising the number of privately-owned, registered enterprises in Viet Nam to about 120,000.

26. The Law on Foreign Investment of 29 December 1987 together with its amendments and additions of 1990, 1992, 1996 and 2000 and other guiding documents mentioned therein constituted the legal framework for foreign direct investment (FDI) activities in Viet Nam. In addition, with a view to creating a comprehensive legal framework for FDI, Viet Nam had signed and acceded to various bilateral and/or multilateral arrangements on investment, including bilateral agreements on the encouragement and protection of investment with 46 countries and territories, agreements on the

avoidance of double taxation with 40 countries and territories, the Framework Agreement on ASEAN Investment (AIA), the MIGA and the New York Convention, etc. These international treaties were an integral part of Viet Nam's legal framework for FDI in Viet Nam. The Ministry of Planning and Investment was the government authority regulating investment activities. Approval procedures for foreign invested projects were stipulated in the Law on Foreign Investment, in Government Decree No. 24/2000/ND-CP of 31 July 2000, and in Decree No. 27/2003/ND-CP of 19 March 2003 on amendment of and addition to a number of Articles of Decree No. 24/2000/ND-CP, guiding in detail the implementation of the Law on Foreign Investment in Viet Nam. Viet Nam encouraged foreign investment into almost all economic areas. Investments in some sectors were subject to certain conditions (specified in Decree No. 24/2000/ND-CP). As of December 2003, 4,412 foreign investment projects, with a total registered capital of US\$41.7 billion, operated in Viet Nam. Foreign investment projects accounted for 18 per cent of the total invested capital, 31 per cent of Viet Nam's export revenue and 37 per cent of industrial output, contributing nearly 14 per cent of Viet Nam's GDP. Foreign investment projects had created some 620,000 jobs directly, and several hundred thousand jobs were indirectly dependent on these projects.

27. Due to its low level of economic development, Viet Nam applied a wide range of incentives to stimulate economic development and employment. The main elements of this policy were wide sectoral coverage; encouragement of a wide range of investment forms with no ceiling on the capital held by foreign investors; priority accorded to projects in agriculture and the production of consumer goods; encouragement of export oriented production, including import duty exemptions and/or drawback on imported inputs used in the production of exports; special incentives for investment in disadvantaged regions; import duty exemptions on machinery and equipment, means of transportation, and materials used in construction for joint venture enterprises; tax holidays; and low tax on profit repatriation. Foreign investment projects were subject to minimum wage regulations. Minimum wages had been stipulated in local currency since 1 July 1999.

28. In accordance with the provisions of Decree No. 27/2003/ND-CP of 19 March 2003, providing for the amendment of and addition to a number of Articles of Decree No. 24/2000/ND-CP, foreign investment in some sectors was only allowed in the form of joint venture or business co-operation contract. The sectors listed were exploitation and processing of oil and gas and precious and rare minerals; consultancy services (except engineering services); air, railway and sea transportation; public passenger transportation; airport and port construction (except for BOT, BTO and BT projects); maritime and aviation business services; culture (except for projects for the printing of technical materials, packaging and labels, and printing on textile and garments, leather and footwear, printing of computer graphics onto animated films, and entertainment and sports areas); afforestation (except for indirect afforestation via Vietnamese organizations, family households and individuals);

travel tours; production of industrial explosives; and consultancy services (except for technical consultancy). The Ministry of Planning and Investment would coordinate with ministries, branches and people's committees of provinces and cities under central authority to submit the listed sectors to the Prime Minister for consideration and promulgation.

29. He added that his Government had abolished most regulations discriminating between domestic and foreign investment, and there were generally no substantial differences between these two categories of investment, even concerning the establishment, maintenance, management and control of enterprises. Notably, the Prime Minister had issued Decision No. 53/1999/QĐ-TTg, unifying a number of investment-related fees and charges. Among the fees and charges currently paid by foreign invested enterprises were fees and charges regulated by the Ordinance on Fees and Charges, as well as social insurance, medical insurance and other insurance fees. Pursuant to the Law on amendments and supplements to some Articles of the Law on Foreign Investment of 9 June 2000, foreign-invested enterprises were permitted to change the form of investment and divide, de-merge, consolidate or merge with other enterprises. Existing joint-ventures could be allowed to transform into wholly-owned foreign capital enterprises under certain conditions pursuant to Government Decree No. 24/2000/ND-CP of 31 July 2000.

30. Foreign invested enterprises were encouraged to manufacture goods for export. Tax incentives, i.e. preferential rates of corporate income tax (10, 15 or 20 per cent against the standard rate of 28 per cent) and tax reductions or exemptions with up to 9 year duration, could be granted to enterprises depending on their export ratio or area of investment. Foreign invested enterprises were also allowed to purchase goods not produced by themselves in the domestic market to be processed for export or exported without processing (except products listed as prohibited to trade for exportation, or conditionally exported goods). Enterprises were remitted import duties on materials and inputs actually used in the manufacturing of exports of finished goods. The Government maintained additional measures granting more favourable conditions for export-oriented enterprises.

31. Labour intensive industries were entitled to trade-related privileges pursuant Article 15 of Government Decree No. 51/1999/ND-CP of 8 July 1999 providing details on implementation of the amended Law on Domestic Investment Promotion (Law No. 3/1998/QH 10), under Government Decree No. 24/2000/ND-CP of 31 July 2000 guiding the implementation of the Law on Foreign Investment, Government Decree No. 27/2003/ND-CP of 19 March 2003 on amendment of and addition to a number of Articles of Decree No. 24/2000/ND-CP, as well as Government Decree No. 164/2003/ND-CP of 22 December 2003 guiding the implementation of the Law on Corporate Income Tax. Incentives could be accorded in the form of reduction or exemption from land rents or the land use tax, and extended periods of corporate income tax exemption or reduction.

32. Some Members considered the granting of a tax preference upon the fulfilment of an export requirement to be contrary to WTO provisions, most notably Article 3 of the Agreement on Subsidies and Countervailing Measures, and requested Viet Nam to provide a timeframe for the elimination of this incentive. The representative of Viet Nam replied that his Government had examined its policies to identify measures inconsistent with WTO provisions. Although Viet Nam did not consider an export ratio requirement to be contrary to WTO rules, Viet Nam would remove this requirement upon accession in an effort towards improving the business environment in Viet Nam.

33. Some Members noted that foreign investors were facing various serious difficulties in Viet Nam. These difficulties were caused by complicated and burdensome procedures, and included governmental investigation and a public tender requirement for the construction of factories, and a requirement in Article 14 of the Law on Foreign Investment that personnel and financial decisions in joint-venture companies be unanimous. Viet Nam's laws and regulations also encouraged increased Vietnamese participation in joint-venture companies, thereby restricting substantially a foreign investor's participation. Conditions on the right to use land remained inconvenient and insufficient for foreign investors, limiting the possibilities for investors to raise funds by mortgaging land. In addition, the land register system was considered imperfect and the methods for calculating land prices were not transparent. Incentives accorded to foreign investment in Viet Nam's laws and regulations were not available automatically, but subject to case-by-case approval by the authorities. Furthermore, Viet Nam applied a discriminatory labour system against foreign-invested companies, which were requested to hire employees through "employment promotion centres" and pay salaries of local workers in U.S. dollars. Viet Nam was encouraged to continue deregulating complicated procedures, in particular by introducing a one-stop service for investment, improving the laws and regulations regarding land and extending land use rights, ensuring that preferential benefits would be granted to foreign companies without exception, and by making improvements to address discrimination in labour matters. Viet Nam was also invited to allow stock-holding companies as one form of investment, and urged to ensure that all company-specific information obtained through the licensing procedures would remain confidential. A Member highlighted specific problems in the mining sector, including overlapping regulatory responsibilities between central and provincial authorities, as well as Viet Nam's practice to grant investment licences at the development stage, rather than at the exploration stage, which was the international norm.

34. The representative of Viet Nam replied that tender requirements aimed at ensuring fair competition, equality and transparency. Government Decree No. 88/1999/ND-CP of 1 September 1999 on the issuing of a Procurement Regulation and its amendments of 2000 and 2003 had introduced more transparent, specific and simple tender procedures. Inspections of construction sites guaranteed the quality of the works in accordance with Viet Nam's construction standards. A

new Construction Law has been issued on 10 December 2003, entering into force on 1 July 2004. Following the passage of this Law, three Decrees would be issued to guide the implementation of the Law. These included a Decree on construction quality management, a Decree on the management of construction investment projects, and a Decree on construction planning and management. These Decrees were expected to be drafted and submitted to the Government for consideration during 2004.

35. The representative of Viet Nam considered unanimity among the parties in a joint-venture an important contribution to its success. He added that the Law on Foreign Investment had been amended in 2000 to narrow further the scope of matters requiring unanimity among joint venture parties. He stressed that, according to this Law, regulations encouraging gradually increasing Vietnamese participation in joint-venture enterprises or allowing Vietnamese enterprises to purchase part of the capital of a wholly foreign-owned enterprise were not binding, and should be applied strictly on the basis of mutual agreement between the joint venture parties or with the consent of the owner of the wholly foreign-owned enterprise. Land was subject to public ownership and State administration in Viet Nam. Thus, even Vietnamese nationals could not own or mortgage land. The amended Law on Foreign Investment nevertheless stated that a foreign invested enterprise was permitted to mortgage assets associated with land and the value of land use rights to secure loans from all credit institutions permitted to operate in Viet Nam. The Law also held Provincial Committees and Vietnamese partners responsible for establishing clear procedures relating to land use rights and, if necessary, offering compensation. Foreign invested enterprises could lease land in connection with investment projects. The duration of the lease should normally not exceed 50 years. In cases stipulated by the Standing Committee of the National Assembly, the Government could grant leases with maximum 70 year duration. In his view, Viet Nam's land lease regulations, which were applied in a non-discriminatory manner between domestic and foreign investors, were not obstructing business activities, and Viet Nam had no plans to revise these regulations. He added that the National Assembly had adopted the Land Law on 26 November 2003.

36. The representative of Viet Nam noted that Vietnamese enterprises were also required to apply for investment incentives, and that Government Decree No. 24/2000/ND-CP listed detailed criteria for the granting of preferential treatment to foreign investors. As to labour matters, the newly amended Labour Code, which had entered into force in January 2003, allowed foreign invested companies to hire local personnel directly without going through employment promotion centres. Wage payments to Vietnamese employees were effected in accordance with Decision No. 708/1999/QĐ-BLĐTBXH of 15 June 1999. He stressed that his Government respected and protected investors' right to confidentiality of their business contracts, and intended to address problems identified at all State agency levels.

37. He added that on 19 March 2003 his Government had issued Decree No. 27/2003/ND-CP providing for amendment of, and addition to, a number of Articles of Decree No. 24/2000/ND-CP with a view to simplifying procedures further. The Decree expanded the scope of activities where foreign investment was encouraged. The group of projects subject to investment registration – which was more open than the investment licensing regime – had been enlarged, the criteria for the issuance of investment licences had been clarified, the list of sectors subject to conditional investment licences had been narrowed, and restrictions on labour recruitment and capital contributions in the form of technology transfer had been abolished. Viet Nam had authorized provincial committees and management committees of industrial parks to grant licences to speed up procedures, and the Ministry of Planning and Investment was considering to decentralize further the authority to issue investment licenses to provincial people's committees and industrial zones' management boards. He noted that licences were granted within a week in the province of Binh Duong. Efforts to establish a "one stop" agency for foreign investment were ongoing. On 6 June 2003, his Government had issued Decree No. 61/2003/ND-CP mandating the Agency of Foreign Investment within the Ministry of Planning and Investment to administer foreign investment activities uniformly throughout Viet Nam. Together with other concerned ministries and agencies, the Ministry of Planning and Investment was reviewing existing regulations with the objective of abolishing provisions, procedures and licenses considered out-dated, overlapping or impeding the operation of FDI enterprises. The Ministry of Planning and Investment had submitted a proposal to the Prime Minister which would allow provincial People's Committees and the management boards of industrial zones to grant investment licences.

38. On 15 April 2003, his Government had issued Decree No. 38/2003/ND-CP, providing for the transformation of foreign invested enterprises into joint stock companies. In addition, with a view to setting up a "level playing field" for foreign and domestic investors, Viet Nam was moving forward on creating a common Investment Law to be applied for both domestic and foreign investors. His Government had also authorized the Ministry of Planning and Investment, the Ministry of Justice and other relevant ministries and agencies to consider the elaboration of a uniform Enterprise Law which would apply to all enterprises irrespective of economic sector or form of ownership. The draft Laws would be submitted for consideration by the National Assembly at its session in November 2004. As to foreign investment in mining, Viet Nam was revising the Mineral Law to bring it closer to international practice. According to Government Decree No. 76/2000/ND-CP of 15 December 2000 (Article 52.4), investment licences covering exploration, exploitation and processing activities were granted to foreign individuals and organizations, and joint ventures. Management of foreign investment in mineral exploitation had been transferred to local authorities to improve the effectiveness of FDI management in this sector.

State ownership and privatization

39. The representative of Viet Nam said that Viet Nam was shifting from a system of central planning to a market-based economy. Resolution No.51/2001/QH10 of 25 December 2001, which amended the 1992 Constitution, recognized seven types of ownership – State-owned, collective, private individual, households, private capitalist, State capitalist and foreign investment – as equal before the laws. State-owned enterprises had accounted for 41 per cent of GDP in 1996, and 39.5 per cent of GDP in 2000. All enterprises operating legally on the territory of Viet Nam and/or under the laws of Viet Nam were recognized and protected by the laws, including protection against nationalization. The laws of Viet Nam did not yet recognize private ownership of land, forests and water resources, but only recognized the right to use these properties. Sustainable land use rights for land users, including the transfer of land-use rights, had been recognized by the State since 1993. The State of Viet Nam recognized the ownership to fixed assets (except land) of foreigners during their residency in Viet Nam.

40. The State-owned sector had been restructured and reorganized since 1986, and in particular since 1991. Their assets had been re-evaluated and audited. The State had abolished direct monitoring and administration of enterprises by governmental agencies. The management of State-owned enterprises had been given autonomy, and were held accountable for the performance of their business operations. In the past, the profits of State-owned enterprises had been transferred to the State budget, and losses had been covered by subsidies from the State. At present, insolvent State-owned enterprises would be treated as any other enterprises under the Law on Bankruptcy, in force since 1 July 1994.

41. Economic co-operatives were recognized and protected under the Law on Cooperatives. In particular circumstances, co-operatives could assign land and capital goods to co-operative member households. Cooperatives were mainly located in rural areas and engaged in agricultural production, handicrafts, rural transport and credit funding. The Government assisted cooperatives through measures such as exemption from land use tax, tax exemptions or reductions, and reduced tuition fees at public training institutions. Proprietorships and households played an important role in small scale production in Viet Nam. The production of private enterprises and companies accounted for around 8 per cent GDP. In addition, business households accounted for approximately 9 per cent of GDP.

42. Pursuant to the Prime Minister's Directive No. 20/1998/CT-TTg of 21 April 1998 and Decree No. 64/2002/ND-CP of 19 June 2002, State-owned enterprises had been transformed into joint-stock companies ("equitized"). Restrictions had been lifted on the proportion of initially issued shares that individuals and legal entities could purchase, and the percentage of shares that had to be sold by auction to outsiders through financial institutions. The Prime Minister had promulgated Decision No. 58/2002/QD-TTg on 26 April 2002. The Decision specified the criteria for classifying enterprises

as State-owned and State corporations. State-owned general corporations would be merged, dissolved or transformed into individual enterprises. Only a few qualified general corporations would be retained and restructured. He added that the State had taken measures to accelerate the "equitization" of certain State-owned enterprises. Asked to define the concept of "equitization", he said that Viet Nam considered the process a step towards the restructuring, upgrading and enhancement of the efficiency of State-owned enterprises, whereas revenue to the State budget was not the ultimate purpose. The process foresaw diversity of ownership, including by the State and the employees, and was implemented with consideration to the interests of the employees.

43. Pursuant to the Prime Minister's Directive, ministries and agencies had classified and arranged State-owned enterprises in three groups; (i) enterprises which would remain State-owned, (ii) enterprises in which the State would retain special interest or controlling shares and (iii) enterprises in which the State would dispose of all its shares. Group 1 were State-owned enterprises considered to play an important role in the economy, and therefore 100 per cent State-ownership should be retained. Certain public-interest State-owned enterprises, specified in Article 1 of Government Decree No. 56-CP of 2 October 1996, were excluded from "equitization", including enterprises in the defense industry, and public-interest enterprises which derived at least 70 per cent of their revenue from urban public works and public transportation; infrastructure such as railway, road, waterways, airport, air traffic control, maritime safety, and ship navigation in and out of harbours; technical inspection of road and waterway means of transportation; examination, control and distribution of radio frequency; exploitation and protection of irrigation works; production of original breed plants and animals; publication and distribution of school books, political publications and newspapers; production and distribution of newsreels, documentary films, and films for children; cinematographic services in the highlands, border regions and island areas; the production and supply of salt; and the production and supply of other products and services in accordance with the State's social policies. Group 1 also included enterprises which manufactured products or provided services under State monopoly, i.e. explosive materials, toxic chemicals, radioactive materials, the printing of money and paper of monetary value (valuable notes), and national and international telecommunications gateways and networks. Notwithstanding their inclusion in Group 1, public-interest State-owned enterprises could be equitized upon approval of the Prime Minister, for enterprises with capital exceeding 10 billion Dong (US\$600,000), or decisions taken by a Minister, or the Chairmen of People's Committees of provinces or cities, for enterprises involving capital equal to or less than 10 billion Dong.

44. Group 2 were enterprises in which the State should retain special interest or controlling shares when equitizing, as their businesses were related security or defence, the activities were considered vital to the economy, involved the supply of essential products, or activities which his Government

believed the private sector was unwilling or unable to engage in. Group 2 included public-interest State-owned enterprises with capital of more than 10 billion Dong; enterprises engaged in exploitation of precious and rare ores, and enterprises engaged in large-scale mineral exploitation; providing technical services relating to oil and gas exploitation; production of fertilizers, insecticides, pharmaceuticals and pharmaceutical chemicals; large-scale production of non-ferrous metals and precious and rare metals; large-scale electricity production, electricity transmission and distribution; aircraft repair; post and telecommunications services; railway, airway and maritime transportation; printing, publishing and large-scale production of alcohol, beer, and cigarettes; investment banks and banks for the poor; and enterprises engaged in large-scale trading of petrol. Joint-stock companies were required to comply with the provisions of the Company Law (now Enterprise Law). At least 20 per cent of the enterprises in Group 2 subject to self-accounting had been targeted for "equitization" during 1998-99 in accordance with Directive No. 20/1998/CT-TTg of 21 April 1998. Group 3 consisted of enterprises in which the State did not hold a controlling interest, having disposed of all or part of its shareholdings.

45. Foreign investors were allowed to participate in the equitization process by purchasing shares of State-owned enterprises in sectors identified in the Prime Minister Decision No. 36/2003/QĐ-TTg of 11 March 2003. The sectors listed were textiles and garments; footwear; leather-processing; production and processing of agricultural, forestry and marine products; production of other consumer goods; production of construction materials; road transportation, inland waterway transportation and container merchandise transportation; production of stationery and teaching equipment for schools; production of toys; commerce, hotel and hotel-related services; and mechanical engineering manufacturing. The regulation did not distinguish between enterprises producing for the local market or for exportation. Moreover, Viet Nam did not prohibit the establishment of foreign invested enterprises competing with State-owned enterprises undergoing equitization.

46. For equitized Group 1 and Group 2 enterprises, the total value of shares sold to foreigners should not exceed 30 per cent of a joint-stock company's registered capital. An auction would be required if the value of the shares bought by foreigners exceeded this threshold, unless the company would be transformed into an FDI enterprise and thus governed by the Law on Foreign Investment. Shares purchased by foreign investors were paid in local currency. Foreign exchange was converted at the average inter-bank exchange rate announced by the State Bank of Viet Nam at the time of the sale.

47. Equitized enterprises benefitted from a 50 per cent reduction in corporate income tax for two years after the transformation had taken place. The fees associated with the transformation were

deducted from the State capital. Enterprise employees were entitled to buy shares at a discount, and cash bonuses were also distributed to the employees.

48. A Member requested Viet Nam to provide a table detailing the progress in privatization and equitization, including data on completed transformations as well as future plans by major sector and/or size of enterprise.

49. In reply, the representative of Viet Nam said that, up to 31 December 2003, Vietnam had "equitized" and diversified the ownership of 1,718 enterprises and units. His Government had issued Decree No. 103/1999/ND-CP of 10 September 1999 on the assignment, sale, contracting out, and leasing of State-owned enterprises. By the end of 2000, about 100 State enterprises had been assigned, sold, contracted out or leased. According to the 2002-2005 Plan for the restructuring and change of ownership of State-owned enterprises, some 2,053 enterprises were expected to be equitized, while 200 were to be sold, 278 to be merged and 108 to be acquired. During 2003, 537 State-owned enterprises had been equitized and 67 had been assigned, sold or contracted out. Following the ownership transformation, most of these enterprises were currently operating more efficiently and contributing to employment and income generation for their employees. He added that important policy adjustments were expected in the near future, including the restructuring of current public-interest enterprises, and the identification of public goods and services to be provided by any enterprise through bidding, rather than by authorization.

Pricing policies

50. The representative of Viet Nam said that his Government respected the autonomous right of enterprises and individuals operating legally in Viet Nam to set their prices. Prices of most goods and services were determined by market forces. The Ordinance on Price, which had come into effect on 1 July 2002 and Decree No. 170/2003/ND-CP of 25 December 2003 guiding in detail the implementation of a number of Articles of this Ordinance, confirmed that direct State intervention in pricing would be limited. His Government would only use measures directly affecting prices in case of dumping or abuse of monopoly position in order to stabilize the socio-economic environment, or to protect the legitimate interests of producers, consumers and the State. Such rates, the enterprises and individual businesses subject to price control, and the implementing period, were published widely in the media (television, newspapers and the internet) in Viet Nam. Since 2003, his Government had applied price controls only on petrol, electricity, postal and telecommunications services, air fares between Hanoi and Ho Chi Minh City, and potable water.

51. The Ministry of Trade had been empowered to establish maximum import prices in accordance with Government Decree No. 33/CP of 19 April 1994. Maximum import prices had been

imposed on fertilizer, petroleum, iron and steel and certain machinery and equipment. This price control measure had been temporary, not applied to Viet Nam's trade on a regular basis, and was no longer in effect pursuant to the Ordinance on Price No. 40/2002/PL-UBTVQH10 of the Standing Committee of the National Assembly of 10 May 2002.

52. A Member noted that with the introduction of Value Added Tax on 1 January 1999, the Vietnamese authorities had issued "guidance" to enterprises not to add VAT to the price of their goods. This Member considered such "guidance" measures unreasonable. The representative of Viet Nam replied that to avoid market disturbance his Government had issued regulations requiring all businesses to declare publicly the selling prices of their goods. His Government required enterprises to review their costs and set reasonable prices, and had been strict in preventing enterprises from taking advantage of the introduction of VAT to increase their prices. This "guidance" had however been phased out.

53. He added that Viet Nam was phasing out gradually a system of dual pricing according to which Vietnamese residents and foreigners were charged different prices for identical goods or services. Uniform telecommunications charges had been applied since 1 October 2000. By February 2004, Viet Nam had eliminated the dual pricing mechanism on domestic air fares (Decision No. 3226/QĐ-CHK of 26 November 2003), telecommunication services, and port services, leaving only electricity subject to dual pricing. According to the timetable for adjusting electricity prices approved by his Government, a common electricity price would be applied for both Vietnamese and foreigners as from 2005. Price reform would be conducted in tandem with a reform of salaries aimed at raising people's income.

54. Some Members were pleased that Viet Nam had eliminated dual prices on many goods and services. These Members encouraged Viet Nam to implement the measures foreseen to eliminate all dual pricing prior to accession, including for electricity, and reminded Viet Nam that in order to meet WTO requirements, price controls applied to trade should be transparent and conform to other WTO provisions, e.g. national treatment and the avoidance of prejudicial effects on imports in Article III of the GATT 1994.

55. [The representative of Viet Nam confirmed that, from the date of accession, in the application of price controls, Viet Nam would apply such measures in a WTO-consistent fashion, and take account of the interests of exporting WTO Members as provided for in Article III.9 of the GATT 1994, and in Article VIII of the General Agreement on Trade in Services (GATS). [He also confirmed that Viet Nam published the list of goods and services subject to State control and any

changes in its Official Gazette and would continue to do so after accession.] The Working Party took note of these commitments.]

Competition policy

56. The representative of Viet Nam said that during the period of central planning in Viet Nam, government agencies had controlled all State-owned enterprises operating in each sector. Government agencies no longer had such controlling power, but they were still responsible for sectoral development policies ("sectoral management").

57. Viet Nam was drafting a Competition Law for presentation to the National Assembly. In the meantime, specific anti-trust and competition matters had been addressed in existing legislation, notably in the Law on Enterprises, the Commercial Law, the Ordinance on Consumer Protection (1999), and the Ordinance on Prices (effective as from 1 July 2002). Viet Nam had been applying certain measures, such as prohibition of abuse of monopolistic power and price fixing, to encourage fair competition. Asked whether the new Competition Law, once enacted, would apply equally to State-owned, privatized, equitized, foreign invested and private firms, or whether wholly or partially State-owned firms would be allowed to retain competitive privileges compared to other enterprises, he noted that the Competition Law was still in elaboration and invited Members to examine the latest version of the draft at the website of the Ministry of Trade (<http://www.mot.gov.vn>).

FRAMEWORK FOR MAKING AND ENFORCING POLICIES

58. The representative of Viet Nam said that in the unitary State of Viet Nam the National Assembly was the highest organ of State and legislative power in accordance with the 1992 Constitution of the Socialist Republic of Viet Nam. The National Assembly decided on the fundamental domestic and foreign policies, socio-economic policies, national defense and security issues, etc. The State President and Vice-President, the Prime Minister, the President of the Supreme People's Court and the Head of the Supreme People's Procuracy were all elected by the National Assembly. The duration of each National Assembly legislature was five years. The National Assembly held two regular sessions each year and, whenever necessary, extraordinary sessions would be convened.

59. The Standing Committee of the National Assembly was a permanent body entitled to enact and supervise ordinances and resolutions. The Standing Committee also supervised the implementation of the Constitution and resolutions of the National Assembly, as well as the activities of the executive and juridical branches of government and local elected bodies. The Standing Committee of the National Assembly was authorized to interpret the Constitution, laws and ordinances, and carry out the routine tasks of the National Assembly in-between its sessions.

60. The State President was elected by the National Assembly among its Deputies for a term similar to that of the National Assembly. Among the duties and powers of the State President were to promulgate the Constitution, laws and ordinances; to negotiate and sign international agreements on behalf of the Socialist Republic of Viet Nam with other heads of State; and to ratify or accede to international agreements, except in cases requiring ratification by the National Assembly. Pursuant to the resolutions of the National Assembly or the Standing Committee of the National Assembly, the State President could appoint, relieve from duty or dismiss the Vice Prime Minister, Ministers and other members of the Government, the Vice President of the Supreme People's Court, judges, and the Vice President and prosecutors of the Supreme People's Procuracy.

61. Executive power to implement policies affecting the economy, cultural and social life, national defense and security, foreign policy, etc. rested with the Government, reporting to the National Assembly, the Standing Committee of the National Assembly, and the State President. The Government was in charge of foreign affairs. It negotiated and signed international agreements on behalf of the Socialist Republic of Viet Nam except in cases falling under the responsibility of the State President, and on behalf of the Government; ratified international agreements on behalf of the Government and monitored their implementation; and protected the interests of the State and Vietnamese organisations and citizens abroad. The Government ensured implementation of the Constitution and the laws, prepared bills and draft law amendments for approval by the National Assembly, issued by-laws (decrees and regulations), and guided the implementation of laws and ordinances. It exercised administrative power at all levels of the administrative system, i.e. central government, provinces and cities directly under the central government, districts, precincts and ward communes. Provincial People's Committees carried out State administrative management and control over foreign economic activities within their provinces pursuant to the Constitution, the Law on Organization of People's Councils and People's Committees, and other relevant legislation. The Government ensured uniform nationwide implementation of the legal system.

62. The Prime Minister was empowered to promulgate decisions and directives to implement laws, ordinances and law-decrees; to suspend or annul decisions, directives, and circulars issued by Ministers or other senior members of the Government, and decisions or directives issued by the People's Committees and by the President of the People's Committees of provinces and cities under central management which were considered contrary to the Constitution, laws and other legal documents issued by higher-level State agencies; to suspend the implementation of resolutions issued by the People's Councils of provinces or cities under central management which were considered contrary to the Constitution, laws and other legal documents issued by the higher-level State agencies, and to propose their annulment by the Standing Committee of the National Assembly. The main ministries and agencies involved in trade and investment related policies were the Ministries of Trade, Planning and

Investment, Finance, Foreign Affairs; the Office of the Government; and the People's Committees of provinces and cities directly under central government rule.

63. He confirmed that the National Assembly was the only body empowered to promulgate the Constitution and laws. In case of conflict between provisions of legally equivalent documents, the most recently promulgated provisions would prevail. Pursuant to the Law on the Enactment of Legal Documents of 12 November 1996 and the Law on amendment of and addition to a number of Articles of the Law on Enactment of Legal Documents adopted by the National Assembly on 16 December 2002, the hierarchy of laws in Viet Nam comprised - in descending order - (i) the Constitution of the Socialist Republic of Viet Nam, (ii) legislation issued by the National Assembly, including laws and resolutions, (iii) legislation issued by the National Assembly's Standing Committee including ordinances and resolutions, (iv) orders and decisions of the State President, (v) resolutions and decrees of the Government and decisions and instructions of the Prime Minister, (vi) decisions, instructions and circulars issued by Ministers and heads of ministry-equivalent bodies, (vii) resolutions of the Judicial Committee of the Supreme People's Court; decisions, instructions and circulars issued by the Head of the Supreme People's Procuracy, (viii) resolutions and circulars issued jointly by government authorities, government authorities and socio-political organizations, and (ix) legislation issued by People's Councils and People Committees at different levels in order to implement the legislation of superior government authorities.

64. He noted that Viet Nam's legislation neither provided for direct applicability of international treaties in the national legal system nor did it ban the direct application of such treaties. The Ordinance on the Conclusion and Implementation of Treaties mainly addressed the classification of treaties, the process and the authority to propose, negotiate, conclude and implement treaties, and did not stipulate whether a treaty was directly applicable in the legal system of Viet Nam. However, the Ordinance required Vietnamese agencies proposing, negotiating, concluding and implementing treaties to review domestic laws and to propose the amendment of, addition to, revocation or issuance of legal documents in order to implement such treaties. In addition, many (but not all) Vietnamese legal documents included a general provision that "in case that treaties to which Viet Nam is a party stipulate otherwise, the provisions of those treaties shall prevail". He added that a Law on Treaties was in preparation and was expected to be submitted to the National Assembly for comment at the end of 2004. He expected the new Law on Treaties would clarify further the hierarchical order of treaties in the legal system of Viet Nam. Concerning the application of MFN and national treatment, he noted that the Ordinance on Most Favoured Nation and National Treatment in International Trade No. 41/2002/PL-UBTVQH10, which had entered into force on 1 September 2002, provided for the general principles of non-discriminatory treatment in trade, as well as exceptions to MFN and national treatment in strict accordance with WTO rules.

65. The Supreme People's Procuracy supervised the full and strict observance of the law by local authorities and had the right to initiate public prosecution. Local People's Procuracy and Regional Military Procuracy supervised judicial activities and exercised the right to initiate public prosecution within their jurisdictions.

66. Viet Nam's judicial system comprised the Supreme People's Court, local People's Courts and military tribunals. The National Assembly could also decide to establish special tribunals. The Supreme People's Court supervised and directed the judicial work of local People's courts and military tribunals. The President of the Supreme People's Court reported to the National Assembly or, when not in session, to its Standing Committee and to the State President. Hearings of the People's Courts were public except in cases determined by the law. Judgements by the Civil Courts were executed by central and local level bodies under uniform administration by the Ministry of Justice.

67. Encouraged by some Members to improve opportunities for consultation prior to the passage of laws, and to accelerate the process of issuing guidelines accompanying the relevant laws, the representative of Viet Nam noted that Viet Nam had made considerable progress in speeding up procedures for the promulgation of legal documents. Government agencies involved in the drafting of legal documents were required to offer individuals and organizations an opportunity to comment on the legal document, and to take account of these comments according to Article 3 of the amended Law on Promulgation of Legal Documents, approved by the National Assembly on 16 December 2002 (see also the section "Transparency"). In response to Members' observations that conflicting provisions in Viet Nam's legislation encouraged subjective interpretation and complicated enforcement, the representative of Viet Nam did not share these views, particularly in respect of legal documents issued by the National Assembly or its Standing Committee in the area of international trade. He stressed that Viet Nam was making every effort to identify and correct discrepancies among its laws and regulations. Viet Nam would also consider proposals to move from a "positive" to a "negative" list approach in its legislation, whereby activities would be considered permitted unless expressly prohibited by law. The principle had already been applied, for example, in the Constitution (Article 16) and in the Enterprise Law (Article 6). However, the "negative" list approach was still a novelty in Viet Nam, and would require further examination and evaluation. In regard to a suggestion that Viet Nam should make its laws self-enforcing, he stressed that Viet Nam was making every effort to enforce laws immediately after promulgation.

68. The representative of Viet Nam said that procedures for negotiation, conclusion and approval or ratification of international treaties were regulated by the Ordinance on the Conclusion and Implementation of International Treaties of 20 August 1998. The State President decided on the ratification of international agreements, except in cases where these would need to be submitted to the

National Assembly for decision. International treaties subject to ratification were those addressing issues concerning peace, security, territorial borders and national sovereignty; the basic rights and obligations of citizens and judicial cooperation; those containing provisions not stipulated in, or in contradiction of, provisions in legal documents issued by the National Assembly, the National Assembly Standing Committee or the State President; treaties having an impact on the State budget upon submission by the Government for ratification; or treaties containing provisions on mandatory ratification. International treaties signed on behalf of the Government, or Ministries subject to approval, were those containing provisions on mandatory approval, or treaties containing provisions not stipulated in, or in contradiction of, legal documents issued by his Government. He confirmed that accession to the WTO would require ratification. The National Assembly was competent to supervise the implementation of international agreements in Viet Nam and to promulgate legal documents for the implementation of such international agreements.

69. Procedures for the settlement of economic disputes were stated in the Ordinance on Procedures for Settlement of Economic Cases, adopted by the Standing Committee of the National Assembly on 29 March 1994. All parties to an economic dispute were entitled to bring their cases to the People's courts for resolution within 6 months from the date on which the dispute had arisen. He expected the Code for Prosecution of Civil Cases and the Ordinance to be amended to extend the current time limit from 6 months to 2 years. Disputes involving a foreign party were solved by People's courts at the provincial level in accordance with first instance procedures. The court would seek amicable settlement before the first instance hearing. The first instance hearing was conducted by a council of trial comprising two judges and one juror, deciding by majority vote. All parties were entitled to appeal against the first instance court's judgment or decision and to request the People's court at a higher level to conduct the second instance trial within 10 days from the date of declaration of the court's judgment. The judgement of the court of first instance would be legally effective if not appealed within this time-limit. Except in complex cases, the court of appeal would generally open the appeal hearing within one month after the date of receipt of all documents submitted by the court of first instance. The judgment or decision of the court of appeal would be legally effective.

70. Individuals and organizations were entitled to lodge petitions and appeal administrative decisions or actions to the courts if they considered such decisions or actions illegal pursuant to the Law on Complaint and Denunciation. Disputed administrative decisions would first be appealed to the agency having taken the decision. The appeal should be lodged within 90 days from the date of receipt of the decision (Article 30 of the Law on Complaint and Denunciation). If the complainant was not satisfied, he could lodge a petition to the immediate higher administrative level or initiate legal proceedings with an Administrative Court. Article 1 of the Ordinance on Procedures for Settlement of Administrative Disputes, adopted on 21 May 1996, and its amendments of 25 December

1998, stipulated that every individual, entity and governmental body had the right to initiate a case before the Administrative Court to protect their legitimate rights and interests. The Administrative Court had competence to handle economic-related administrative cases such as petitions against administrative decisions or administrative actions concerning land management, the grant or withdrawal of permits and licences in construction, production and business, forced requisition, purchase or confiscation of property, the collection of taxes and tax arrears, and decisions or actions concerning the collection of charges and fees. The Administrative Court was a judicial tribunal in the system of People's Courts and was independent from the executive branch. He confirmed that according to Article 11 of the Ordinance on Procedures of Settlement of Administrative Cases issues relating to customs, taxes, licensing fees and charges were all under the purview of administrative courts.

71. Court judgments or decisions having come into legal force could be challenged under the judicial procedure. The President of the Supreme People's Court and the Head of the Supreme People's Procuracy had the right to protest against judgments or decisions, which had taken effect, of Courts at all levels. The Vice President of the Supreme People's Court and the Deputy Head of the Supreme People's Procuracy had the right to protest against judgments or decisions (which had taken effect) of lower-level Courts. The President of the provincial People's Court and the Head of the provincial People's Procuracy also had the right to protest against effective judgements or decisions of lower-level Courts. The Head of the Supreme People's Procuracy had the right to request retrial of judgements or decisions (which had taken effect) of People's Courts or Military Courts at all levels. The Head of the provincial People's Procuracy had the right to request retrial of effective judgements or decisions of district People's Courts. The Head of the Regional Military Procuracy could request retrial of effective judgements or decisions of Regional Military Courts. The trial panel was entitled to reject a protest, to retry a case under the first instance or appeal procedures, or to modify the judgements or decisions of the case. Judgments or decisions of the People's court in economic disputes were mandatory, and enforced in accordance with the Ordinance on implementation of civil judgments.

72. Procedures for settlement of economic disputes by arbitration were provided in Government Decree No. 116/CP of 5 September 1994 on the Organization and Activities of Economic Arbitration. If the parties to a dispute did not want to file a petition to the People's court, they could choose, by consensus, to resolve the dispute by an economic arbitration centre. The petition should attach a written agreement on the choice of arbitrators and other related documents. Arbitration decisions were final and binding, and could not be appealed by any party. However, if a party did not accept the decision, he would have the right to request an authorized People's court to try the case in accordance with the procedure on settlement of economic cases. Ordinance No. 08/2003/PL-UBTVQH on Commercial Arbitration had been adopted by the National Assembly Standing Committee on

25 February 2004 in order to replace Decree No. 116/CP of 5 September 1994 and Decision No. 204/TTg of 28 February 1993 of the Prime Minister. The Ordinance expanded the concept of commerce to be consistent with international practice, stipulated that decisions of an arbitrator would be final and that the related parties had to follow the decisions of arbitrators and the decisions of courts, except when the decisions of arbitrators had been rejected by a court according to the provisions of this Ordinance. The Ministry of Justice was responsible for the organization of and activities of arbitrators and, once established, the Arbitration Centres should operate according to the Charter and Procedural Rules of Arbitration Centres. Unless specified otherwise, the deadline for the filing of an arbitration case would automatically be two years from the date the dispute had arisen.

73. A Member asked the representative of Viet Nam to confirm that sub-central entities had no autonomous authority over issues of subsidies, taxation, trade policy or any other measures covered by WTO provisions, and that Viet Nam would apply the provisions of the WTO agreement, including its Protocol of Accession uniformly throughout its customs territory and other territories under its control, including in regions engaging in border trade or frontier traffic, special economic zones, and other areas where special regimes for tariffs, taxes and regulations were established. Viet Nam should also confirm that, after accession, when informed of a situation where WTO provisions were not being applied or applied in a non-uniform manner, the central authorities would act to enforce WTO provisions without requiring affected parties to petition through the courts.

74. The representative of Viet Nam replied that the assignment of authorisation to different levels of administration was determined by Viet Nam's laws. Thus, according to the Law on Organization of People's Councils and People's Committees of 26 November 2003, the functions of provincial People's Committees included (i) the establishment of plans to develop trade, services and tourist networks and participate in international cooperation in trade, services and tourism as stipulated by laws; (ii) issuing and revoking licenses for tourist businesses, tourist areas, tourist spots, hotels, and local travel agencies within a province as regulated by laws; (iii) market supervision and organization of export-import management as regulated by laws; and (iv) inspection and supervision of trade, services and tourism activities to ensure their compliance with laws and regulations. The decentralization of management functions to People's Committees at different levels was also stipulated in other specific laws. However, the People's Committees implemented the administrative functions specifically stipulated in legal documents, and were required to comply with these documents. Viet Nam would ensure uniform application of its commitments upon accession to the WTO. His Government would implement measures as necessary to carry out its obligations required by the WTO and the obligations of Viet Nam stipulated in its accession Protocol. He confirmed that local authorities had no right to promulgate any kind of fees on imported goods.

75. A Member noted that most WTO members allowed for the full use of administrative appeals prior to recourse to the courts, and that participation in one process would not preclude recourse to the other. This Member urged Viet Nam to consider the advantages of allowing both avenues of appeal in the context of its accession. The representative of Viet Nam replied that this question had raised an important issue to be considered in the process of administrative and judicial reform in Viet Nam. His Government's commitment to public administration reform had been confirmed in a Master Plan covering the period 2001-2010 and focusing on reforms of institutions, public finances, organizational matters and human resources development.

POLICIES AFFECTING TRADE IN GOODS

Trading rights (the right to import and export)

76. The representative of Viet Nam said that, in the past, only businesses licensed by the Ministry of Trade had been allowed to import and export. The regulation distinguished between production enterprises and non-production enterprises, including those specialized in commerce and the supply of services (i.e. tourism, transportation, forwarding etc.). Production enterprises were required to be legally established in Viet Nam and to operate in the line of business for which they had been registered initially.

77. The import-export licensing requirement had been abolished by virtue of Government Decree No. 57/1998/ND-CP of 31 July 1998, and a working capital requirement for trading enterprises was no longer effective. As of 1 September 1998, all wholly Vietnamese-owned enterprises - irrespective of ownership structure, nature (trading or manufacturing) and size of capital - were allowed to import and export goods. However, business activities in some sectors were prohibited (arms, narcotics, etc.) or conditional (mainly for safety, human health and environmental purposes). His Government did not limit or otherwise intervene in the scope of business chosen by Vietnamese enterprises and, except in the prohibited sectors, wholly Vietnamese-owned enterprises were entitled to determine their scope of business at their own discretion.

78. Concerning importation by foreign invested enterprises, past regulations were still in force. Foreign-invested enterprises were subject to the Law on Foreign Investment, while domestic enterprises were subject to a different set of regulations. Viet Nam did not encourage foreign investment in pure trading without a local production or manufacturing base. Foreign invested enterprises and foreign joint venture enterprises were not permitted to import goods for distribution in Viet Nam. Foreign invested enterprises were accordingly allowed only to import goods used as inputs in the manufacturing process, and machinery, equipment, transportation means and materials used in the construction and installation of the project in accordance with the investment licence.

79. As a step towards levelling the playing field between Vietnamese-owned and foreign invested enterprises, the Government of Viet Nam had promulgated Decree No. 10/1998/ND-CP on 23 January 1998. The Decree allowed foreign invested manufacturing enterprises to purchase goods in the local market for direct exportation or exportation after processing, except goods prohibited to export (also applicable to Vietnamese enterprises) as well as (i) rice (HS 1006.10-1006.40), (ii) explosives and inflammables (HS 3601-3604 and 3606), (iii) books and magazines (HS 4901, 4902), (iv) pearls, precious stones and metals, and jewellery (HS 7101-7116 and 7118), (v) fine art items, collectibles and antiques (HS 9701-9706), (vi) garments and textiles destined for the European Communities, Canada, Norway and Turkey, (vii) processed items made from wood, (viii) coffee beans, (ix) wild animals, (x) forestry plants for seeds, (xi) aquatic products, and (xii) minerals (see also Annex II in document WT/ACC/VNM/9). Foreign invested enterprises could only export goods falling within these categories if indicated in their investment licences.

80. Categories (iii), (vi), (viii), (xi), (xii) and part of (v) had subsequently been removed from the list of goods FDI enterprises were not allowed to purchase for export in accordance with Circular No. 26/2001/TT-BTM of 4 December 2001. Pursuant to Government Decree No. 24/2000/ND-CP of 31 July 2000 foreign-invested enterprises and business co-operation parties were allowed not only to export directly or authorize agents to export their products, but also to purchase goods and products directly in the Vietnamese market for processing for export or for exportation without further processing, except for prohibited exports or certain exports specified by the Ministry of Trade for particular periods. Foreign invested enterprises and business cooperation parties exported goods subject to the list of conditional exports, and imported goods in accordance with their awarded investment licences. Pursuant to Decree No. 45/2000/ND-CP of 6 September 2000, branches of foreign traders were allowed to purchase handicrafts, agricultural products and processed agricultural products (except rice and coffee), vegetables and processed vegetables, consumer goods, poultry and cattle meat and processed foodstuff for export. These branches were also permitted to import certain goods for sale in the Vietnamese market – machinery; equipment for mineral exploitation, processing of agricultural products and aquatic products; materials for production of human and animal medicines; and materials for the production of fertilizer and pesticides - provided they used the foreign exchange earned from export activities to finance the imports, and had obtained a licence from the Ministry of Trade. Viet Nam did not apply foreign exchange regulations for importation specific to foreign invested enterprises.

81. Concerning changes in the scope of business, Article 61 of the Foreign Investment Law stipulated that "any change to business objective of an enterprise must be approved by competent authority". Wholly Vietnamese-owned enterprises intending to amend the Business Registration Certificate had to re-register with the local Department of Planning and Investment. National

Corporations belonging to the Government were also obliged to comply with this procedure, but they registered with the Ministry of Planning and Investment.

82. Some Members noted that importation of items designated to be of special importance to the national economy were reserved for "specialized business enterprises". Annex 3 of document WT/ACC/VNM/3/Add.1 contained all possible items falling under the category of special importance as of 1997, and Viet Nam was requested to provide information on the frequency and procedure of adding and removing items of special importance. The representative of Viet Nam replied that import trading rights had been relaxed considerably over the past years. Importation of items designated to be of special importance to the national economy was no longer reserved for "specialized business enterprises", except for the products listed in document WT/ACC/VNM/14/Add.1.

83. Some Members stated that foreign-invested firms did not have the same rights to import, import for resale, or export as Vietnamese firms. The current system granted a preference to national companies over foreign ones and denied imported goods national treatment as required by Article III of the GATT 1994. Restricting importation to items specified in the investment licence or the Business Registration Certificates could be seen as a non-tariff barrier to importation prohibited by GATT Article XI. These Members insisted that Viet Nam should eliminate this discriminatory system, thus allowing domestic and foreign individuals and firms to import inputs and finished goods for resale, and to export without any restriction other than those consistent with GATT Articles XX and XXI. The process should be completed prior to or by the time of accession to the WTO, as national treatment was a basic requirement of the WTO. Viet Nam should provide additional information to the Working Party on its plans to ensure national treatment in this regard.

84. The representative of Viet Nam replied that, in his opinion, the restrictions outlined above did not violate the national treatment obligation of Article III of the GATT 1994 and did not amount to an import restriction as enterprises were free to define their scope of business (trading lines) and hence free to determine the list of imported goods indicated in their Certificate of Business Registration, except for goods listed as prohibited imports and exports. Article 61 of the Law on Foreign Investment stipulated that any change in the business objective of an enterprise with foreign owned capital required approval by the competent authority. In his view, the provisions of Article 61 of the Law on Foreign Investment did not cause any impediment to the importation of equipment, machinery, and materials used in the establishment and production of these enterprises. Importation of goods for resale in Viet Nam was, in his opinion, a matter relating to distribution services and therefore to be addressed in the bilateral market access negotiations on trade in services. Concerning exports, he confirmed that the rights of foreign invested enterprises to export were identical to those of Vietnamese enterprises.

85. The representative of Viet Nam confirmed that wholly Vietnamese-invested enterprises had been granted full rights to trade since 1 January 2002. Regarding foreign invested enterprises, he proposed to phase in trading rights gradually in accordance with the conditions and the timeframe detailed in Annex 1 (Commitments on Trading Rights) and Table A in document WT/ACC/VNM/32.

1. Import Regulation

Customs tariff

86. The representative of Viet Nam said that Viet Nam had begun levying import duties in accordance with the Law on Import, Export Duties for Commercial Goods of 29 December 1987. In 1991, Viet Nam had promulgated the Law on Export-Import Duties, which had replaced the 1987 Law. The Law on Export-Import Duties had been amended in 1993 and 1998, and the tariff rates were accordingly decided by his Government within duty bands promulgated by the Standing Committee of the National Assembly.

87. At the time of circulation of the Memorandum on the Foreign Trade Regime in September 1996, Viet Nam's import tariffs ranged from zero to 60 per cent. About 52 per cent of the tariff lines fell in the 0-5 per cent range. The average tariff on major imported items such as automobiles (for detailed rates see document WT/ACC/VNM/3 pp.107-109), alcoholic and non-alcoholic beverages, petroleum, air-conditioners, refrigerators, electric household appliances, cement, plastics, rubber, paper and steel was 33.5 per cent. The trade weighted average duty collected on imported goods amounted to 15-16 per cent in 1996. Viet Nam's tariff schedule had been modified several times since then in response to the country's development needs. The number of tariff bands had been reduced, as well as the number of tariff lines subject to zero tariff. In principle, the rate of duty applied to imports should not exceed 60 per cent of the c.i.f. price at the point of customs clearance. In order to improve the transparency of its trade policy regime and fulfill commitments *vis-à-vis* the IMF and the World Bank, Viet Nam had gradually been removing import restrictive non-tariff measures since 2000. These non-tariff measures would be replaced by import duties or temporary surcharges during a transitional period. Thus, Viet Nam's customs tariff included some MFN tariff rates exceeding 60 per cent.

88. Some Members requested information on the implementation of the Harmonized System nomenclature in Viet Nam and further work to align with the ASEAN Harmonized Tariff Nomenclature (AHTN). Viet Nam was also asked to clarify its "Current Statutory Applied Ceiling Rates" and their relationship with the applied customs tariff. Some Members observed that Viet Nam's present tariff system lacked transparency, and urged Viet Nam to submit its current customs tariff and detailed trade statistics to facilitate the market access negotiations on goods. A

Member said that his authorities had been advised by exporters that Viet Nam had increased the import duty on wheat flour from 10 to 20 per cent in October 1998, and wondered whether Viet Nam had raised import duties on any other products. This Member considered such action inconsistent with the standstill expectation on new trade distorting measures.

89. In reply, the representative of Viet Nam said that the Harmonized System Convention had come into force in Viet Nam on 1 January 2000, making Viet Nam's tariff nomenclature in full compliance with the HS 1996 nomenclature at the six-digit level. Viet Nam's nomenclature had subsequently been harmonized with the AHTN at the eight-digit level, in full consistency with HS 2002. The new tariff nomenclature had been issued by virtue of Decision No. 82/2003/QD-BTC of 13 June 2003. Concerning the tariff rates, he noted that the Standing Committee of the National Assembly had established maximum rates of duty at the four-digit HS level ("Current Statutory Ceiling Rates of Duty"), which constituted the legal basis for the "effective rates of duty" established by the Government at the eight-digit level, currently stipulated in Decision No. 110/2003/QD-BTC of 25 July 2003, which had replaced previous legal documents governing this issue. A copy of the Effective Import Tariff (MFN rates) was provided to the Working Party (see notice in document WT/ACC/VNM/28/Add.1), as well as import and export statistics for 1998-2000 (see WT/ACC/VNM/27). Although he recognized that frequent changes in the tariff rates limited the stability of the tariff policy and affected business plans, he stressed that the Vietnamese economy was undergoing transition and restructuring and the tariff nomenclature was being adjusted to keep up with the economic changes and to assist the development of domestic infant industries. Changes in tariff rates were decided in consultation with the business community and the ministries and agencies concerned. He assured the Working Party that Viet Nam would make best efforts to publish the rates prior to application and to stabilize the tariff rates. The customs tariff introduced through Decision No. 110/2003/QD-BTC had been published in the Official Gazette and circulated widely prior to the entry into force. Tariff rates on petrol and some iron and steel products had been changed recently due to wide price fluctuations in world markets.

90. He noted the preference expressed by some Members for *ad valorem* duty rates and their concern that any future conversion to specific duties would lead to reduced transparency and predictability, but stressed that Viet Nam might need to apply specific or compound duty rates on certain items in the future to counter customs fraud. He stressed that any conversion of *ad valorem* rates after Viet Nam's accession to the WTO would comply with the procedures for modification of schedules under Article XXVIII of the GATT 1994 as well as other relevant regulations of the WTO.

91. The representative of Viet Nam added that Viet Nam's trading partners were subject to tariff treatment at the preferential, MFN or standard rate (also referred to as normal or non-MFN rate).

General provisions also allowed Viet Nam to impose additional import duty on goods originating in countries discriminating against goods originating in Viet Nam on the basis of tariffs or other measures. However, Viet Nam had no specific provisions regulating such cases, and he could therefore not indicate the criteria Viet Nam would use to identify such discriminatory treatment. He confirmed that after accession to the WTO, any measure taken by Viet Nam in response to discriminatory treatment would be consistent with the regulations applied by WTO Members. The Standing Committee of the National Assembly had adopted the Ordinance on Most Favoured Nation and National Treatment on 22 May 2002, which required Viet Nam to comply with MFN and national treatment provisions of international treaties.

92. Viet Nam aimed at a uniform import tariff regime for border trade and international trade. In response to a specific question, he added that Viet Nam had not signed any agreement with Cambodia favouring border trade. According to Decision 0724/99/QD/BTM of 8 June 1999, border trade by local residents amounting to 500,000 Dong (about US\$35) per passage per day were exempt from custom duty. The excess value was subject to normal tariff treatment. Cargoes cleared through Customs by businesses were of commercial nature and therefore subject to normal duty. The same principles applied to trade along the borders with China and the Lao PDR.

Other duties and charges

93. The representative of Viet Nam said that his Government had operated a Price Stabilization Fund since April 1993. The difference between domestic and world market prices for certain goods was monitored, and surcharges were collected in case of significant fluctuations. The Government decided or authorized the Head of the Government Pricing Committee to decide on the items subject to surcharge and the amount of surcharge. The applied rate of surcharge normally amounted to 30 to 70 per cent of the price differences observed. The revenues were used to stabilize domestic prices and to protect domestic production and consumption. Viet Nam maintained no fixed list of goods and services subject to price stabilization, but it was generally applicable to essential goods such as paddy and rice, coffee, rubber, sugar cane, cashew nuts, petroleum-related products, iron and steel, and fertilizer. Since 1993, surcharges had been imposed on imported petroleum, iron and steel for construction purposes, DAP fertilizer and sheet steel, and Vietnamese exports of coffee, rubber and cashew nuts. Although the Price Stabilization Fund no longer existed, the import and export surcharges had been carried over into the Export Promotion Fund, which had been set up to replace the Price Stabilization Fund pursuant to Decision No. 195/1999/QD-TTg of 27 September 1999.

94. A Member asked Viet Nam to explain the rationale for charges imposed on cement, clinkers, ceramics, paper, and steel. Some Members sought the elimination of all non-tariff charges on imports

other than domestic taxes applied in conformity with Article III of the GATT 1994, customs or other fees or charges applied to cover the cost of services rendered, or other charges authorized by WTO Agreements. Consequently, Viet Nam was requested to bind all "other duties and charges" (ODCs) within the meaning of Article II:1(b) of the GATT at "zero" in its Schedule of Concessions and Commitments on Goods.

95. The representative of Viet Nam replied that Viet Nam had been eliminating non-tariff measures on imports gradually since 2000 under an extended structural adjustment programme. The non-tariff measures had in some cases been replaced temporarily by import surcharges, including on cement, clinkers, ceramics, paper, and steel. The ODCs assisted the elimination of non-tariff measures by (i) mitigating the negative and direct impact of the elimination of non-tariff measures in the early stages of the programme and (ii) ensuring flexibility in solving issues that might arise in implementing the NTM elimination programme. He confirmed that the surcharges on the goods listed in Tables 1 (a) and 1(b) had been applied since 2000, and for imported sheet glass and some steel products since 1 January 2002. Viet Nam was making efforts to convert these ODCs into ordinary customs duties. As per April 2004, Viet Nam applied ODCs only to welded steel pipe (HS 7306) and PVC in powder and granule form (HS 3904).

96. Some Members reiterated their request that Viet Nam bind all other duties and charges at zero in its Schedule of Concessions and Commitments on Goods.

97. [The representative of Viet Nam stated that any other duties and charges applied to imports other than ordinary customs duties and fees and charges for services rendered would be in accordance with WTO provisions from the date of accession. He further confirmed that Viet Nam would not list any other charges in its Schedule of Concessions and Commitments on Goods under Article II:1(b) of the GATT 1994, and would bind such charges at "zero". The Working Party took note of this commitment.]

Tariff rate quotas, tariff exemptions

98. Some Members were concerned that Viet Nam was proposing to introduce tariff rate quotas for a range of products, arguing that TRQs were outmoded and distorted trade. If tariff quota commitments were to be agreed upon, Viet Nam would be requested to provide full details of all tariff quota arrangements in force, including information on the in-quota and out-of-quota tariff rates; proposed quota volumes and annual growth rates; supporting data on domestic production, consumption and imports for each product concerned; and guarantee tariff quota access on a non-discriminatory basis for all WTO Members. Viet Nam was reminded that a tariff quota system should be simple, transparent, timely, predictable, uniform, non-discriminatory and non-trade restrictive, and

be administered in a way that would not distort trade or cause more burdens than absolutely necessary.

99. The representative of Viet Nam replied that his Government had issued Decision No. 91/2003/QĐ-TTg on 9 May 2003, introducing tariff rate quotas on the importation of cotton, tobacco materials, salt, dairy products, eggs and maize. TRQs were being applied on a pilot basis as a step in the process of increasing market access and in the elimination of non-tariff measures such as prohibitions, licences or import quotas affecting the same products.

100. The representative of Viet Nam said that the procedure for tariff exemption was outlined in the 20 May 1998 Law amending and supplementing the Law on Import-Export Duties of 26 December 1991. Tariff exemptions were permitted for non-refundable aid; temporary imports and re-exports, temporary exports for exhibitions and re-imports; goods in transit; exports and imports of foreign organizations and individuals enjoying immunities stipulated by the Government pursuant to international treaties to which Viet Nam was a signatory or participant; and materials and raw materials imported for processing and re-export in accordance with a contract entered into with a foreign party. In accordance with Article 11 of the Law amending and supplementing the Law on Import-Export Duties, import duty exemptions were applicable to imports for specialized use for security, national defence, scientific, educational, training; equipment and machinery imported in accordance with Article 47 of the Law on Foreign Investment and Article 25 of the Law on Promotion of Domestic Investment; exports and imports of enterprises with foreign owned capital and foreign parties to a business co-operation contract; gifts of foreign organizations and individuals to Vietnamese organizations and individuals, and vice-versa, within the permitted amount; and imported goods for duty-free shops. The tax exemptions accorded under Article 47 of the Law on Foreign Investment applied also to project expansions and upgrading of technology. In regions where investment was specially encouraged the import duty exemption for raw materials, equipment and components was valid for five years following the commencement of production.

101. The importer (a domestic enterprise or a foreign-owned enterprise) filed an application to the General Department of Taxation, the Ministry of Finance for approval on a case-by-case basis for imports which were eligible for duty exemption. The required documentation was specified in the legal documents guiding the implementation of the Law on Export and Import Duties. These procedures were not required if the Ministry of Trade had already approved the importation of equipment, machinery or specialised means of transport for the capital construction establishing a foreign invested project. Regarding other cases of duty exemption, importers filed applications with the Customs authority.

Fees and charges for services rendered

102. The representative of Viet Nam said that fees and charges for the State budget were levied in accordance with Decree No. 04/1999/ND-CP of 30 January 1999, Chapter IV of Government Decree No. 16/1999/ND-CP of 27 March 1999 on customs procedures, customs supervision and customs fees, and the Ordinance on Fees and Charges that had come into effect on 1 January 2002. The Ministry of Finance and General Department of Customs had issued an Inter-Ministerial Circular No. 71/2000/TTLT/BTC-TCHQ on 19 July 2000 providing for guidelines on the collection of customs fees and usage management. The Inter-Ministerial Circular identified the following forms of customs fees: (i) customs clearance fees applicable to imported or exported goods calculated on the basis of quantity of goods, (ii) customs warehouse fees for cargo and luggage, (iii) cargo escort fees based on accompanying distance, (iv) customs sealing fees (for paper, lead seal and seal ring), (v) transit fees, and (vi) administrative fees for re-certification of customs documents. The respective fees and charges are enumerated in Table 2. This Circular had superseded an earlier inter-ministerial circular issued in April 1993. The fees had been adjusted for inflation to ensure that they were maintained at a level approximate to the cost of the customs services rendered. An earlier provision in the 1993 circular, allowing customs fees to be adjusted when market prices fluctuated more than 20 per cent relative to an established price index, had been abolished.

103. Some Members noted that fees for fundamental infrastructure, such as port services, were very high in Viet Nam compared to other countries in the region, and requested that these fees be reduced drastically. The representative of Viet Nam replied that fees for fundamental infrastructure were generally based on commercial considerations. The general policy of his Government was to try to reduce such fees to facilitate trade and investment activities in Viet Nam. He noted that port services charges were determined by the port services enterprises themselves, and that these charges had been reduced by approximately 10 per cent in 2002 and a further 20 per cent in 2003 and early 2004.

104. A Member was concerned that some of Viet Nam's extensive charges and fees might be applied to importers or to imported goods in a manner that provided less favourable treatment for imports compared to similar domestic goods. Viet Nam was requested to identify charges and fees applied in a discriminatory manner to importers or foreigners. The Working Party needed to examine these fees and charges to determine those that would have a negative impact on trade in possible violation Article III or Article VIII of the GATT. The representative of Viet Nam replied that current regulations on fees and charges had been reviewed to amend the discriminatory provisions relating to differential rates between Vietnamese or foreigners, or between domestic and imported goods.

105. A Member noted that Viet Nam applied a fee for the purchase or sale of foreign exchange which varied according to the value of the transfer. The fee did not meet the requirements of Article VIII of the GATT, and should be eliminated or revised to meet the criteria of this Article. In reply, the representative of Viet Nam said that the customs fee for importation and exportation of foreign exchange was determined per tranche of US\$100,000, with a minimum of VND 100,000 (US\$6) and a maximum of VND 1.5 million (US\$100) for each transaction. He considered this fee approximate to the costs of the services rendered and thus not inconsistent with Article VIII of the GATT 1994.

Application of internal taxes

106. The representative of Viet Nam said that certain goods were subject to excise tax, levied in accordance with the Law on Excise Tax of 30 June 1990, with amendments of 5 July 1993, 28 October 1995 and 20 May 1998. The tax system was explained in further detail in Circular No. 98 TC/TCP of the Ministry of Finance. Taxes initially ranged from 32 to 70 per cent on tobacco, 75 to 90 per cent on beer, 15 to 90 per cent on other alcoholic beverages, 100 per cent on pyrotechnic articles (excluding firecrackers), 30 to 100 per cent on motor vehicles and 15 per cent on petroleum products. Bottled, canned, and fresh beer were taxed differently depending on the consumption pattern, and thus the elasticity of demand, for each type of beer. Effective 1 January 1999, the coverage of the Law on Excise Tax had been extended to various "non-essential" goods and services, including automobiles (less than 24 seats); air conditioners; votive paper and votive objects; dancing halls; massage parlours; karaoke bars; casino, jackpot games and gambling activities; and golf services, including the sale of golf club membership cards and tickets. The rates of excise tax applicable in 2003 are enumerated in Table 3.

Table 3: Goods and services subject to excise tax

No.	HS Code	Description	Tax rates (per cent)
	(for goods)	Goods	
1	Cigarettes, cigars:		
	2402	a) Filter cigarettes mainly made of imported material, cigars	65
		b) Filter cigarettes mainly made of domestically-produced materials	45
		c) Cigarettes without filter	25
2	Spirits:		
	2204; 2205; 2206; 2207; 2208	a) Of alcoholic strength exceeding 40° vol	75
		b) Of alcoholic strength 20-40° vol	30
		c) Of alcoholic strength less than 20°, of wine or fruit flavoured°	20
		d) Medicinal and herbal wines	15
3	Beer:		
	2203	a) Bottled, canned and draught beer	75

	HS Code	Description	
		b) Draft beer	30
4	Automobiles:		
	8703	a) 5 seats or less	80
	8702; 8703	b) 6 to 15 seats	50
	8703	c) 16 to 24 seats; pick-up cars	25
5	2710	Petrol, naphtha, reformed components, other petrol components	10
6	8415	Air conditioners of capacity not exceeding 90.000 BTU	15
7	9504.40.00	Playing cards	40
8	4823.90.10	Votive papers; votive objects	70
		Services	
1		Dancing halls, massage parlours, karaoke bars	20
2		Casino, jackpot games	25
3		Gambling on horse racing, motor racing	20
4		Golf services: sale of golf club member cards and tickets	20

107. The taxable value was the duty-inclusive price for imported goods and the ex-works selling price for domestically-produced goods. Excise tax was in general applied uniformly to imported and domestically-produced goods. However, cigarettes made from imported tobacco were taxed at a higher rate than cigarettes made with domestic tobacco.

108. The representative of Viet Nam added that, in principle, all individuals and entities producing or importing goods subject to excise tax were liable to pay the tax. However, the Law on Excise Tax specified cases where tax reduction could be considered for production enterprises facing difficulties due to natural disasters, war and other contingencies, as well as for the expansion of production capacity. Tax breaks for enterprises investing in new technology and additional production capacity had been abolished.

109. Domestically manufactured or assembled motor vehicles were originally not subject to excise tax. Since 1 January 1999 such vehicles had been subjected to excise tax, in principle. However, according to the Law on Excise Tax and Official Note 168/1999/TT-BTC of the Ministry of Finance, local car assembling enterprises would be entitled to a 95 per cent tax reduction until the end of 2003, and the reductions could be extended an additional five years for enterprises still incurring losses. He added that Article 16 of the amended Law on Excise Tax No. 08/2003/QH11 of 17 June 2003 allowed excise tax reductions for domestic automobile manufacturers until 31 December 2006. Golf business enterprises had been accorded an excise tax reduction of 30 per cent for three years starting from 1999 and, as a transitional measure until 2004, loss-making small breweries qualified for a reduction in the amount of excise tax due equal to the annual loss. He confirmed that the tax exemption for loss-making

small breweries had been abolished according to the amended Law on Excise Tax No. 08/2003/QH11 of 17 June 2003.

110. Some Members noted that Viet Nam applied discriminatory excise taxes on imported tobacco, a possibly WTO-inconsistent lower rate of excise duty on herbal wines, and preferential excise tax rates on domestically-produced beer and automobiles. The excise taxes applied to cigarettes and beer were in clear contrast to Article III of the GATT 1994 as they taxed like products differently, and these Members requested Viet Nam to submit a detailed plan for the elimination of the existing discrimination to the Working Party. In their view, the preferential tax treatment for domestic producers was also inconsistent with the national treatment principle of Article III and should be abolished prior to accession.

111. The representative of Viet Nam replied that only cigarettes made of domestically-produced materials and those made of imported materials were subject to different excise tax rates according to Article 7 of the Law on Excise Tax of 20 August 1998. He added that Viet Nam would comply with the non-discrimination principles stipulated in Article III of the GATT 1994 in respect of imported tobacco upon accession. The Law on Excise Tax did not provide for any tax rate discrimination between domestically-produced and imported beer. Viet Nam used its excise taxes to influence trade, production and consumption between high-value, luxurious products and cheaper varieties, and therefore applied lower tax rates on low-cost items such as draft beer and medicinal and herbal wine compared to other beers and wines. The manufacturing of automobiles was still an infant industry in Viet Nam, and the amended Law on Excise Tax No. 08/2003/QD11 of 17 June 2003 stipulated a reduction in the excise tax rate for domestic manufacturers equal to 70 per cent in 2004, 50 per cent in 2005 and 30 per cent in 2006. The preferential excise tax regime for domestic automobile manufacturers would lapse on 31 December 2006, and Viet Nam would comply fully with Article III of the GATT 1994 in respect of its excise taxes on automobiles from 1 January 2007.

112. Concerning value added tax, the representative of Viet Nam said that the Law on Value Added Tax, adopted by the National Assembly on 10 May 1997 had entered into force on 1 January 1999, replacing the Law on Turnover Tax. The Law on Value Added Tax stipulated four rates (0, 5, 10 and 20 per cent). The tax was collected monthly and settled at the end of every calendar year. VAT applied generally to all products and services in the covered categories and used in production and consumption in Viet Nam irrespective of their origin. He identified 26 products and services not subject to VAT, including sales of unprocessed or semi-processed agricultural products by organisations or individuals producing these products; salt; credit services; life insurance; health and education services; and public sanitation services. According to Article 4 of the Law on Value Added Tax, VAT was not assessed on goods and services subject to excise tax, and this provision

applied equally to imported and domestically-produced goods (including on locally manufactured and imported motor vehicles with less than 24 seats).

113. Noting that goods subject to excise taxes were not subject to VAT, some Members asked Viet Nam to provide a comprehensive list, using the HS classification, of items subject to VAT and the corresponding tax rate, as well as a listing of items exempt from VAT. The representative of Viet Nam replied that the list of items exempt from VAT had been issued in accordance with Circular No. 122/2000/TT-BTC of 29 December 2000 of the Ministry of Finance. He provided a detailed listing of imported items subject to VAT (exempt, 5 or 10 per cent) in 2003, prepared in accordance with Circular No. 84/2003/TT-BTC of 28 August 2003, issued by the Minister of Finance (see notice in document WT/ACC/VNM/28/Add.2). The VAT rate of 20 per cent stipulated in the Law had been repealed. He confirmed that Viet Nam's value added tax system in principle provided for equal treatment of imported and domestically-produced goods.

114. In response to queries about the VAT exemption on unprocessed and semi-processed agricultural and aquatic products sold by individuals and organizations in Viet Nam, against the 5 per cent VAT applied on similar imported items, the representative of Viet Nam added that the objective of Article 4, section 1 of the amended Law on Value Added Tax No. 07/2003/QH11 of 17 June 2003 was not to protect domestic production against imports, but a measure to simplify the management of the VAT system. The proportion of unprocessed and semi-processed agricultural and aquatic products sold by farmers directly to final consumers was very low, and all such products sold by farmers to distribution and processing intermediaries were subject to 5 per cent VAT. Viet Nam would welcome technical assistance to improve the management of its VAT system.

115. Noting that Viet Nam exempted from VAT machinery equipment imported for fixed asset purposes by foreign investing enterprises according to Article 60 of the Foreign Investment Regulation, a Member requested Viet Nam to apply this exemption uniformly and in compliance with Article III of the GATT 1994, as VAT exemptions appeared not to be granted if the same kind of equipment could be manufactured in Viet Nam.

116. In reply, the representative of Viet Nam confirmed that according to Article 60 of Decree No. 24/2000/ND-CP, VAT was not levied on equipment, machinery and specialized means of transportation forming part of a technological line, not yet domestically produced, and imported to form fixed assets of FDI enterprises or to implement business co-operation contracts. In his opinion, this regulation was not inconsistent with Article III of GATT 1994 since no comparison could be made to a "like domestic product", and the purpose of this measure was not to afford protection to domestic production. He noted that equipment and machinery produced in Viet Nam was subject to

the same value added tax as imported products.

Quantitative import restrictions, including prohibitions, quotas and licensing systems

117. The representative of Viet Nam said that importation of some products was subject to quantitative restriction, or restricted by other means. He noted that Viet Nam had been liberalizing its quantitative import restrictions. Responding to statements from Members that quantitative restrictions were inconsistent with GATT Article XI at that Viet Nam should provide a single comprehensive and consolidated list of its current quantitative restrictions, including all bans, quotas and restrictive licensing requirements and to provide a timetable for each measure currently in place, either to be eliminated, revised or replaced with a specific WTO consistent alternative, or present an appropriate WTO justification for the retention of the measure, the representative of Viet Nam provided a timetable for the elimination of specific non-tariff measures in document WT/ACC/VNM/25, subsequently revised in documents WT/ACC/VNM/25/Rev.1, Rev.2 and Rev.3. Although Viet Nam initially envisaged to phase out quotas and licensing requirements on some non-agricultural products after accession, the representative of Viet Nam subsequently confirmed that Viet Nam committed to eliminate all quantitative import restrictions in the form of quotas or restrictive licences upon accession, and had revised the list of non-tariff measures - reproduced in Table 4 - accordingly.

118. Quantitative restrictions on agricultural products would also be eliminated upon accession, or replaced by tariff rate quotas for some items. Viet Nam had not fixed annual import quotas, but relied on a flexible system based on forecasted gaps between total demand and supply of the goods concerned. Quota volumes were decided by the Ministry of Trade, in consultation with the Ministry of Planning and Investment, and the line ministries in charge of the goods.

119. Asked to provide further justifications for the measures applied, the representative of Viet Nam said that Viet Nam prohibited importation of arms and ammunition, narcotics, toxic chemicals, depraved and reactionary cultural products, firecrackers, children's toys adversely affecting their moral education and social security, cigarettes (except as personal belongings), right-hand drive motor vehicles, second hand spare parts for motor vehicles, second hand internal combustion engines below 30 CV, and asbestos materials under the amphibole group. The main agencies responsible for issuing detailed regulations and guidance concerning products subject to import prohibition included the Ministry of Public Security, the Ministry of Culture and Information, the Ministry of Industry, and the Ministry of Health. Restrictions on trade in toxic products were applied equally to Vietnamese and foreign traders. Toxic chemicals prohibited to import or subject to conditional approval are detailed in Tables 4.1.a and 4.1.b. In exceptional cases, importation of prohibited goods was subject to approval by the Prime Minister, in consultation with relevant ministries and agencies.

120. Some Members questioned whether Viet Nam was using the least trade restrictive means to address health, environmental, safety or other concerns, and invited Viet Nam to outline the restrictions applied to domestic production and sale of products such as cigarettes, certain motorcycles, second-hand motor vehicle spare parts and certain combustion engines. Viet Nam was reminded that if it wished to limit vehicle registrations for environmental/traffic congestion reasons, this need not be accomplished through a quota system on imported vehicles. Viet Nam was requested to provide more specificity with respect to the second-hand products covered by import restrictions as some of the categories, e.g. electronic goods, appeared rather broad. Unless Viet Nam could confirm that it prohibited the internal resale or resale of domestic manufactures for all second-hand consumer goods, materials and equipment listed in Table 4, Viet Nam was invited to explain how its import restrictions did not violate Articles III and XI of the GATT 1994. Viet Nam was also asked to provide an indication of the types of children's toys considered to have adverse effects on moral education and social security, and provide examples of depraved and reactionary cultural products.

121. The representative of Viet Nam replied that the import prohibition on cigarettes was part of an anti-smoking programme aiming at restricting the production and consumption of cigarettes. Although existing tobacco production units were being utilized, Viet Nam had no intention to develop its cigarette industry and discouraged the establishment of new production units. He added that provisions restricting domestic production and consumption of tobacco had been included in Government Resolution No. 10/2000/NQ-CP of 14 August 2000 on a national policy on preventing harmful effects of tobacco in the period 2000-2010, and in Decree No. 76/2001/ND-CP of 22 October 2001. Viet Nam had also signed the Framework Convention on Tobacco Control, adopted by the World Health Organization on 25 May 2003, in order to limit the number of increasing death tolls of tobacco-related diseases. However, Viet Nam was seeking alternative WTO-consistent measures to achieve its objectives, and accordingly committed to eliminate the prohibition on imports of cigarettes and cigars upon accession.

122. Viet Nam prohibited importation, registration and circulation of motorcycles with engine capacity exceeding 175 cm³. Importation of such motorcycles was only allowed for special purposes such as for the armed forces, security personnel, or for competitive sports. Responding to calls for removal of this ban, as motorcycles of this size were produced and sold as a commercial good for non-military use in many countries, the representative of Viet Nam reiterated that Viet Nam prohibited the domestic registration of motorcycles with engine capacity exceeding 175 cm³ to ensure traffic safety. Imports of second hand spare parts were prohibited for traffic security reasons, and the prohibition on second hand internal combustion engines below 30 CV was enforced to protect the environment. He considered the import prohibition on second-hand motor vehicle spare parts to be the most feasible measure to protect safety that Viet Nam could implement under the current

conditions, as there was no alternative enforceable internal mechanism. Similarly, Viet Nam prohibited imports of second-hand clothing to protect public health as there was no enforceable internal mechanism. He noted that no domestic organizations or individuals were granted Business Registration Certificates to conduct business in second-hand consumer products subject to import restrictions.

123. Concerning toys, the Minister of Trade had issued a detailed list of goods subject to import prohibition in Decision No. 0088/2000/QĐ-BTM of 18 January 2000. The Decision specified "children toys having adversely effect in moral education, children's health and social security" as gun-shaped toys; airguns or guns using compressed spring as propelling force for firing plastic bullets or other kinds of bullets; guns firing water or water vapour; guns flaring or making noise while shooting; weapon-shaped toys other than gun-shaped toys; shape-like grenades, bombs, mines, or explosives; shape-like swords, spears, bayonets, daggers, bows and crossbows; firecrackers of all kinds; certain types of virtual toys; toys in the form of cultural products (publications, cassettes, discs), electronic games containing images, sound, actions describing brutal combats, fights, murderous attacks or other actions degrading or offending human dignity, destroying the environment, or detrimental to children's aesthetic sense or adversely affecting children's education; computer software, electronic games with content inciting the users to violence or prostitution; remote-controlled electrical toys that could interfere with the operation of other equipment, devices or be unsafe for children; and toys using the national flag, Viet Nam's map, leaders' pictures and photographs inconsistent with regulations, or for bad intentions. Viet Nam had not issued any specific legal document stipulating the criteria for determining "depraved and reactionary cultural products". He suggested that depraved, reactionary, superstitious or morally pernicious cultural products would include books, newspapers, magazines, pictures, paintings, calendars, posters, catalogues, leaflets, circulars, handbills, pamphlets, tracts/propaganda leaflets, slogans, couplets, scrolls, sound or pictures recording tapes and discs of various kinds, films (including cinematographic films and video films), photos, practical arts, and other cultural documents and products of depraved, reactionary, superstitious or morally pernicious content. Prohibited toys included virtual toys propagating violence or running counter to traditional Vietnamese morals.

124. Some Members asked whether Viet Nam applied procedures which met the definition of automatic import licensing under the Agreement on Import Licensing Procedures and sought an explanation why government ministries needed to supervise the quality of imported products as this should be an issue determined between buyers and sellers. Viet Nam was requested to clarify, for each tariff line item, why licensing was imposed and the precise conditions under which licences would not be issued or would be restricted in volume or otherwise.

125. In reply, the representative of Viet Nam provided information on import licensing procedures in document WT/ACC/VNM/3/Add.1, Annex 3. Products subject to import licensing (as of 1 May 1997) are listed in Table 5. Products subject to line management, i.e. import licensing by line Ministry, are listed by HS number in Table 5.1. He added that import restrictive line-management measures had been eliminated in early 2001. Annex 3 of the Prime Minister's Decision No. 46/2001/QĐ-TTg of 4 April 2001 stipulated that imported products subject to line management for the purpose of health, safety, etc., once allowed for use in Viet Nam, would be imported upon demand and not subject to limitation in amount or value. Current measures were applied to supervise product quality and safety - for example for pharmaceuticals, breeding animals and plants - and were, in his view, in compliance with international practice and with WTO provisions, notably Articles XX and XXI of the GATT 1994. The fees associated with the issuance of licences were consistent with the Ordinance of Fees and Charges and, in his opinion, modest and commensurate with the related administrative costs.

126. A Member requested Viet Nam to list the international environmental conventions Viet Nam was a party to, and the rules and standards specifically applied when requiring licenses on unprocessed wood and forestry products. This Member also asked Viet Nam to explain the rationale behind the licence requirement for importation of "complete equipment for forestry production and wood processing industry" based on "management of quality and standards of imported technology".

127. The representative of Viet Nam replied that Viet Nam was a signatory to the Convention on World Cultural Heritage and Natural Resources Conservation signed on 19 October 1987; the Convention on Wetland of International Importance, especially of Waterfowls Habitat (Ramsar), signed on 20 January 1989; the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES), signed 20 January 1994; the Protocol on Ozone destructive substances; the Framework Convention on Climate Change, signed on 16 November 1994; the Convention on Biological Diversity (CBD), signed on 16 November 1994; the Convention on Marine Law, signed in 1994; the Basel Convention on controlling the transit and disposal of dangerous waste, signed in 1995; and the Convention on Combat Desertification (CCD), signed on 23 July 1998. He added that Viet Nam no longer maintained the licence requirement for importation of "complete equipment for forestry production and wood processing industry" based on "management of quality and standards of imported technology". Imported second-hand equipment, machinery and materials in connection with foreign investment projects were only subject to general requirements relating to labour safety, environmental protection, and product and service quality. An earlier certification requirement regarding the remaining quality of imported used equipment or machinery was no longer effective (Decision No. 06/2003/QĐ-BKHCN of 3 April 2003 of the Ministry of Science and Technology).

128. Some Members sought a commitment from Viet Nam that, upon accession to the WTO, it would only maintain those import restrictions that can be justified under WTO rules. Viet Nam was requested to submit a detailed action plan for the introduction of licensing procedures that conform to WTO rules. Notably, Article 1.6 of the Agreement on Import Licensing Procedures stipulated that licence applicants should need to approach only one body, and not more than three administrative bodies if "strictly indispensable". Viet Nam would also need to bring its licensing regime into full compliance with the time-limits for processing of import licence applications as set out in Article 3.5(f) of the Agreement on Import Licensing Procedures.

129. In reply, the representative of Viet Nam submitted an action plan for the implementation of the WTO Agreement on Import Licensing Procedures (WT/ACC/VNM/22), subsequently revised in document WT/ACC/VNM/22/Rev.1. According to the revised plan, Viet Nam would ensure full compliance with the Agreement by 1 January 2005, except for the submission of publications containing information on import licensing procedures to the Secretariat (obligation under Article 1.8), and the provision of all relevant information to Members interested in the trade in a product subject to non-automatic licensing (Article 3.5.a). The two latter provisions would be complied with upon Viet Nam's accession to the WTO. He added that Viet Nam intended to comply with the provisions of the Agreement on Import Licensing Procedures upon accession either by (i) including import licensing provisions in the (amended) Commercial Law planned to be submitted to the National Assembly in September 2004; or (ii) in case the drafting of the above Law could not be completed in time, to issue regulations in the form of a Government Decision in order to fully comply with the WTO Agreement on Import Licensing Procedures.

Customs valuation

130. The representative of Viet Nam said that customs valuation of imported and exported goods was carried out in accordance with the Law on Export-Import Duties. The basic valuation principle was the "contract price", which was not entirely synonymous with the "transaction value" stipulated in the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (the Customs Valuation Agreement). Viet Nam provided information on the implementation and administration of the Customs Valuation Agreement in document WT/ACC/VNM/3/Add.1, Annex 4. He acknowledged that several of the provisions of the Agreement had not yet been implemented in Viet Nam.

131. He added that Viet Nam was taking steps to implement the WTO Customs Valuation Agreement. The National Assembly had adopted the new Law on Customs on 29 June 2001, and Government Decree No. 102/2001/ND-CP of 31 December 2001 provided detailed procedures and

processes to conduct post-clearance examination for exported and imported goods. Viet Nam had also introduced measures to combat commercial fraud and transfer pricing. In addition, customs officers and the business community needed training to use the new valuation procedures. Viet Nam had established a Working Group to promote implementation of the Agreement. The Government had promulgated Decree No. 60/2002/ND-CP to implement the Agreement on a pilot basis for goods imported from ASEAN countries under the ASEAN Common Effective Preferential Tariff (CEPT) Program.

132. Some Members noted that Viet Nam used minimum import prices in customs valuation, and that Viet Nam's valuation practices resulted in higher tariffs on imports from some countries, raising issues of non-MFN treatment of imports, transparency and consistency with the Agreement on Customs Valuation. The proliferation of this practice to include differential valuation treatment for wines, spirits and ceramic tiles was highlighted.

133. The representative of Viet Nam replied that the minimum import prices were determined jointly by the Ministry of Finance and the Ministry of Trade. The minimum import prices were adjusted periodically to take account of fluctuations in world market prices. Products of different origin varied in quality, level of consumer confidence and retail sales price, and Viet Nam's minimum import prices reflected the influence of these factors. Viet Nam had removed minimum customs values for wines, spirits and ceramic tiles imported from the EU in exchange for preferential treatment to Vietnamese exports of textiles and clothing products. He added that Viet Nam was generally phasing out its minimum import values. The differences in the minimum import prices of goods from various origins had already been narrowed. The number of commodity groups subject to minimum value had been cut from 15 to 7 in 2000. Goods subject to minimum customs values as per April 2004 are listed in Table 6.

134. Asked to clarify whether an importer had the right to judicial review of customs valuation decisions by an independent judicial body, and that recourse to an independent tribunal would not preclude the right to lodge administrative appeals, the representative of Viet Nam said that under current rules an importer could appeal either to a higher administrative body or bring a case before the Administrative Court in accordance with Article 13 of the Ordinance on Procedures for Settlement of Administrative Disputes of 21 May 1996. Cases brought forward by one complainant would be handled by the Administrative Court. Final and binding decisions on appeals to the higher Customs bodies were taken by the Minister of Finance; in exceptional cases the Minister's decision could be brought before the Prime Minister. In order to comply fully with Article 11(2) of the Agreement on Customs Valuation, Viet Nam was considering amending the existing Law on Complaint and Denunciation.

135. A Member sought a commitment from Viet Nam to implement fully the provisions for the valuation of carrier media bearing software for data processing equipment and the provisions on the treatment of interest charges in the customs value of imported goods. The representative of Viet Nam replied that carrier media bearing software and interest charges were being valued in accordance with the basic principles of the Agreement on Customs Valuation. He added that the valuation of carrier media bearing software raised complex issues and Viet Nam would appreciate receiving additional assistance on this matter.

136. Some Members requested Viet Nam to provide a detailed action plan specifying each measure necessary for the implementation of the Agreement and target dates for implementation. The action plan should include early elimination of minimum customs values, which resulted in higher tariffs on imports from some countries and were considered inconsistent with the MFN, transparency and consistency requirements of the Agreement on Customs Valuation.

137. In reply, the representative of Viet Nam submitted an action plan for the implementation of the Custom Valuation Agreement. The action plan was subsequently revised (see documents WT/ACC/VNM/20 and Revisions 1 and 2). He noted that domestic legislation to implement the Customs Valuation Agreement had been largely completed with the promulgation of Government Decree No. 60/2002/ND-CP of 6 June 2002. The Ministry of Finance had promulgated Circular No. 118/2003/TT-BTC of 8 December 2003 guiding the implementation of Decree No. 60/2002/ND-CP of 6 June 2002. The new system would be applied on a pilot basis for certain target groups from 1 January 2004. The minimum customs values stipulated in accordance with Decisions Nos. 164/2000/QD-BTC of 10 October 2000, 136/2001/QD-BTC of 18 December 2001 and 164/2002/QD-BTC of 27 December 2002, affecting imports of goods enumerated in Table 6, would be eliminated upon accession. Relevant legislation addressing this issue would be promulgated.

138. [The representative of Viet Nam confirmed that, from the date of accession, Viet Nam would apply fully the WTO provisions concerning customs valuation, including the Agreement on the Implementation of Article VII of the GATT 1994 and Annex I (Interpretative Note) and the provisions for the Valuation of Carrier Media Bearing Software for Data Processing Equipment (Decision 4.1), providing that valuation of the software was based on the value of the media. He stated that Viet Nam would not use any form of reference price or fixed valuation schedule for the valuation of imports or to apply duties and taxes, and that all methods of valuation used were in strict conformity with those provided for in the WTO Agreement on the Implementation of Article VII of the GATT 1994. The Working Party took note of these commitments.]

Rules of origin

139. A Member requested Viet Nam to supplement or amend its legislation to meet all aspects of the Agreement on Rules of Origin, in particular the requirements of Article 2(h) and paragraph 3(d) of Annex II of the Agreement.

140. The representative of Viet Nam said that Viet Nam had issued several legal documents to implement ASEAN preferential rules of origin as well as non-preferential rules of origin, including Decision No. 416/TM-DB of 13 May 1996 of the Minister of Trade, and joint-agency Circulars of the Ministry of Trade and the General Customs Department Nos. 09/2000/TTLT-BTM-TCHQ of 17 August 2000 and 22/2001/TTLT-BTM-TCHQ of 2 October 2001. Viet Nam was participating in the ASEAN Free Trade Area (AFTA) and the preferential rules of origin of AFTA, and importers were thus required to submit certificates of origin (form D), proving 40 per cent ASEAN cumulative origin, for goods imported under the CEPT implementing the ASEAN Free Trade Area. Importers were also required to provide certificates of origin issued by relevant authorities in accordance with international practices (or as provided in the contract). The owners of the goods, or the customs agents acting on their behalf, were legally responsible for the accuracy of the information contained in their certificates of origin.

141. The existing legal documents were, in his view, consistent with the Agreement on Rules of Origin, although they did not elaborate fully all aspects governed by the Agreement, including the requirements of its Article 2(h). Viet Nam was considering drafting a higher level legal document addressing the remaining issues. He confirmed that Viet Nam intended to comply fully with the Agreement on Rules of Origin from the date of accession.

Other customs formalities

142. Some Members noted that Viet Nam's customs procedures were complicated and at times unpredictable, depending on the discretion of customs officials. Moreover, continued high tariffs appeared to be contributing to rampant smuggling, putting goods cleared through the official channels at a disadvantage in the Vietnamese market. The presence of significant quantities of illegally copied goods was also noted. Viet Nam was urged to establish prompt, simplified and more transparent customs procedures, as well as to strengthen the protection of intellectual property rights, including the enforcement capability of border measures.

143. The representative of Viet Nam said that Viet Nam was making continuous efforts to ensure fair trade and reinforce legal compliance. His Government had established a Steering Committee to supervise activities to combat smuggling and fraudulent trading practices, and Viet Nam's customs

administration was receiving technical assistance from the World Customs Organizations and bilateral donors to strengthen and enforce anti-smuggling measures. The General Department of Customs had organized training courses to enhance the knowledge of Viet Nam's customs regulations among customs officials, and cooperated with the Viet Nam Chamber of Commerce and Industry to raise awareness of the Law on Customs and its guiding legal documents among other agencies and the business community. Customs procedures were publicly known and transparent. In addition, a "hot-line" communication system had been set up in customs agencies to discourage bribery practices.

Pre-shipment inspection

144. Some members noted that Viet Nam did not apply preshipment inspection requirements. In case Viet Nam would contract the services of pre-shipment inspection firms, the Government of Viet Nam was asked to ensure that the operations of such firms be consistent with the relevant WTO Agreements, in particular GATT Article VIII, the Agreement on Preshipment Inspection and the Agreement on the Implementation of Article VII of the GATT 1994. A member requested a commitment that Viet Nam would not apply PSI measures until WTO-consistent legislation had been implemented.

145. In reply, the representative of Viet Nam said that Viet Nam would take into consideration the provisions of WTO Agreements in the formulation of its policies in this area. While indicating initially that preshipment inspection might be introduced on a trial basis on particular consignments, he later confirmed that Viet Nam was not applying mandatory preshipment inspection, and was not preparing any legislation covering this subject matter.

146. The representative of Viet Nam stated that if preshipment inspection requirements were introduced, they would be temporary and in conformity with the requirements of the Agreement on Preshipment Inspection. Viet Nam would take full responsibility to ensure that such enterprises operating on its behalf complied with the provisions of WTO Agreements. Decisions by such firms could be appealed by importers in the same way as administrative decisions taken by the Government of Viet Nam. The Working Party took note of these commitments.

Anti-dumping, countervailing duties, safeguard regimes

147. The representative of Viet Nam said that Viet Nam at the outset had no provisions on antidumping, countervailing duty or safeguard measures in its legislation. He noted, however, that the Law on Amendment and Revision of a number of Articles in the Law on Import and Export Duties (Articles 2 and 9), passed by the National Assembly on 20 May 1998, would allow the imposition of additional duty on goods imported at a price lower than the "normal price as a result of dumping

practices, and consequently causing difficulties to domestic producers of like products" or "normal price resulting from subsidy in the exporting country, consequently causing difficulties to domestic producers of like products". Viet Nam could also impose additional duty on goods originating in countries that applied "discriminatory treatment against Vietnamese goods with respect to tariff rates and/or any other measures". He considered this provision necessary to ensure that Viet Nam, as a non-WTO Member, would not be disadvantaged in international trade.

148. The representative of Viet Nam acknowledged that Viet Nam needed to establish a proper legal and institutional framework to enforce provisions on antidumping and countervailing measures. Ordinances on Antidumping and Countervailing Measures were in preparation and slated for adoption by the Standing Committee of the National Assembly [prior to Viet Nam's accession to the WTO]. He expected the Ordinance on Antidumping Measures to be submitted to his Government in [late 2003], and the Ordinance on Countervailing Measures in [2004]. He added that the Standing Committee of the National Assembly had approved an Ordinance on Safeguard Action on 25 May 2002. The Ordinance had entered into force on 1 September 2002, and had been submitted to the Working Party.

149. A Member asked whether Viet Nam was ready to make a commitment that, in the absence of WTO compatible rules on antidumping and countervailing regimes, Viet Nam would not impose similar remedies to foreign goods. The representative of Viet Nam replied that Viet Nam reserved the right to apply WTO-consistent anti-trade distortion measures and trade remedies to dumped or subsidized imports, causing or threatening to cause injury to domestic production of like products, to protect the legitimate interests of Vietnamese producers.

150. [The representative of Viet Nam said that any legislation in place at the time of accession or implemented in the future providing for the application of measures taken for safeguard, anti-dumping or countervailing duty purposes would be brought into conformity with the provisions of the WTO Agreements on Safeguards, on Anti-dumping and on Subsidies and Countervailing Measures. In the absence of such conforming legislative authority in place at the time of accession, Viet Nam would not apply measures for safeguard, anti-dumping or countervailing duty purposes until legislation in conformity with the provisions of these WTO Agreements had been implemented. The Working Party took note of this commitment.]

2. Export regulation

- Customs tariffs, fees and charges for services rendered, application of internal taxes to exports

151. The representative of Viet Nam said that Viet Nam levied export duties on some non-renewable minerals and natural resources exported in raw form. The main purpose of these export duties was to protect scarce natural resources, limit the export of strategic goods, and to regulate and reconcile revenue to the State budget.

152. Export duties were imposed in accordance with the Law on Import, Export Duties. Viet Nam's export duties were applied on an MFN basis. Rates of export duty ranged from zero on processed products to 45 per cent on scrap metal. Goods subject to export duties are listed in Table 7.

153. In addition, surcharges were or had been applied to exports of coffee, rubber and cashew nuts. The rates of surcharge were linked to fluctuations in commodity prices, and the revenue had been channelled into the Price Stabilization Fund. The rates of surcharge applied in 2000 are indicated in Table 1(b). He added that an Export Promotion Fund had been established by the Prime Minister's Decision No. 195/1999/QD-TTg of 27 September 1999. According to Article 3 of this Decision, revenue was collected on price differentials for certain imported and exported goods. For exported goods, the price differential was calculated on the basis of the actual export price, excluding freight and insurance, but inclusive of export tax and domestic distribution fee, if applicable.

154. Asked whether Viet Nam intended to adjust the measures applied to cashew nuts and coffee to make them consistent with WTO rules, the representative of Viet Nam said that surcharges applied to exports of coffee had been phased out since 1995. Those applied for the benefit of the Export Promotion Fund would be adjusted in accordance with the requirements of the WTO. Viet Nam was trying to reduce fees and charges applied to exports with a view to encouraging exportation. He did not consider Viet Nam's regulations on surcharges to be at odds with WTO rules.

Export restrictions

155. Some Members noted that Viet Nam allowed only licensed businesses to export. In addition, Viet Nam prohibited exports of timber logs, sawn wood, charcoal, raw rattan and various semi-processed and processed wood products "for the purpose of protecting the environment" and these Members asked whether Viet Nam could confirm that domestic production of these items was also restricted for the same reasons. Some Members were also concerned that Viet Nam's export quota on

rice was WTO-inconsistent, as Article XI of the GATT 1994 prohibited export quotas unless applied temporarily to prevent or relieve critical food shortages.

156. The representative of Viet Nam replied that the import-export licensing requirement had been abolished by virtue of Government Decree No. 57/1998/ND-CP of 31 July 1998, and that the working capital requirement for trading enterprises was no longer effective. Viet Nam imposed product-specific controls or restrictions on the items listed in Table 8. Certain exports were subject to line management approval. The Ministry of Aqua-culture licensed exports of certain aquatic species (see Table 9). The list of products subject to export prohibition, in his view, conformed to the requirements of Article XX of the GATT 1994. An enterprise wishing to export a product on the prohibited list, submitted an application, including justifications for the exports, to the Ministry or People's Committee concerned. If these institutions considered the demand justifiable, the application would be submitted to the Prime Minister for final decision. He added that Viet Nam restricted the cutting volume of wood and maintained an annual cutting allocation in addition to quantitative restrictions on exports of wood. The production ceiling for wood products had been reduced from 617,000 m³ in 1995 to 300,000 m³ in 1999, and the corresponding export quotas for natural wood had been set at 330,000 m³ in 1996, 80,000 m³ in 1997, 100,000 m³ in 1998 and 150,000 m³ in 1999.

157. In order to ensure national food security, Viet Nam had controlled the export of rice by setting indicative export volumes and by channelling exports through so-called focal point exporters. According to Decision No. 141/TTg of the Prime Minister "On the Administration of Rice Exports and Fertilizer Imports in 1997" of 8 March 1997, rice export quotas had been allocated to provincial People's Committees based on the output of rice paddy in commercial quantities in each province, and the provincial People's Committees allocated their quotas to enterprises based on their actual export capacity. Quotas had also been distributed to certain Central Food Corporations based on their capacity. Enterprises had been required to be members of the Vietnamese Foods Association to be eligible for quota allocations. An enterprise unable to fill its allocated quota would need to report promptly to the Ministry of Trade and the Ministry of Agriculture and Rural Development. The Prime Minister could transfer unused entitlements to other enterprises; no other form of quota transfer or sale was permitted.

158. The Government had announced the indicative export volume to be allocated to enterprises at the beginning of each year based on forecasts for annual consumption, storage and production. The indicative export volume could be adjusted during the year, and actual exports had exceeded the indicative levels in 1998 and 1999. As for the focal point exporters, only State-owned enterprises had held the right to export rice in the past. Focal point status was no longer limited to State owned enterprises and, since 1998, other Vietnamese enterprises regardless of form of ownership had also been entitled to export rice. The number of enterprises exporting rice had increased from 26 in 1997 to 64 in

1999, and had continued to rise in 2000. He confirmed that minimum export prices on rice and crude oil, serving only as guidance prices, had been abolished.

159. Noting that export quotas were generally not justified under WTO rules, some Members requested a commitment that Viet Nam would only maintain those export restrictions that could be justified under WTO rules upon accession to the WTO. Some Members did not consider Viet Nam's export controls, in particular those on rice and timber, in conformity with WTO provisions. Viet Nam was requested to revise its regime to introduce WTO consistent measures to achieve its policy objectives, and to provide a clear timetable for the elimination of measures inconsistent with WTO rules.

160. In reply, the representative of Viet Nam said that rice was considered vital for Viet Nam's socio-economic security, and Viet Nam therefore did not intend to eliminate controls on production (and trade), but would develop a flexible control mechanism. He added that rice export quotas had been eliminated, and that Viet Nam was not applying any export restriction on rice at present.

Export subsidies

161. The representative of Viet Nam provided information on industrial subsidy programmes, including export subsidies, in documents WT/ACC/VNM/13 (covering the period 1996-1998), WT/ACC/VNM/13/Add.1 (for 1999-2000), and WT/ACC/VNM/13/Add.2 (2001-2002). Viet Nam had established an Export Promotion Fund to assist, encourage and promote exportation of Vietnamese products. Subsidies were provided in the form of interest rate support (full or partial refund of interest incurred on ordinary bank loans); direct financial support, particularly to first-time exporters, for exports to new markets, or goods subject to major price fluctuations; and export rewards and bonuses. Total expenditure from the Export Promotion Fund had amounted to 128.4 billion Dong (about US\$9.2 million) in 2000. Asked to define the terms "financial support" and "export reward", the representative of Viet Nam said that financial support covered any kind of financial benefit, and that both financial support and export reward could be considered as grants.

162. Export rewards were paid to traders exporting new products of recognized high quality, based on labour intensive manufacturing or the processing of local raw materials. In order to receive a "Certificate on Export Performance", successful traders would also need to satisfy criteria with respect to minimum export volume or export growth. Since 1998, the average annual export reward to each eligible enterprise had ranged between US\$2,900 and US\$4,710. The programme to provide export bonuses had targeted exports of agricultural products in 2001, but in 2002 the programme had been extended to include non-agricultural products such as handicrafts, rattan and bamboo ware, plastic products and mechanical products (Decision No. 63/2002/QD-BTC of 21 May 2002).

163. The Export Promotion Fund also provided support to enterprises for expenditures on trade promotion activities such as participation in trade fairs and exhibitions, market surveys, consultancy fees and the opening of trade promotion centres and representative offices abroad since the beginning of 2001. Payments were determined on the basis of exported value (0.1-0.2 per cent), but the support could not exceed 50-70 per cent of the actual expenditures of enterprises on such activities.

164. Effective since 25 September 2001, the Development Assistance Fund – which had been established in 1999 to assist in the implementation of important economic projects and the development of disadvantaged areas - was administering an export credit programme, covering short-term loans and guarantees, medium and long term investment loans, post-investment interest rate support and investment credit guarantees. Viet Nam had granted short-term export support loans amounting to 140 billion dong in 2001 and 3,006 billion dong in 2002.

165. He added that Viet Nam granted a five year tariff exemption on the importation of production raw materials to foreign invested enterprises exporting at least 80 per cent of their products, or 50 per cent in the case of agricultural, forestry or aqua-cultural products. Investment in such projects were "specially encouraged" according to Decree No. 24/2000/ND-CP. He confirmed that the export ratio requirement would be eliminated upon Viet Nam's accession to the WTO. Domestic firms producing goods for export were exempted from import duties on the importation of equipment, machinery, and specialized transportation means used in the establishment of the enterprises' fixed assets. Fixed assets used in the production, processing or assembly of exported goods had been subject to accelerated depreciation (half the normal duration). In addition, enterprises in the software and mechanical industry benefited from duty exemption on the exportation of their products.

166. Some Members noted that Viet Nam appeared to be using incentives stipulated in Decree No.24/2000/ND-CP which were linked to export performance or use of local raw materials and resources, and that the criteria employed in the allocation of such incentives were unclear and potentially open to abuse. Moreover, the export bonuses granted in accordance with Decisions Nos. 65/2001/QD-BTC and 63/2002/QD-BTC would appear questionable in the light of Article 3 of the Agreement on Subsidies and Countervailing Measures. A Member noted that Viet Nam considered itself a low-income developing country eligible to maintain export subsidies under the Agreement on Subsidies and Countervailing Measures (SCM). However, Article 27.2(a) of the Agreement was specific to developing countries referred to in Annex VII of the SCM, and this was not a self-nominated or expanding list of countries. Moreover, the provisions of Article 27.4 of the Agreement, available to developing countries with a small share of world export trade, would not be available to Viet Nam. While ready to consider some flexibility as to how Viet Nam would phase out its prohibited export subsidies, this Member maintained that Viet Nam should have no recourse to provisions allowing the

use of prohibited subsidies following its accession. Moreover, as Viet Nam would be acceding to the WTO after the lapse of the phase-out period for export subsidies by developing countries, Viet Nam should phase out its export subsidy schemes upon accession.

167. In reply, the representative of Viet Nam confirmed that subsidies contingent on localization ratios and the use of domestic over imported goods would be eliminated upon Viet Nam's accession to the WTO. As for subsidies in the form of direct payments contingent on export performance, he proposed that Viet Nam would abolish such subsidies within five years from the date of accession to the WTO. Viet Nam would seek to maintain subsidies in the form of investment incentives until its per capita GNP reaches US\$1,000.

3. Internal policies affecting foreign trade in goods

Industrial policy, including subsidies

168. The representative of Viet Nam said that Viet Nam's socio-economic development strategy was orientated towards industrialization and modernization. The State had concentrated on rehabilitation, upgrading and construction of infrastructure such as electricity and water supply, roads, airports, sea-ports and post and telecommunications facilities. Most of Viet Nam's industries were at the initial stage of development and frequently suffered from low competitiveness. The paper industry, for example, was characterized by small scale, inefficient technology, poor product range, low quality and high production costs. At the same time, the industry was important for the living standards of farmers supplying raw materials for the production of paper. The industry was accordingly protected by high tariffs and import control measures.

169. The representative of Viet Nam submitted a "Notification on Industrial Subsidies Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures" for the period 1996-1998 in document WT/ACC/VNM/13, updated to cover the period 1999-2000 in document WT/ACC/VNM/13/Add.1, and 2001-2002 in document WT/ACC/VNM/13/Add.2. According to the up-dated notifications, Viet Nam provided import duty reductions on inputs to certain mechanical-electric and electronic industries; investment incentives to labour intensive domestic enterprises; support to enterprises employing a great number of female employees; development assistance to some projects in mechanical industries; investment incentives to domestic and foreign invested enterprises producing goods for export, or operating in certain business fields and sectors, or certain areas; development assistance to enterprises located in disadvantaged areas; assistance channelled through a Development Assistance Fund; investment assistance for science and technology development; support for the development of priority industrial products; assistance for the development of software industry; assistance for newly-established or

expanding Vietnamese enterprises or domestic enterprises moving to disadvantaged areas; as well as assistance to Vietnamese enterprises conducting special activities. He noted that most of the subsidy programmes were based on tax concessions or exemptions, i.e. revenue foregone to his Government, and that Viet Nam's statistical and data management systems were not yet sufficiently developed to estimate the revenue foregone and thus to provide data on total subsidy amount or subsidy per unit for most of the programmes listed. However, in his assessment most of the programmes provided only minor subsidies.

170. The import duty reduction programme for domestic and foreign-invested enterprises producing or assembling mechanical, electric, or electronic products and/or parts of these products was contingent on local content, but not on export performance. Details on the tariff reductions and corresponding local sourcing ratios are provided in Table 10. The programme was part of Viet Nam's overall industrialization strategy, although he recognized that the programme only played a useful role in the development phase of these industries. Current legislation did not specify eligibility criteria or indicate any timeframe for the application of the subsidy. However, he confirmed that the import duty reduction programme for two-wheel motorcycles and parts had not been applied since 1 January 2003. He confirmed that the duty reductions were the only incentives provided to recipient firms under this programme, and that firms reducing their local content ratios without approval from the competent authorities would face sanctions, including repayment of rebated duty.

171. Labour-intensive domestic enterprises were eligible for exemption or reduction of land rental and land use tax, and extended corporate income tax exemption and reduction. The programme aimed primarily at creating employment and improving people's income and conditions of living. He confirmed that the incentives provided under this programme were not industry- or enterprise-specific, and were linked entirely to the number of employees. Land rental fees differed from region to region and the average value of the subsidy could not be determined. Domestic and foreign-invested enterprises employing a large number of female employees were entitled to corporate income tax reductions. The enterprises could also deduct expenses related to the employment of female workers from the taxable income. The programme was not enterprise- or industry-specific.

172. A programme to develop the mechanical industry was channelled towards manufacturing of bicycles, electric fans, small-size power engines and maritime ships. Assistance was provided in the form of preferential credits; corporate income tax exemption or reduction; exemption from export duties; and import duty exemption on components, accessories, materials and equipment. Eligible firms were enterprises facing difficulties in raising capital to upgrade the technology used in production. By February 1998, the programme had provided assistance to 34 projects in four mechanical sub-sectors (bicycle, electric fan, power machine, and shipbuilding). Manufacturers

and/or exporters of selected products - computer software and mechanical products including diesel engines, power engines, bicycles and electric fans - had also been eligible for preferential credits from commercial banks between September 1998 and October 1999. However, this programme - providing credit at a monthly interest rate 0.2 per cent lower than on normal export credits accorded by these banks - had been discontinued.

173. Export oriented foreign-invested enterprises benefitted from investment incentives in the form of exemption of corporate income tax or preferential tax rates, and exemption of import duties. Domestic enterprises producing goods for export were also entitled to various subsidies, including exemption or reduction of land use payment, land rental, and land use tax; preferential corporate income tax rates; extended corporate income tax exemption and reduction; exemption or reduction of the corporate income tax payable on the income attributable to expansion and/or enhancement investments; exemption from supplementary corporate income tax; import duty exemption on equipment and machinery constituting the enterprise's fixed assets; and additional preferential treatment with respect to corporate income tax.

174. His Government granted investment incentives to foreign-invested and domestic firms operating in certain business fields and sectors of national development priority. Decree No. 24/2000/ND-CP identified investment projects which were "specially encouraged" or "encouraged", reproduced in Annexes IV and V of document WT/ACC/VNM/13/Add.2. Foreign investment in such projects were eligible for preferential rates of corporate income tax, reduction or exemption of corporate income tax, or duty exemptions for imported fixed assets and materials. As to domestic firms, these were eligible for exemption or reduction of land use payment, land rental, and land use tax; preferential corporate income tax rates; extended corporate income tax exemption and reduction; exemption or reduction in the corporate income tax payable on the income attributable to expansion and/or enhancement investments; exemption from supplementary corporate income tax; and import duty exemption on equipment and machinery constituting an enterprise's fixed assets. The business fields and sectors covered under the programme were listed in Annex I of document WT/ACC/VNM/13/Add.2. He confirmed that some of the incentives conferred to foreign-invested firms were contingent on export performance, but argued that most of the sectors were important for the development of disadvantaged regions. Regional development support in the form of investment incentives was, in his view, legitimate for a low income developing country in the process of economic transition such as Viet Nam.

175. Enterprises operating in socio-economic disadvantaged areas were entitled to investment incentives. The list of areas in which foreign-invested firms could benefit from incentives had been published in Decree No. 24/2000/ND-CP of 31 July 2000, and was reproduced in Annex VI of

document WT/ACC/VNM/13/Add.2. All projects operated by foreign-owned enterprises in these areas were entitled to incentives in terms of preferential corporate income tax rates, exemption or reduction in corporate income tax, import duty exemption and preferential remittance tax rates. Domestic firms operating in the areas listed in Annexes II and III of document WT/ACC/VNM/13/Add.2 could benefit from exemption or reduction in land use payment, land rental, and land use tax; preferential corporate income tax rates; extended corporate income tax exemption and reduction; exemption or reduction of the corporate income tax payable on the income attributable to expansion and/or enhancement investments; exemption from supplementary corporate income tax and personal income tax; and import duty exemption on equipment and machinery constituting an enterprise's fixed assets.

176. Benefits granted through the Development Assistance Fund to assist in the implementation of important economic projects and the development of disadvantaged areas included preferential investment credits ("development investment loans"), post-investment interest-rate support, and investment credit guarantee. Enterprises investing in technology research and development benefitted from preferential corporate income tax rates; exemption and reduction in corporate income tax; exemption from supplementary corporate income tax; preferential treatment in respect of land use payment, land rental, and land use tax; import duty exemption; preferential credit terms and other forms of support. He confirmed that the benefits and incentives provided under these two programmes were not contingent on export performance or on the use of domestic over imported goods.

177. Viet Nam also supported some enterprises implementing projects to promote the development of priority industrial products. Assistance took the form of import duty exemptions, preferential corporate income tax, preferential access to the State's development investment credits, and reduction of land rentals. Enterprises eligible under this program were the Viet Nam Shipping Industry Corporation, for the building of maritime ships with a capacity of 11,500 tonnes; the Viet Nam Engine and Agriculture Machinery Corporation (VEAM), responsible for manufacturing internal combustion engines (below 30 CV); the Hanoi Electronics Company (HANEL), which produced colour television sets; as well as sub-contractors to these enterprises. Computers had been added to the list in February 2001 (Decision No. 19/2001/QD-TTg). The representative of Viet Nam added that, in accordance with Circular No. 86/2000/TT-BTC of 16 August 2000, the import duty incentives would lapse on 31 December 2003.

178. In the software industry, incentives were granted to domestic and foreign-invested enterprises to stimulate investment and promote the supply of software-related services in Viet Nam. Incentives included preferential corporate income tax rates, exemption from corporate income tax, preferential

treatment with respect to VAT, export duty exemption, import duty exemption on materials, preferential access to the State's development investment credits, preferential treatment in respect of land use and land rents, and other forms of support.

179. In 2001, Viet Nam had introduced a subsidy programme to support a Development Strategy (2001-2010) for the textile and clothing sector, focusing on projects to develop the production of textile materials, investment in waste water treatment, infrastructure development, and training and research. Assistance was provided in the form of preferential credits, investment incentives, government guarantees and support to trade promotion activities. Revenue from auctions of textile quotas and fees collected in granting such quotas were earmarked for trade promotion and human resources development. By the end of 2002, medium and long term loans totalling 1,379 billion dong had been granted to 56 projects, and the estimated value of the subsidy elements of these loan agreements amounted to 395 million dong. Viet Nam had also introduced a new preferential credit and tax incentive scheme for the shipbuilding industry in October 2000, provided new preferential credits for the mechanical industry since 2001, and preferential credits for the manufacturing of motorcycle engines during 2002. In addition, the Ministry of Finance had administered a programme to assist enterprises "facing difficulties due to objective reasons" since January 2001. The programme allowed enterprises in financial difficulties to postpone payment of taxes or other dues to the State budget for periods of 6-12 months, or to have their payment obligations forgiven or frozen.

180. Newly-established or expanding Vietnamese enterprises and domestic enterprises moving to mountainous, island and other disadvantaged areas were entitled to exemption and reduction in corporate income tax and - from 18 January 2002 - loans at reduced rate of interest granted by State-owned commercial banks. Corporate income tax holidays were also granted to domestic enterprises engaged in scientific research; technical services related to agriculture; vocational training for disabled persons, ethnic minority people, and children from families in difficulties; production, training or services to households earning less than the minimum salary of State employees; and enterprises employing disabled persons.

181. Some Members stated that the subsidies provided specifically to export-oriented enterprises were contingent on export performance. In addition, the investment incentives granted to foreign-invested firms producing goods for export appeared to be contingent on local content. Such subsidies were prohibited under the Agreement on Subsidies and Countervailing Measures, and should accordingly be phased out. Some Members also noted that the import duty reduction programme for mechanical-electric and electronic industries appeared to be a prohibited import substitution subsidy according to Article 3.1(b) of the Agreement on Subsidies and Countervailing Measures, and would have to be phased out prior to accession. It was also noted that the interest rate support to certain

mechanical industries and Viet Nam's assistance to develop its software industry would seem to be linked to export performance. Viet Nam was asked to repeal all measures contingent on export performance. Concerning Viet Nam's subsidies for regional development, some Members noted that these subsidies could be considered specific in the WTO, and provisions which had allowed non-actionable regional subsidies had lapsed on 31 December 1999.

182. The representative of Viet Nam replied that, in his view, the incentives applied to export oriented production were consistent with WTO provisions available to certain developing countries. He requested the right for Viet Nam to maintain these incentives in accordance with the special and differential treatment provisions of the WTO. He added that the import duty reduction programme for mechanical-electric and electronic industries would be phased out by the date of Viet Nam's accession to the WTO, as indicated in Viet Nam's action plan for implementation of the TRIMs Agreement. The preferential credits accorded to certain mechanical industries were not, in his view, contingent on export performance nor on the use of domestic over imported goods. The programme to assist the software industry would, in his opinion, be subject to the disciplines pertaining to trade in services.

183. The representative of Viet Nam confirmed that subsidies contingent on localization ratios and the use of domestic over imported goods would be eliminated upon accession. For subsidies in the form of direct payments contingent on export performance, he proposed that Viet Nam would eliminate this form of subsidy within 5 years from the date of accession. As for subsidies in the form of investment incentives, Viet Nam would seek to maintain such subsidies until its per capita GNP reaches US\$1,000.

Technical barriers to trade, standards and certification

184. The representative of Viet Nam said that a State administration body - the Directorate for Standards and Quality (STAMEQ), reporting to the Ministry of Science and Technology - was responsible for advising the Government on issues related to standardization, metrology and quality management, and representing Viet Nam in international and regional standardization fora. Information on technical barriers to trade was submitted in document WT/ACC/VNM/3/Add.1, Annex 5, in which STAMEQ was designated as Viet Nam's central contact point for standards, technical regulations and conformity assessment issues, as well as the notification authority for TBT issues according to Decision No. 356/2003/QĐ-BKHCN of 25 March 2003 of the Ministry of Science and Technology.

185. The main tasks of STAMEQ included preparation of rules and regulations on standardization, metrology and quality control for approval by the competent authorities; supervision and control of the implementation of approved rules and regulations; to organize and guide activities relating to

standardization, metrology and quality control; to formulate national standards; to perform quality system certification, product certification and accreditation of testing and calibration laboratories, quality inspection bodies and quality certification bodies; to implement State supervision of quality requirements related to goods; to keep the national measurement standards; to organize and guide activities of verification, calibration, and certification of measuring instruments and patterns; to conduct studies on standardization, metrology and quality control; to participate in international cooperation on standardization, metrology and quality control; and to provide information and training on these subjects.

186. The legal framework for standardization, metrology and quality control consisted of the Ordinance on Metrology No. 16/1999/PL-UBTVQH10 of 6 October 1999, the Ordinance on Goods Quality No. 18/1999/PL-UBTVQH10 of 24 December 1999, the Ordinance on Consumer Rights Protection No. 13/1999/PL-UBTVQH10 of 27 April 1999, the newly promulgated Ordinance on Food Safety and Hygiene No. 12/2003/PL-UBTVQH11 of 26 July 2003, issued by the National Assembly Standing Committee, and other related regulations such as Decrees or Decisions issued by the Government or Prime Minister, and inter-Ministerial or Ministerial Circulars and/or Decisions issued by ministries or Ministers to guide the implementation of the Ordinance on Metrology and the Ordinance on Goods Quality. He expected a new Ordinance on Standardization to be developed and introduced in 2007. The main ministries involved in standardization and quality requirements were the Ministries of Science and Technology; Industry; Fisheries; Health; Trade; Agriculture and Rural Development; Post and Telematics; Resources and Environment; and Transport. Asked to define the term "quality" more precisely, he said that the term should be understood in a broad sense. The Ordinance on Goods Quality governed the state administration of quality through technical regulations with the aim to protect human health, safety, the environment and other legitimate objectives as indicated in the TBT Agreement.

187. Concerning standardization, he said that over 5,600 national standards (Viet Nam standards) existed in Viet Nam as per October 2003, of which nearly 1,300 standards were foreign, regional and international standards adopted and translated for application in Viet Nam. Draft technical regulations or standards were prepared by drafting committees or technical committees respectively (for example, for drafting Viet Nam standards 86 technical committees and 38 sub-committees had been established to date). These committees and sub-committees had been established by STAMEQ and were organized and operated in accordance with the guidelines of the International Standardization Organization (ISO). In order to facilitate the collection of comments on draft standards, STAMEQ posted the annual standards preparation program on the Internet (<http://www.vsc.org.vn>), and interested parties could request copies of draft standards for consideration and comment, if necessary. Concerning technical regulations, the Law on the

Enactment of Legal Documents stipulated that for technical regulations issued by the Government, the Government would assign a drafting body to establish drafting committees. The drafting committees consisted of the relevant agencies and organizations, experts and scientists. Ministries or Ministerial level bodies issuing technical regulations established committees or working groups to assist in the preparation. Draft technical regulations were - subject to their nature and content - submitted to the relevant bodies, organizations and individuals for comment. These committees or working groups were dissolved upon completion of the assignment.

188. Viet Nam was considering the issue of publication of draft standards and technical regulations for the purpose of comment prior to adoption. Viet Nam had embarked on programmes to harmonize national standards with international standards, particularly for electrical and electronic products, within the framework of ASEAN, APEC and ASEM.

189. Several Vietnamese standards were compulsory under the provisions of specific technical regulations. Among the some 5,600 national standards listed in the Viet Nam Standards Catalogue in 2002, 231 were mandatory. Requested to provide a list of the mandatory standards/technical regulations applicable in Viet Nam, he referred Members to the internet homepage of STAMEQ (<http://www.tcvn.gov.vn>). Providing an example, he noted that on 24 December 1999, the Standing Committee of the National Assembly had adopted Ordinance No. 18/1999/PL-UBTVQH10 which stipulated that goods related to food, safety, sanitary, human health, environment, and other goods specified by laws and regulations, were obliged to be in conformity with Viet Nam's national standards. The Ordinance had entered into force on 1 July 2000, superseding an Ordinance on Goods Quality of 27 December 1990. The Ordinance stipulated that both domestic and imported goods could be subject to either quality inspection - the list of goods would be determined by the Government - or quality certification, to be determined by Ministers. Both methods were being developed and revised on the basis of ISO Guides. Quality certification to establish the conformity with Viet Nam standards was mostly carried out on a voluntary basis.

190. Viet Nam was developing safety certification, formerly known as "mandatory product quality certification", on the basis of Systems 4 of the eight third-party certification systems introduced by ISO, notably for electrical and electronic products. Safety certification would include type testing and post-certification surveillance in the market or at the production site. Fees for testing, verification and related administrative formalities had been established by the Ministry of Finance (Circular No. 83/2002/TT-BTC of September 2002), based on the Ordinance on Fees and Charges promulgated by the National Assembly Standing Committee on 28 August 2001, and Government Resolution No. 57/2002/ND-CP of 3 June 2002. According to this Circular, Vietnamese and foreign organizations and individuals paid State management fees and charges for the granting, testing, goods

quality State inspection, and verification of measuring instruments, by State administrative bodies for standards, metrology and quality, or other authorized bodies. The fees and charges were stipulated in Vietnamese Dong and were based on the costs of the services rendered. Viet Nam had issued Decision No. 2424/2000/QD-BKHCMNT of 12 December 2000, introducing a procedure for supplier's declaration of conformity. The procedure was based on ISO/IEC Guide 22. Imported products were also subject to this method. He expected supplier's declaration of product conformity to become the principal method of quality management in Viet Nam in the future. Viet Nam had also established certification schemes of quality assurance systems based on ISO guidelines, Codex (GMP, HACCP) and on the systems of other countries such as New Zealand and Japan.

191. The representative of Viet Nam listed imported and exported commodities subject to mandatory quality inspection in 1997 in document WT/ACC/VNM/3/Add.1, Appendix 5. When asked by some Members to update these lists he referred them to the website of STAMEQ (<http://www.tcvn.gov.vn>). The Ordinance on Goods Quality stipulated that the Government should issue a list of goods subject to mandatory quality inspection. The most recent list had been published in Decision 117/2000/QD-KHCMNT of 26 January 2000, but this list was currently subject to revision. [Once published, the revised list will be provided to the Working Party.] He added that mandatory registration of product quality had been abolished in early 2001. Inspection procedures for imported and exported goods had been simplified by moving towards a system of type testing. The requirement to inspect each individual consignment could be waived for companies with a proven track record of quality. The principle of simplified inspection procedures applicable to imported and exported goods had been approved by the Minister of Science and Technology in Decision No. 1091/1999/QD-BKHCMNT of 22 June 1999. The detailed conditions under which simplified inspection procedures could be applied were specified in regulations issued by the Directorate for Standards and Quality and line management ministries for each type of goods. Complaints against decisions by the authorities responsible for conformity assessment or quality inspection procedures were conducted in compliance with Viet Nam's Ordinance on Claim and Denouncement.

192. Asked specifically about the quality inspection and customs procedure for imported goods subject to state quality inspection, he added that the procedures were guided by Inter-Circular No. 37/2001/TTLT/BKHCMNT-TCHQ issued by the former Ministry of Science, Technology and Environment and General Department of Customs on 28 June 2001. The Circular stipulated that the owner had legal responsibility for the specified quality of imported goods subject to State mandatory quality inspection. The owner registered for quality inspection with the inspecting body using the registration form provided in the Inter-Circular. No. 37. Within one working day following customs clearance, the goods owner should present the declared goods in their original state together with the cleared customs documents and other documents pursuant to the regulations of the inspecting body.

The inspecting body was required to verify the registration for State quality inspection, or issue a notification of inspection exemption, to the customs agency within one working day. As noted above, the list of imported and exported goods subject to State quality inspection was implemented according to the Decision No. 117/2000/QĐ-BKHCNMT of the former Minister of Science, Technology and Environment. The list included specified the goods subject to State quality inspection under the competence of specialized inspecting bodies of the former Ministry of Science, Technology and Environment; the Ministries of Health; Agriculture and Rural Development; Industry; and Fisheries.

193. Among the steps Viet Nam was taking to remedy deficiencies in its current standardization and regulatory regime, he noted that existing standards were subject to review and revision to ensure consistency with international and regional standards, inspection procedures were shifting from consignment-by-consignment inspection to type testing where appropriate, Viet Nam was establishing product testing laboratories meeting the requirements of ISO/IEC Guide 25 as well as ISO/IEC Guide 17025, and Viet Nam had entered into multilateral mutual recognition agreements (APEC-MRA). In response to a specific question, the representative of Viet Nam said that Viet Nam had signed bilateral agreements with China, the Russian Federation and Ukraine which included provisions on harmonisation of national standards and conformity assessment procedures with international standards and guides, mutual technical cooperation, and a mechanism for mutual recognition of conformity assessment results. He referred requests for the texts of Viet Nam's existing Mutual Recognition Agreements to the website of STAMEQ (<http://www.tcvn.gov.vn>).

194. Asked whether and how Viet Nam accepted the results of conformity assessment procedures in other Members, as foreseen under Article 6.1 of the TBT Agreement, and whether Viet Nam recognized test data and/or certification conducted by bodies outside of Viet Nam, he said that Viet Nam provided many forms of acceptance of testing results or certification undertaken by foreign organisations. In most of cases, test results and certifications undertaken by foreign organisations were accepted by the sellers and buyers. For goods subject to quality inspection and certification, testing and certification results were accepted under, for example, (i) bilateral and multilateral mutual recognition agreements to which Viet Nam and exporting countries were parties; (ii) unilateral acceptance by Viet Nam of foreign laboratories or certifying organizations; and (iii) import quality inspection.

195. Some members asked Viet Nam to confirm that full compliance with the TBT Agreement would be ensured by the time of accession, and requested a detailed plan of action addressing all outstanding issues. The representative of Viet Nam submitted an Action Plan for the Implementation of the WTO Agreement on Technical Barriers to Trade in document WT/ACC/VNM/24, subsequently revised in documents WT/ACC/VNM/24/Rev.1 and Rev.2. According to the revised plans, Viet Nam

would ensure that all new technical regulations, standards, and conformity assessment procedures would be in full compliance with the Agreement from the date of accession. In recent years his Government had been promoting a program to review legal documents to ensure progressive consistency with WTO obligations, including in the area of technical regulations and conformity assessment. The Ministry of Justice acted as the focal point for this program, and legal documents drafted by a ministry were sent to the relevant ministries, including the Ministry of Science and Technology and STAMEQ, for comment before submission to the Government. He added that Viet Nam, by enhancing the capacity of STAMEQ to prepare standards, would accept and implement fully throughout its administration the Code of Good Practice for the preparation, adoption and implementation of standards. Although Viet Nam had established its TBT Enquiry Point and National Notification Body, he did not expect this agency to be fully operational until the end of 2005 or, if earlier, by the date of accession.

196. [The representative of Viet Nam confirmed that Viet Nam would apply the Agreement on Technical Barriers to Trade from the date of accession without recourse to any transition period. The Working Party took note of this commitment.]

Sanitary and phytosanitary measures

197. The representative of Viet Nam submitted an Action Plan for the implementation of the Agreement on the Application of Sanitary and Phytosanitary Measures in document WT/ACC/VNM/11; the plan has subsequently been revised four times. He noted that Viet Nam was working on the establishment of an SPS regime based on international standards, guidelines and recommendations. Among the main challenges facing Viet Nam were the development of software for pest risk analysis, application of pest risk analysis for genetically modified organisms, and to amend legislation on plant quarantine in accordance with the 1997 revision of the International Plant Protection Convention. Viet Nam was facing difficulties in performing risk assessment and had not yet been able to analyze disease risks in accordance with international criteria. In principle, Viet Nam applied international standards in the areas where Viet Nam could not conduct its own independent risk assessment.

198. Concerning phytosanitary measures, he said that the basic legal instruments were the Ordinance on Plant Protection and Quarantine on 15 February 1993, amended on 25 July 2002, Regulations on plant protection and inspection attached to Decree No. 58/2002/ND-CP of 3 June 2002, and decisions and circulars by the Ministry of Agriculture and Rural Development guiding their implementation. Viet Nam was in the process of reviewing and amending its subsidiary legislation to ensure consistency with the amended Ordinance and the new Regulations. The legal

documents were based on the International Plant Protection Convention, as amended in 1997, and the disciplines of the Asia Pacific Plant Protection Commission (APPPC). Viet Nam was reviewing its legislation on phytosanitary measures in the light of the SPS Agreement, the IPPC and other international standards to harmonize phytosanitary measures with ASEAN and WTO norms. Viet Nam and other ASEAN members were developing a harmonisation framework for phytosanitary procedures comprising 10 agricultural products at the outset and applicable to ASEAN members only. Work on a phytosanitary certification management system had been completed.

199. The principal legal framework for inspection of animals was the Veterinary Ordinance enacted on 15 February 1993; Decree No. 93/CP of 27 November 1993 for implementation of the Ordinance; Regulations on animal protection and inspection attached to Decree No. 93/CP; the Regulation on Quarantine Slaughter control and veterinary hygiene inspection of animals and animal-related products; and Decisions Nos. 389 NN-TY/QD and 607 NN-TY/QD providing details of the Ordinance. He expected his Government would promulgate a revised Veterinary Ordinance before the end of 2003, and a Decree guiding the implementation of the Ordinance on Animal Disease Control, Animal Quarantine and Inspection and Veterinary Hygiene Inspection, and Veterinary Drug Management in the first quarter of 2004. Viet Nam was also preparing Recommendations to improve veterinary hygiene and food safety inspection procedures, and inspection procedures for veterinary medicines and vaccines. Viet Nam had signed agreements and memoranda of understanding on technical animal health cooperation with the United States, Argentina, Australia, the Netherlands, the Russian Federation, France, etc. Viet Nam's import requirements for animals and animal products were based on the International Animal Health Code and, in his view, Viet Nam's veterinary standards and inspection measures were consistent with regulations of international organizations such as CODEX, OIE, and ASEAN. Unsuitable import requirements, if any, would be revised to meet OIE standards. Viet Nam was also making efforts to build the necessary infrastructure for veterinary hygiene inspection of animals and animal-related products.

200. The Ministry of Health was responsible for State control of food safety. A new Ordinance on Food Safety and Hygiene had been promulgated in November 2003, and a Decree guiding the implementation of this Ordinance would be promulgated during 2004. The Ordinance addressed various issues including hygiene and food safety in the production, importation, and exportation of food and foodstuff. In the meantime, food safety was regulated by the Law on Protection of People's Health, Decree No. 23/HDBT of 24 January 1991, Decree No. 86/CP of 8 December 1998 on the settlement of administrative breaches in State management of health, and Decree No. 41/1998/ND-CP regulating medical inspection at the border of food and foodstuff which, according to the representative of Viet Nam, was based on norms established by the WHO. Viet Nam had adopted

about 60 per cent of CODEX standards relating to food and foodstuff as of December 2001 and was planning to adopt all remaining CODEX standards.

201. Concerning GMO labelling, he noted that this was a relatively new subject in Viet Nam. A Regulation on safety management for genetically modified organisms was in preparation. Viet Nam intended to formulate compulsory standards for products using GMO technology based on specific evidence or labelling as "products using GMO technology".

202. Asked specifically about Viet Nam's current SPS requirements for the importation of meat and poultry, live plants, horticultural products and grain, as well as technical requirements for the certification, labelling, and packaging of food products, the representative of Viet Nam said that Viet Nam's requirements for imported meat were generally based on the Recommendations of OIE, the regulations of CODEX, and agreements between Viet Nam and exporting countries. Poultry meat importers were required to obtain a sanitary certificate issued by the National Veterinary Authority of the exporting country, certifying that (i) the exporting country was free from Avian influenza, (ii) the meat originated from healthy poultry slaughtered in disease free zones, (iii) the poultry had been examined anti-mortem and post-mortem and found free from every infectious disease, and (iv) met all veterinary hygiene standards and were free from harmful micro-organisms. Plants imported for consumption, including grains, were required to be free from plant quarantine pests of Viet Nam and be accompanied by a Phytosanitary Certificate of the exporting country. Live plants imported for propagation or planting should have a quarantine permit issued the competent Vietnamese authority, a Phytosanitary Certificate of exporting country, and be free from plant quarantine pests of Viet Nam. As for technical requirements for the certification of food products, Viet Nam applied certification procedures based on national and international standards, and certified the quality management system based on ISO 9000, Good Manufacturing Practices (GMP) and Hazard Analysis and Critical Control Point (HACCP) for food producing units. Labelling and packaging of food products was regulated according to the Prime Minister's Decision No. 178/1999/QD-TTg of 30 August 1999 and Circular No. 34/1999/TT-BTM of 15 December 1999 guiding the implementation of the Decision.

203. A Member noted that although Viet Nam Action Plan (third revision) provided a reasonable framework, it did not address directly some key provisions of the SPS Agreement, notably its Articles 5.1 and 2.2. Viet Nam was requested to detail how it would act when international standards did not exist or the level of protection of an international standard did not meet Viet Nam's appropriate level of protection, as the Agreement stipulated that Viet Nam would need to undertake a risk analysis to validate each measure (Article 5.1), or determine that insufficient scientific evidence would only justify the application of a provisional measure (Article 5.7). Viet Nam was also requested to specify

to what extent Viet Nam would adopt international standards and under what circumstances different standards might be used.

204. The representative of Viet Nam replied that Viet Nam's SPS standards were based on CODEX and FAO/WHO standards. Should CODEX and FAO/WHO standards not be available, Viet Nam would adopt the standards of regional or developed countries, or as a last resort, national standards would be applied to the extent that these were consistent with the SPS Agreement. He noted that the SPS standards applied by Viet Nam were in conformity with international ones, but generally at a lower level in order to adapt to the production conditions in Viet Nam. He confirmed that Viet Nam was committed to apply international standards once a WTO Member. Viet Nam would gradually improve the techniques and procedures for conducting risk assessment in cooperation with international organizations and WTO Members, and he expected Viet Nam to be in conformity with Articles 2.2, 5.1 5.2 and 5.3 upon accession.

205. The representative of Viet Nam said that Viet Nam had not yet established a single enquiry point to provide information on its SPS measures, but his Government had assigned the task to the Ministry of Agriculture and Rural Development of Viet Nam (MARD). The Ministry served as a general enquiry point for information on sanitary and phytosanitary requirements. Viet Nam had also assigned responsibility for sanitary and phytosanitary control, plant and animal quarantine, health quarantine and fisheries inspection to various ministries and agencies, and each entity was responsible for the submission of information relevant to its domain. Thus, the Department of Plant Protection and the Department of Animal Health were at present national enquiry points responsible for providing information on plant protection and veterinary requirements and measures. In the context of the Action Plan, he noted that Viet Nam would ensure that its transparency obligations would be met on an ongoing basis. He added that his Government envisaged the establishment of its SPS enquiry point, ensuring the necessary inter-agency cooperation, before the end of 2004, and the enquiry point would be fully operational by the date of accession.

206. A Member requested Viet Nam to establish a law or guidance requiring the publication of proposed SPS measures, notification to the WTO, and a reasonable timeframe for comments from Members. The representative of Viet Nam replied that legal documents, including those related to SPS issues, were published in the Official Gazette and entered into force minimum 15 days thereafter in accordance with the amended Law on Promulgation of Legal Documents. As noted above, Viet Nam intended to establish its National Enquiry Point and National SPS Notification Body within the Ministry of Agriculture and Rural Development, and this agency would be responsible for notifying WTO Members of all regulations and measures in a manner consistent with the SPS

Agreement. At present, SPS-related legal documents were accessible at two websites (<http://www.mard.gov.vn/dah> and www.ppd.gov.vn).

207. Some Members noted that Viet Nam appeared to be taking appropriate account of international standards, guidelines and recommendations in establishing its SPS regime, and would welcome a commitment from Viet Nam to implement the SPS Agreement from the date of accession without recourse to any transition period. In reply, the representative of Viet Nam said that as a low-income developing country in the process of economic transition, Viet Nam was facing many difficulties in implementing the Agreement. Viet Nam would therefore require a transitional period until 1 July 2008 to complete work to comply with the provisions of the SPS Agreement in respect of harmonization (Article 3.1, 3.3. and 3.4.), equivalence (Article 4) and control, inspection and approval procedures (Article 8 and Annex C). Viet Nam would comply fully with the main obligations of the Agreement such as transparency, non-discrimination and risk assessment from the date of accession. SPS measures applied by Viet Nam would not create barriers to trade during the transitional period. He stressed that Viet Nam would need technical assistance to train staff, and technical equipment and expertise (in particular for disease risk analysis) to develop its laboratories and information systems.

Trade-Related Investment Measures (TRIMs)

208. Noting that Viet Nam appeared to apply local content requirements and that the transition period for developing country Members for such requirements expired at the end of 2000, some Members requested a detailed action plan from Viet Nam, identifying current measures inconsistent with the Agreement on Trade-Related Investment Measures (TRIMs) and specifying a timetable for their elimination. A Member reminded Viet Nam that the solution envisaged for automobile assembly factories, i.e. voluntary registration of local content, would not solve the problem of consistency with the TRIMs Agreement. Conditions attached to tax concessions to foreign enterprises investing in export processing zones and industrial zones also appeared to be inconsistent with the TRIMs Agreement. Furthermore, several Members noted that most TRIMs measures had been introduced after Viet Nam's application to join the WTO, and reminded Viet Nam that acceding governments were expected not to implement new restrictive measures. In the view of some Members, Viet Nam should comply fully with the TRIMs Agreement from the date of accession to the WTO without invoking a transition period.

209. The representative of Viet Nam replied that following its application to the WTO, Viet Nam had amended its legislation to make it increasingly compliant with WTO provisions on TRIMs. He noted that, in 2000, the Law on Amendment and Supplement to some Articles of the Law on Foreign Investment had removed the requirement on foreign exchange self-balancing and the obligation for

foreign-invested enterprises to give priority to the purchase of domestic products. Viet Nam had no intention to reintroduce self-balancing requirements.

210. He nevertheless acknowledged that Viet Nam's legislation on foreign investment included measures inconsistent with the TRIMs Agreement, for example local content requirements for automobile and motorcycle manufacturing projects. Viet Nam provided sample notifications of its existing TRIMs measures in document WT/ACC/VNM/19 and its Revision 1. Manufacturing of automobile spare parts and accessories in Viet Nam was a condition for obtaining investment licences to assemble and manufacture automobiles. The value of locally manufactured spare parts and accessories was required to reach minimum 5 per cent of the total value of the vehicle by the fifth year of the start-up of production, rising to at least 30 per cent by the tenth year of production. For motorcycles, the value of components and spare parts manufactured in Viet Nam by a licensed project was required to account for 5-10 per cent of the complete motorcycle value from the second year of production. The ratio was required to increase gradually and steadily until reaching a target of minimum 60 per cent of the complete motorcycle value during the fifth or sixth year of manufacture. Viet Nam did not issue investment licences for projects to assemble motorcycles in simple CKD form. Assembly projects in mechanical engineering, and electric and electronic products were only approved in IKD form. The value of components and spare parts manufactured in Viet Nam during the first two years should account for at least 20 per cent of the value of the finished products, and the ratio should increase steadily in subsequent years. Investment projects for the manufacture of spare parts used in mechanical engineering, electric and electronics industries (except the motor vehicle industry) were granted preferential import duty rates contingent upon localization rates with respect to semi-finished products, accessories, parts and materials used in the production of such spare parts. Viet Nam had issued Inter-Ministerial Circular No. 176/1998/TTLT-BTC-BCN-TCHQ of 25 December 1998, and its amendment of 25 December 2000, providing guidelines on the implementation of Viet Nam's tariff policy contingent upon the localisation ratio for products and components of mechanical, electrical and electronic industries. These documents had come into effect in January 2001. Viet Nam's export requirements and/or tax concessions applied to enterprises investing in industrial zones or export processing zones were, in his view, not contrary to the TRIMs Agreement, because this type of measures had not been included in the illustrative list contained in the Annex to this Agreement.

211. He added that Decision No. 229/1998/QĐ-BKH of 29 April 1998 of the Minister of Planning and Investment applied only to projects licenced after the Decision had entered into force. The 80 per cent export ratio was otherwise accepted by investors on a voluntary basis. The sectors subject to this requirement are listed in Table 11. This list had however been updated in light of Decision

No. 718/BKH-QD issued on 7 December 2001 by the Minister of Planning and Investment. The number of products subject to export requirements had been reduced to 14.

Table 11: Industrial Products Subject to Requirement to Export 80 per cent of Output

No.	Description of goods
1	Motorcycles
2	Minibuses, trucks of less than 10 ton tonnage
3	Irrigating pumps of capacity less than 30,000 m ³ /h, pumps used for everyday lives of capacity less than 540 m ³ /h
4	Medium and low voltage electric transmission cables
5	Normal transmission cables
6	Cargo ships of tonnage less than 30,000 tons, fishing ships of less than 1,000 CV, water boats, canoes, barges (this is applicable to 100 per cent foreign invested projects)
7	Audio-visual products
8	Aluminium profiles products
9	Construction glasses in large use ($\varnothing < 40$ mm)
10	NPK fertilizers
11	PVC
12	Bicycles and bicycle parts
13	Transformers under 35 KV
14	Diesel motors under 15 CV

Note: The list is attached to Decision No. 718/2001/QD-BKH of 7 December 2001

212. A Member noted that the export requirement for some products, although deleted according to the new list, appeared not to have been eliminated in practice. In some cases, foreign-invested enterprises appeared to have been requested also to maintain the same export sales ratio for products not included in the list (such as pork).

213. The representative of Viet Nam submitted an action plan for the implementation of the TRIMs Agreement in document WT/ACC/VNM/18, and a revised action plan in document WT/ACC/VNM/18/Rev.1. He stated that, in accordance with the revised action plan, the import duty preferences contingent on localization ratio with respect to enterprises producing and assembling motorcycles specified in the Inter-Ministry Circular No 176/1998/TTLT-BTC-BCN-TCHQ would be eliminated before the end of 2003. Furthermore, upon accession to the WTO Viet Nam would eliminate the localization requirements and import duty preferences contingent upon localisation ratios for enterprises producing automobile parts, electronic and mechanical products specified in the Inter-Ministry Circular No. 176/1998/TTLT-BTC-BCN-TCHQ, amend the list of sectors subject to conditional investment licensing (attached to Decree No. 24/2000/ND-CP) to eliminate the criteria requiring development of raw material sources for vegetable oils, sugar cane, and wood, and eliminate the localization requirement in practice for investment licences applicable to projects producing or assembling automobiles and motorcycles. Viet Nam would commit not to re-introduce phased-out TRIMs from the date of accession. Compulsory export ratio requirements were, in his

opinion, not covered by the provisions of the TRIMs Agreement. Viet Nam would nevertheless commit not to apply them from the date of its accession to the WTO.

214. Some Members encouraged Viet Nam not to enforce contracts imposing requirements inconsistent with the TRIMs Agreement, assuming that the Government of Viet Nam would also eliminate any such requirements accepted on a voluntary basis. Viet Nam was invited to confirm that any export requirement listed in an investment licence, whether issued by the central government or a local authority, would be eliminated at the same time.

215. The representative of Viet Nam replied that foreign invested enterprises were free to choose their own markets for products other than those listed in Decision No. 718/BKH-QD of 7 December 2001. Immediately upon accession, Viet Nam would remove the mandatory export requirement stipulated in current legal documents as well as in investment licences issued by central or local authorities, and Viet Nam's competent authorities would not apply neither mandatory nor voluntary export regulation for enterprises manufacturing the products listed in Table 11. He confirmed that Viet Nam would implement fully the provisions of the TRIMs Agreement from the date of accession.

State trading entities

216. A Member expressed a general concern that exporting State trading enterprises (STEs) could use their special rights and privileges to disguise export subsidies or to otherwise engage in anti-competitive behaviour. Viet Nam was requested to provide details on the specific steps it would be willing to take to ensure that the operations and policies of STEs within its jurisdiction would not distort trade, and otherwise be consistent with the principles of non-discriminatory treatment prescribed by Article XVII of the GATT 1994. Information provided by Viet Nam in document WT/ACC/VNM/9, Annex I, indicated that many products subject to State trading were subject to additional measures such as quantitative restrictions, surcharges and import licensing. Some of Viet Nam's enterprises appeared to be involved in trade as well as industry regulation, and Viet Nam was encouraged to separate these functions to ensure a more open and transparent regulatory and purchasing environment.

217. The representative of Viet Nam provided information on State-trading in document WT/ACC/VNM/3/Add.1, Annex 6, and subsequently a "Notification on State Trading Enterprises" in document WT/ACC/VNM/14 of 28 June 2000, revised in document WT/ACC/VNM/14/Add.1 of 31 October 2003. He added that Viet Nam was in the process of reforming its State trading enterprises to create a level playing field for all enterprises, and to ensure that enterprises' trading activities were conducted in accordance with commercial considerations. The system of designating

authorized enterprises to export rice had been phased out. Viet Nam would continue to update and supplement the information relating to State trading enterprises. The entities identified by Viet Nam as State trading enterprises in 2002 and the products traded by them, listed by HS numbers, are enumerated in Table 12.

Table 12: State Trading Enterprises in Viet Nam

No	Products	HS Code	Name of enterprise	Functions of enterprise
1	Crude oil	27090010	Viet Nam Oil and Gas Corporation (PETROVIETNAM)	Searching, exploring, exploiting, processing and dealing in oil and gas products, providing oil and gas related services.
2	Refined petrol & gasoline	271011 271019 271099	- PETROLIMEX - PETEC - PETECHIM - SAIGON PETRO - PETROMEKONG - VINAPCO (Airlines Petrol & Gasoline Company which is the exclusive re-exporter of aircraft gasoline) - Petroleum Processing and Trading Company; - MARINESUPPLY - Military Petroleum and Gas Corporation - Dong Thap Petroleum Import-Export Company	Authorised importers of gasoline and petrol for supplying to domestic consumption.
3	Aircraft spare parts and aviation equipment, facility	8802, 8803	Airlines Import Export Corporation (AIRIMEX)	Ensuring the supply of aircraft, equipment, facility and materials used in aviation; Sole importer of aircraft and aviation materials, spare parts.
4	Film	8524	Viet Nam Films Import/Export and Distribution Company (FAFILM VIET NAM)	Sole importer and distributor of feature films (video tape, VCD).
5	Newspapers	4902	Books and Newspapers Import Export Company (XUNHASABA)	Sole importer and distributor of newspapers.

218. Members encouraged Viet Nam to provide updated information on its State trading enterprises. A Member reminded Viet Nam that Article XVII of the GATT stipulated that purchases and sales by State trading enterprises (STEs) should be made "solely in accordance with commercial considerations". However, the information provided by Viet Nam in document WT/ACC/VNM/14 suggested that some of Viet Nam's STEs did not operate strictly on the basis of commercial considerations, for example with respect to importation of fertilizer, printing equipment, printed material, and cinematographic works. Among the programmes causing concern was also an export

enhancement programme for rice (Money Award For Rice Export Turnover), whereby the Vietnamese Government provided a grant worth approximately 1.2 per cent of the turnover for every rice exporter. A Member requested Viet Nam to clarify why several major State-owned enterprises involved in agricultural trade had not been included in its submissions, noting that a Vietnamese website listed several entities as State enterprises, including the Viet Nam National Coffee Corporation (VINACAFE), the Viet Nam National Tea Corporation (VINATEA), and the Viet Nam Dairy Products Company (VINAMILK).

219. The representative of Viet Nam replied that all State trading enterprises in Viet Nam were operating in accordance with commercial considerations. The Ministry of Culture and Information licensed imports of specialised printing plates, printers and typesetting systems for the printing industry for reasons of national security and social stability. Concerning motion pictures and other audio-visual products, the Ministry of Culture and Information screened imports to preserve national culture, traditions and customs and to maintain national and social security. Quantitative restrictions were not applied to such products, except for cinematographic films. The purchases and sales of State trading enterprises were based only on commercial considerations. The system of fertilizer import quotas and designated importers had been phased out, as well as the price controls imposed by the Government Pricing Committee on fertilizer imports and rice exports. Although he did not consider VINACAFE, VINATEA and VINAMILK fell within the scope of GATT Article XVII, he provided information on the trading activities of these enterprises in document WT/ACC/VNM/32, Annex 2. He added that VINAMILK had been equitized and was no longer State-owned.

220. [The representative of Viet Nam confirmed that his Government would apply its laws and regulations governing the trading activities of State-owned enterprises and other enterprises with special or exclusive privileges in full conformity with the provisions of the WTO Agreement, in particular Article XVII of the GATT 1994 and the Understanding on that Article and Article VIII of the GATS. He further confirmed that Viet Nam would notify any enterprise falling within the scope of Article XVII, including those noted in Table 12. The Working Party took note of these commitments.]

Free zones, special economic areas

221. The representative of Viet Nam said that Viet Nam had established 4 export processing zones and 87 industrial zones. Industrial zones were established by Government Decision or Decision of the Prime Minister. The establishment and operation of export processing enterprises were governed by the Regulations on Industrial zones, Export Processing Zones, and High Tech Parks enacted by Decree No. 36/ND-CP.

222. Enterprises in export processing zones were exempt from import and export duties for goods imported from or exported to foreign countries. Enterprises located in industrial zones could import duty free equipment, machinery and specialized means of transport (including spare parts and accessories) for the initial establishment, expansion or rehabilitation of the project. Materials and parts used in the production of exports were subject to import duty, which would subsequently be refunded in proportion to the amount of exported products. Enterprises located in export processing zones were allowed to sell their products in the domestic market upon approval by the Ministry of Trade. However, all such sales were subject to the same tariff treatment and customs procedures applicable to imported goods.

223. Asked whether incentives in industrial zones and export processing zones were tied to export performance, the representative of Viet Nam said that enterprises in industrial zones which exported less than 50 per cent of their output were subject to 15 per cent profit tax and corporate income tax exemption for two years after the first profit-making year. An additional reduction of 50 per cent in payable corporate income tax was granted for the two consecutive years for enterprises exporting 50 to 80 per cent of their output. Enterprises exporting 80 per cent or more of their output were subject to 10 per cent corporate income tax as well as the two-year corporate income tax exemption and the 50 per cent reduction in payable corporate income tax for the third and fourth year after the first profit-making year. Enterprises engaged in infrastructure development in the export processing zones were subject to 10 per cent corporate income tax, exemption from corporate income tax for four years after the first profit-making year, and a reduction of 50 per cent in payable corporate income tax during the following four years. The 10 per cent profit tax also applied to enterprises meeting at least two among four stipulated conditions, i.e. being a service enterprise, assigning assets to the State of Viet Nam without compensation upon expiry of operations, investing in regions with specially harsh socio-economic conditions, or investing in "specially encouraged" projects enumerated in Decree No. 24/2000/ND-CP of 31 July 2000.

224. A Member stated that Viet Nam was using prohibited subsidies as incentives to locate in its export processing zones, as the benefits were tied to a specific level of exportation from the zone. This Member therefore asked what Viet Nam would be prepared to do to bring these measures into line with WTO provisions, and in what timeframe. Another Member requested confirmation from Viet Nam that the preferential treatment for investments in high-tech parks, industrial zones and export processing zones would not be granted in a manner inconsistent with the Agreement on Subsidies and Countervailing Measures.

225. In reply, the representative of Viet Nam said that the preferential treatment provided by the Regulations on industrial zones, export processing zones and high-tech parks were measures

commonly applied by other countries to attract foreign direct investment. The preferential measures applied to industrial zones, export processing zones and high-tech parks had been described in the Notification pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures in document WT/ACC/VNM/13/Add.2. Viet Nam would review these measures to bring them into line with WTO provisions in due course if the measures encouraged the use of products of domestic origin and caused discrimination against imports.

226. [The representative of Viet Nam confirmed that from the date of accession the Government of Viet Nam would ensure enforcement of its WTO obligations in its export processing zones and industrial zones. [In this regard, he confirmed that the Laws on foreign investment and domestic investment and related regulations had been amended to eliminate any requirements for establishment in the zones or receipt of benefits provided to firms within the zones conditioned on use of local goods or export performance.] In addition, goods produced in these zones under tax and tariff provisions that exempt imports and imported inputs from tariffs and certain taxes would be subject to normal customs formalities when entering the rest of Viet Nam, including the application of tariffs and taxes. The Working Party took note of these commitments.]

Government procurement

227. The representative of Viet Nam said that his Government had promulgated Decree No. 88/1999/ND-CP on Procurement Regulations on 1 September 1999. The Decree regulated uniformly the management of bidding activities; the selection of consultants; procurement of goods; construction and installation; and the selection of partners to implement projects in full or in part. Several governmental agencies, including the Ministry of Investment and Planning in cooperation with the Ministry of Finance, the Ministry of Trade, the Ministry of Construction, the State Bank of Viet Nam, and other heads of related ministries/agencies had been involved in the elaboration of guiding documents to implement the Decree.

228. The Government Decree had been supplemented and amended by Decrees Nos. 14/2000/ND-CP of 5 May 2000 and 66/2003/ND-CP of 12 June 2003, and a Regulation on Procurement had been issued together with the Government Decree in September 1999. Viet Nam's legislation did not specify the procurement agencies and entities covered, but according to the Regulation any purchase of goods and services or any investment by State agencies, mass organisations and State-owned enterprises financed by the State budget had to be made in the form of a tender. Viet Nam had not published any list of procuring entities, but the agencies involved were mentioned in each bidding announcement. Statistics on the overall value of public sector purchasing and the major procuring entities were not available in Viet Nam. Whether tenders for procurement

were open to international bidders, or not, was not provided in the relevant regulations, but determined according to the nature and purpose of the procurement.

229. The 1999 Decree and the Regulation on Procurement had required foreign contractors to enter into partnerships with Vietnamese contractors or undertake to employ Vietnamese sub-contractors when participating in tenders for the selection of consultants, tenders for the purchase of goods, and tenders for construction and installation in Viet Nam. The amendments introduced through Government Decree No. 14/2000/ND-CP on 5 May 2000 limited this requirement to international tenders for construction and installation in Viet Nam. The requirement applied to all construction projects, including those which were part of a larger procurement contract.

230. Successful bidders were required to purchase and use materials and equipment produced, processed or available in Viet Nam, with due account taken of quality, price, safety and environmental considerations related to the procurement. The quality of materials and equipment purchased in Viet Nam should meet the requirements stipulated in the tender invitation documents, and be of equal quality to like materials and equipment purchased overseas. The price paid should also be equal to or lower than that of like materials and equipment purchased overseas. Safety requirements and "other necessary issues" would be stipulated in the tender invitation documents as well as in the procurement contract.

231. Concerning procedures for publishing tenders, he said that the notification inviting bids and the bid result were required to be made public. The opening of submitted bids was made public under the terms stipulated in the call for tenders according to Article 13 of the Regulations on Procurement, attached to Decree No. 88/1999/ND-CP. The opening report should include information such as the name of the tender package, the date, time and location of the tender opening, the names and addresses of the bidders, the bid price, the bid bond (warranty) and the implementation schedule. The representatives of the party calling for tenders and the bidders were required to sign the report. Although public notice of government procurement was compulsory, Viet Nam's legislation did not specify any particular publication where these notices should be provided. Consequently, public notices were made through either national or local newspapers, audio-visual media or other mass media. Procuring agencies and entities announced their tenders in a least three consecutive issues of widely circulated daily newspapers, or in the audio-visual and other mass media. The announcements should be made at least five days before the issue of tender invitation documents for contracts worth less than 2 billion Dong, and minimum ten days prior for larger tenders. Calls for international tenders were announced in at least one English-language newspaper with wide circulation in Viet Nam.

232. The representative of Viet Nam added that a new Ordinance on Procurement in preparation would provide for greater transparency in the procurement process. The Ordinance foresaw the creation of a Procurement Gazette to provide general information on tendering activities, invitations for tender, lists of tenderers participating in limited tendering proceedings, selection of bids, information on enterprises prohibited to participate, or restricted, in the bidding process, etc. The party calling for tenders would have to publish the terms and conditions of the tender in the newsletter. The Ordinance also aimed at decentralising procurement decision-making to the ministries, agencies and local authorities. The new Ordinance would also identify bad practices and fraudulent behaviour, stipulate penalties for violations, and include provisions concerning right of appeal and the settlement of disputes.

233. A Member encouraged Viet Nam to continue in its ongoing efforts to make its procurement systems more transparent and open to competition. Viet Nam should become an observer to the Committee on Government Procurement upon accession as a first step towards joining the Agreement on Government Procurement. Viet Nam was also encouraged to identify its challenges and needs for technical assistance in implementing the Agreement.

234. The representative of Viet Nam replied that Viet Nam had made efforts to improve the legal framework for government procurement to enhance its transparency and to harmonize the tender process and procedures with international practice. Viet Nam had not yet examined the provisions of the Agreement on Government Procurement and its implications for Viet Nam, but was willing to work with Members to improve Viet Nam's understanding of the Agreement.

Trade in Civil Aircraft

235. A Member argued that the Agreement on Trade in Civil Aircraft, including the duty free treatment of imported aircraft and parts, could make a significant contribution to Viet Nam's development and growth, and requested Viet Nam to join the Agreement upon accession to the WTO.

236. In reply, the representative of Viet Nam noted that this was a plurilateral Agreement and that participation in the Agreement was not an obligation. Viet Nam would consider assistance from other countries in studying the implications, including the developmental aspects, of the Agreement.

Transit

237. The representative of Viet Nam said that goods, in order to transit through the territory of Viet Nam, required prior permission from the Ministry of Trade. Permits were granted only to authorized Vietnamese carriers or carriers from countries which had signed bilateral transit agreements

with Viet Nam (China, the Lao PDR and Cambodia). The selection of Vietnamese carriers was based on past performance. Regulations were strict for the purpose of combating smuggling. While in transit, goods were required to be transported along the prescribed route and within the time allowed. Warehousing of goods in transit was subject to approval by Customs. Consumption of goods in transit within the territory of Viet Nam was forbidden, and any discrepancy between the amount of goods entering and leaving Viet Nam required certification by Customs.

238. Some Members noted that Viet Nam allowed only enterprises of countries having a common land border with Viet Nam to apply for the transit licences, and that goods in transit were subject to a transit fee of 1 per cent of the value of the goods. These members questioned whether Viet Nam's regulations restricted the freedom of transit as provided for under GATT Article V.2, and whether the associated fee was commensurate with the administrative expenses entailed by transit or with the cost of the services rendered for individual cases as required under GATT Article V.3.

239. The representative of Viet Nam replied that, upon accession to the WTO, Viet Nam will observe GATT 1994 rules on the freedom of transit and on transit fees commensurate with the cost of the services rendered. The 1 per cent transit fee had been abolished. Current fees applicable to goods, including postal packages and parcels, and luggage were calculated according to the means of transport and the length of the journey. The fees for transit and escorting of cargo are enumerated in Tables 13 (a) and 13 (b).

240. Some Members noted that Viet Nam in its responses had addressed the issue of transit fees, but not the fundamental principle of freedom of transit laid down in Article V of the GATT 1994. Viet Nam was invited to provide further justifications for its transit procedures and the conditions for granting transit permits, and explain how Viet Nam would bring its transit regime into conformity with the WTO.

241. The representative of Viet Nam replied that goods were generally allowed to transit through Viet Nam once the customs procedures had been completed. The requirement to obtain a transit licence from the Ministry of Trade applied only to in-land or waterway transportation of round or sawn timber, and for transiting goods subject to import or export prohibition. Current procedures were, in his view, not in violation of GATT Article V and Viet Nam would therefore commit to observe fully WTO rules on transit upon accession.

242. [The representative of Viet Nam confirmed that his Government would apply any laws, regulations and practices governing transit operations and would act in full conformity with the provisions of the WTO Agreement, in particular Article V of the GATT 1994. The Working Party took note of this commitment.]

Agricultural policies

(a) Imports – description of the types of border protection maintained

243. Some Members noted that Viet Nam was using bans, quotas, discretionary licensing and other quantitative restrictions to regulate agricultural imports, and that the WTO Agreement on Agriculture prohibited the use of quantitative restrictions to regulate such imports. Import restrictions on rice and sugar appeared to violate the WTO Agreements on Agriculture and Import Licensing Procedures, and could not be justified under the provisions of Article XI of the GATT 1994. Viet Nam was requested to identify, by tariff line, agricultural imports subject to non-tariff measures and undertake to eliminate these measures prior to accession to the WTO. Noting that Viet Nam banned imports of cigarettes for health reasons, Viet Nam was reminded that Article III and Article XX of the GATT prohibited the use of such measures if Viet Nam allowed the manufacture, sale and distribution of cigarettes domestically. If necessary, Viet Nam should rely on WTO-consistent measures, and ensure that imported items would be subject to the same treatment as domestically-produced items, even if Viet Nam's policy aimed at human health protection. Viet Nam was urged to maintain maximum transparency in any use of tariff-rate quotas and to provide information, if applicable, on differences in treatment between State-owned corporations and private companies in the allocation of licenses. Some Members noted that Viet Nam was seeking recourse to apply Special Safeguards (SSGs) if necessary. These Member considered SSGs a transitional measure linked to the Uruguay Round commitments of some Members, and thus a provision not available to acceding governments.

244. The representative of Viet Nam replied that Viet Nam would consider using tariffs instead of quantitative restrictions. As from the date of accession, Viet Nam did not intend to use quantitative or other import restrictions on any agricultural product, except for measures allowed under the provisions of WTO Agreements. The simple average tariff on imports of agricultural products was 17.7 per cent (document WT/ACC/VNM/3), and had been increased to 27.1 per cent in 2004. Imported sugar was subject to licensing and a tariff of 30 per cent on raw sugar and 40 per cent on refined sugar. Sugar was included in Viet Nam's List of Sensitive Agricultural Products under the CEPT/AFTA framework and would not be subject to tax reduction in the short term. Viet Nam did not apply import quotas on rice. Viet Nam did not intend to develop its tobacco industry, but existing processing facilities were put to best use for the benefit of tobacco-growing farmers. Viet Nam's legislation did not favour State-owned enterprises to the detriment of the private sector.

(b) Exports

245. A Member noted that State-owned enterprises purchased a major portion of Viet Nam's agricultural production, and accounted for a large share of Viet Nam's exports, for example of rice

(60 per cent), coffee (70 per cent) and rubber (90 per cent). Viet Nam was requested to provide information about the purchase prices fixed by State-owned enterprises, the relationship between State-owned enterprises and the Price Stabilization Fund, and the functioning of this Fund.

246. The representative of Viet Nam replied that purchase prices for exported agricultural products were determined by the enterprises themselves, subject to market conditions. State-owned enterprises operated in the same manner as all other business enterprises. Enterprises had been treated equally in relation to the Price Stabilization Fund irrespective of ownership form. The Export Promotion Fund, managed by the Ministry of Finance, had superseded the Price Stabilization Fund in October 1999. The purpose of the Fund was to help enterprises producing and trading in exported products (mainly agricultural products) to cope with adverse fluctuations in international market prices, to improve their competitiveness, and to promote exports.

(c) Internal policies

247. The representative of Viet Nam said that agricultural and rural development was a priority in the economic and social strategy of his Government. Commercial banks were encouraged to provide loans to agricultural projects and farmers on normal commercial terms. Soft loans could be provided to poor farming households; to develop agriculture in mountainous or island regions, and areas populated by ethnic minorities; as natural disaster relief, etc. Transformation of land reserved for rice production to cultivation of other plants was not encouraged for food security reasons. However, his Government presently allowed and facilitated diversification from rice to other plants or shrimp breeding in areas where rice productivity was unstable or low. Except for land reserved for the cultivation of rice, where the State had invested substantially in irrigation infrastructure, farmers were free to decide their agricultural production.

248. He provided information on domestic support and export subsidies in agriculture for the period 1999-2001 in documents WT/ACC/SPEC/VNM/3 of 5 November 2002, WT/ACC/SPEC/VNM/3/Rev.1 of 30 October 2003, and WT/ACC/SPEC/VNM/3/Rev.2 of 28 April 2004. He added that most of Viet Nam's support measures should be considered "Green Box" policies, notably the funding of scientific research, training, agricultural extension programmes, agricultural infrastructure services (irrigation, dikes, etc.), plant protection, sanitary and phytosanitary quarantine, national stockholding for food security, natural disaster relief, structural adjustment assistance provided through investment aids, and regional assistance for relocation. Among programmes which, in his view, would be included in the category of special treatment or developmental programmes for developing countries, he identified programmes to provide preferential medium and long term credits through the banking system for farmers and agricultural

enterprises building workshops or processing facilities, and to plant perennial crops; soft loans to support the development of infrastructure, water and processing facilities to encourage agricultural and forestry production; preferential short term credits to poor farmers through the Bank for the Poor People; and subsidies to shift production away from opium. In calculating its Total Aggregate Measurement of Support, Viet Nam applied a de minimis level of 10 per cent. Certain subsidies, including "green box" support, were provided by the State and provincial budgets. Moreover, the Price Stabilization Fund had been used to grant soft loans to enterprises increasing their stock levels above normal commercial requirements for the purpose of stabilizing market supply and demand.

249. Asked specifically about policies to support the sugar sector, the representative of Viet Nam said that sugarcane was cultivated mainly in poor and disadvantaged areas, i.e. in the mountainous midland, central coastal regions, highlands and in the Cuu Long delta. Policies supporting the sugar sector aimed at improving the economic conditions and job creation in these disadvantaged regions. In the past, sugar had mostly been produced by household sugar mills, characterized by low quality, waste and environmental pollution. Since 1995, his Government had used funds from abroad and domestic credits, and stimulated foreign direct investment to build refining plants. However, the new plants had been unable to operate at full capacity, resulting in low productivity, high prices and, consequently, import protection.

250. A Member requested more detailed information on specific measures applied to support Viet Nam's coffee sector, including tax and credit policies, development assistance programmes and export subsidies. Viet Nam was asked to confirm that its coffee sector was now operating according to market principles.

251. The representative of Viet Nam replied that, under cooperation agreements signed with former Socialist partners in 1983, Viet Nam had received a loan of 30 million Transferable Roubles in the form of merchandise such as fertilizers, tractors, petroleum products, trucks, etc. The loan, which had been reimbursed in 1991, had enabled Viet Nam to sow coffee on 24,500 hectares of land. Viet Nam was currently involved in two cooperation projects; (i) a technical assistance programme to strengthen the research capacity of the coffee industry, and (ii) a 700 billion Dong project to plant an additional 40,000 hectares of arabica in North Viet Nam. About 400 billion Dong for the arabica coffee project had been financed through a loan from an overseas development agency. The coffee sector was, in his view, operating in accordance with market principles. In 2000 and 2001, Viet Nam had purchased 150,000 tons (representing some 20 per cent of domestic production) for temporary stockholding. However, the strategy had failed and the stocks had subsequently been exported at a loss. The low price of Viet Nam's coffee reflected the high productivity of the domestic coffee industry due to good quality soil and favourable climatic conditions. Viet Nam's coffee prices tracked

fluctuations at the London Commodity Exchange (LIFFE). The gap between Vietnamese and LIFFE prices, ranging from US\$150 to more than US\$200, was mainly due to temporary oversupply in Viet Nam and the gap between the FOB price in Viet Nam and the CIF price in London. More than 90 per cent of Viet Nam's coffee production was exported, mainly in the form of green coffee. Roasted and ground coffee was largely consumed domestically.

252. The representative of Viet Nam initially said that Viet Nam did not provide any export support in the form of direct transfers from the State budget. However, Viet Nam had begun granting direct budgetary export subsidies in 1998. Subsidies took the form of interest rate support; export bonuses; support to cover losses for enterprises exporting rice, pork, and coffee; and support to exports of vegetables and fruit.

253. Some Members were concerned that Viet Nam had introduced and maintained export subsidies for agricultural products. Their expectation was that Viet Nam would not use agricultural export subsidies on any product after accession to the WTO. A Member requested information on export bonuses paid for a range of products including rice, coffee, canned vegetables, canned fruit and pork in 2001.

254. The representative of Viet Nam replied that bonuses contingent on export performance had been paid to enterprises exporting rice, coffee, pork, canned fruit and canned vegetables in 2001 in accordance with Decision No. 65/2001/QD-BTC of 29 June 2001 of the Ministry of Finance. The export bonus programme had been continued in 2002, and extended to also cover beef and poultry meat; fresh, dried and semi-processed fruit and vegetables; tea; peanuts; pepper; and cashew nuts (Decision No. 63/2002/QD-BTC of 21 May 2002). Detailed information on subsidy per unit was provided in document WT/ACC/VNM/13/Add.2, pp. 20-22. He added that Vietnamese farmers had faced particularly difficult conditions during 1999-2001 with large fluctuations in commodity prices, and his Government had therefore provided support, including export subsidies, to stabilize production and foster the development of the agriculture sector. He considered the level of Viet Nam's export subsidies negligible and with no significant distorting effects on international trade.

255. [The representative of Viet Nam stated that Viet Nam's agricultural export subsidies would be reduced progressively. Export subsidies on coffee would be eliminated upon accession, and export subsidies on other agricultural products would be phased out within three years from the date of Viet Nam's accession to the WTO.][The representative of Viet Nam confirmed that from the date of accession, Viet Nam would not maintain or introduce any export subsidies on agricultural products. The Working Party took note of this commitment.]

Fisheries

256. The representative of Viet Nam said that his Government was implementing a comprehensive programme to develop aqua-culture industries. The programmes were managed by enterprises, households and fishermen, and cooperatives, and relied to a large extent on technical assistance by government experts through a fisheries extension system, training and management guidance for labourers in the sector. Infrastructure, including the construction of refrigerated facilities and facilities for the construction and repair of fishing boats, was also being developed. His Government was offering long-term loans to fishermen to build or upgrade offshore fishing boats, and encouraged the introduction of new technologies. His Government had also promulgated the Law on Fisheries, as well as standards and regulations equivalent to regulations on hygiene, food safety and veterinary requirements issued by Codex and the Code of Conduct for Responsible Fisheries.

257. Import licenses for specialised fishery products mentioned in Decision No. 344/2001/QD-BTS of 2 May 2001 and Decision No. 20/2003/QD-BTS of 12 December 2003 of the Ministry of Fisheries, including seeds, feed, medicines, vaccines, bio-chemical treatments, and growth stimulants, applied only to new products, in which case a licence for experimental import was required. The Decision stipulated the requirements and procedures relating to import and export of specialised fishery products. Quarantine requirements and quarantine certificates were applied for health protection purposes - to prevent the spread of infectious diseases in the aqua-culture industry. The Ministry of Fisheries could ban exportation of rare marine species threatened by extinction and set conditions for the export of rare living marine species with high economic value if considered necessary to preserve resources.

Textiles Regime

258. The representative of Viet Nam said that textile and garment production was a relatively new industry in Viet Nam. Exports of textiles and clothing had grown rapidly, although Viet Nam's exports were still modest compared to other countries with comparable population. He noted that Viet Nam's export restraints on textile and clothing products were based on agreements with countries applying quantitative import restrictions (Canada, the EU, Turkey and the United States).

259. Some Members noted that Viet Nam banned importation of second-hand clothing, and urged Viet Nam to apply less trade restrictive measures. The representative of Viet Nam noted these comments, but considered the import prohibition necessary to protect human health.

260. A Member asked whether Viet Nam would accept that, for the purposes of Viet Nam's accession to the WTO, the phrase "in force on the day before the entry into force of the WTO

Agreement" contained in Article 2:1 of the Agreement on Textiles and Clothing should be deemed to refer to the WTO, and that the increase in growth rates provided for in Article 2:13 and 2:14 of the Agreement on Textiles and Clothing should be applied to these base levels, as appropriate, from the date of accession of Viet Nam to the WTO.

261. [The representative of Viet Nam confirmed that the quantitative restrictions on imports maintained by WTO Members on textiles and clothing products originating in Viet Nam that were in force on the date prior to the date of accession of Viet Nam to the WTO should be notified to the Textiles Monitoring Body (TMB) by the Members maintaining such restrictions and would be applied for the purposes of Article 2 of the Agreement on Textiles and Clothing. Thus, for the purposes of Viet Nam's accession to the WTO, the phrase "in force on the day before the entry into force of the WTO Agreement" contained in Article 2.1 of the Agreement on Textiles and Clothing shall be deemed to refer to the day prior to the date of accession of Viet Nam to the WTO. To these base levels the increase in growth rates provided for in Article 2.13 and 2.14 of the Agreement on Textiles and Clothing shall be applied, as appropriate, in the Agreement on Textiles and Clothing from the date of Viet Nam's accession, such base levels and growth rates coming to an end upon the termination of the Agreement on Textiles and Clothing. The Working Party took note of these commitments.]

Core Labour Standards

262. Referring to paragraph 4 of the Singapore Ministerial Conference Declaration, a Member noted the commitment of all WTO Members to the observance of core labour standards, i.e. recognising that the International Labour Organization (ILO) was the relevant body to advise upon these standards and declaring that all Members had an obligation to promote and realize the fundamental principles and rights at work. In this context, this Member requested Viet Nam to provide information concerning (i) the provision of core labour standards to workers in Viet Nam through national law and practice; (ii) work undertaken with the ILO to modify its law and practice to bring these into greater conformity with internationally recognised core labour standards; and (iii) whether the Government of Viet Nam had requested technical cooperation and advisory services from the ILO to promote Viet Nam's observance of these standards. A Member noted that Viet Nam had not ratified eight ILO Conventions related to current core labour standards, and asked whether Viet Nam had stipulated any rules or regulations concerning minimum wages.

263. The representative of Viet Nam replied that Viet Nam had ratified many conventions in the framework of the ILO. By May 2003, Viet Nam had ratified 16 ILO Conventions. The Labour Code of Viet Nam and other related legal documents had been established with reference to the conventions

and recommendations of the ILO. The Vietnamese Government had requested technical cooperation and advisory services from the ILO in order to ensure that Vietnamese labour laws were consistent with established international standards.

Trade-Related Intellectual Property Rights (TRIPS)

1. General

(a) Industrial property protection

264. The representative of Viet Nam said that the main legal instruments for the protection of intellectual property in Viet Nam were the Civil Code of 1995 (Part Six); Government Decree No. 63/CP of 24 October 1996 on Detailed Regulations on Industrial Property; Circular No. 3055/TT-SHCN of 31 December 1996 of the Ministry of Science, Technology and Environment on Guiding the Implementation of the Provisions on the Procedures for Establishing Industrial Property Rights, and a number of other procedures in Decree No. 63/CP; and Government Decree No. 76/CP of 29 November 1996 on Guiding the Implementation of the Provisions on Copyrights in the Civil Code; and Circular No. 23-TC/TCT of 9 May 1997 of the Ministry of Finance on Industrial Property Fees.

265. He added that Viet Nam was upgrading the legal system for the protection of intellectual property rights and effective enforcement of these rights. Viet Nam had enacted Government Decree No. 12/1999/ND-CP of 6 March 1999 on handling administrative violations in the industrial property fields; Circular No. 825/2000/TT-BKHCHMT of 3 May 2000 of the Ministry of Science, Technology and Environment guiding the implementation of Decree No. 12/1999/ND-CP; Government Decree No. 54/2000/ND-CP of 3 October 2000 on the protection of industrial property rights in business secrets, geographical indications, trade names and protection against unfair competition in the industrial property field; Government Decree No. 06/2001/ND-CP of 1 February 2001 on amendment and supplement to some articles of Decree No. 63/CP detailing the regulations on industrial property; Government Decree No. 13/2001/ND-CP of 20 April 2001 on the protection of new plant varieties; Government Decree No. 31/2001/ND-CP of 26 June 2001 on handling administrative violations in the field of culture and information, including copyright; Joint Circular No. 01/2001/TANDTC-VKSNDTC-BVHTT of 5 December 2001 on dispute settlement procedures concerning copyright violations; Decree No. 101/2001/ND-CP of 31 December 2001 providing guidelines on customs procedures; Circular No. 29/2003/TT-BKHCHN of 5 November 2003 of the Ministry of Science and Technology guiding the implementation of procedures for establishing industrial property rights to industrial designs; and Circular No. 30/2003/TT-BKHCHN of 5 November 2003 of the Ministry of Science and Technology guiding the implementation of procedures for establishing industrial property

rights to inventions/utility solutions, including provisions on application and examination in respect of micro-organisms.

266. He presented an Action Plan for the Implementation of the TRIPS Agreement in document WT/ACC/VNM/12, and revised action plans in documents WT/ACC/VNM/21 and WT/ACC/VNM/21/Rev.1 and Rev.2. Viet Nam was considering issuing an Intellectual Property Code, or individual Laws governing each subject-matter, against the option of including intellectual property provisions in an amendment to the Civil Code, and then issue various documents guiding the implementation of the Civil Code.

(b) Responsible agencies for policy formulation and implementation

267. The representative of Viet Nam said that the main ministries and agencies responsible for IPR policy formulation and implementation were the Ministries of Science and Technology; Culture and Information; Justice; Finance; and Trade; the General Customs Department (under the Ministry of Finance); the National Office of Intellectual Property (under the Ministry of Science and Technology) and the Copyright Office (under the Ministry of Culture and Information). Administrative enforcement of IPR legislation was entrusted to the customs offices, the market control organizations, the Economic Police, the Culture and Information Inspections, the Science and Technology Inspections, and the People's Committees at all levels (provincial, district and commune).

268. Concerning the tasks of the enforcement agencies, he said that customs was responsible for controlling borders to prevent and deal with infringement of intellectual property rights in export and import activities, the market control organizations dealt with protection of intellectual property rights in production, trade and services within the domestic market, while the Economic Police was responsible for preventing and handling infringement of intellectual property rights in all business activities. The People's Committees at the provincial level were entrusted by the Central Government to cooperate with enforcement bodies in protecting industrial property rights (Section 63(3) of Decree No. 63/CP).

(c) Participation in international intellectual property agreements

269. The representative of Viet Nam said that Viet Nam had been party to the Paris Convention for the Protection of Industrial Property and the Madrid Agreement on International Registration of Marks since 1949; the Convention establishing the World Intellectual Property Organization since 1976; and the Patent Cooperation Treaty since March 1993. Viet Nam had concluded bilateral agreements on the protection of intellectual property with the EU, the United States, and Switzerland, and was preparing its accession to the Berne Convention for the Protection of Literary and Artistic Works (1971). He

expected Viet Nam to join the Berne Convention, the Rome Convention and the International Union for the Protection of New Varieties of Plants (UPOV Convention) in 2004. He confirmed that Viet Nam's legislation neither allowed nor banned the direct application of international treaties to which Viet Nam was a party.

270. Viet Nam had so far not taken any decision on accession to the IPIC Treaty, as the level of protection afforded by this international treaty would essentially be covered by Viet Nam's eventual adherence to the TRIPS Agreement. Viet Nam had no plans to ratify and join the WIPO Copyright Treaty or the WIPO Performance and Phonograms Treaty (WPPT).

(d) Application of national and MFN treatment to foreign nationals

271. The representative of Viet Nam said that Viet Nam applied the national treatment principle in accordance with the Paris Convention for the Protection of Industrial Property, and applied no discrimination, including Most Favoured Nation treatment between the nationals of other countries. Viet Nam applied the principle of reciprocity in other cases.

272. A Member noted that Viet Nam appeared to require foreign nationals not having a representative office in Viet Nam to use specially licensed agents to establish or enforce trademark, design and patent rights, and asked whether this requirement also applied to copyright protection. Concerned that these provisions might impose a burden on foreign applicants, restrict access and hamper the development of an effective intellectual property system, this Member asked what steps Viet Nam would take to ensure equal treatment between foreign and domestic right holders.

273. In reply, the representative of Viet Nam said that existing laws did not require foreign natural or legal persons to establish and enforce copyright through intellectual property agents. According to Decree No. 63/CP (Article 15.3.b) and Decree No. 42/2003/ND-CP (Article 12.3), the requirement to use Vietnamese industrial property agents applied only to foreign non-residents and foreign legal persons without legal representation or an effective industrial or commercial presence in Viet Nam. The requirement aimed at protecting the interests of the right holder and facilitating his/her communication with the competent State authorities and was, in his view, in conformity with international practice and exceptions to national treatment allowed under the TRIPS Agreement.

(e) Fees and taxes

274. The representative of Viet Nam said that current regulations specified 18 types of fees related to administrative procedures for the establishment, maintenance and protection of industrial property rights. Most fees were in the US\$10-60 range; fees related to the establishment of rights in respect of

inventions amounted to US\$100, and the annual maintenance fees ranged from US\$50 to US\$280. He added that Viet Nam imposed a tax on income derived from royalties. The tax rate was 5 per cent for non-resident individuals and enterprises in Viet Nam. For resident individuals and enterprises, income derived from royalties was subject to the provisions of the Ordinance on Income Tax for High Income Earners and the Law on Corporate Income Tax.

275. A Member stated that if Viet Nam charged a fee on top of the application fee to enjoy a priority right, then this practice would be contrary to the Paris Convention. The representative of Viet Nam held the view that the Paris Convention prohibited the collection of fees for late filing of documents, but not the application of fees with respect to priority right claims. He considered Viet Nam's fee justified by the additional work involved in comparing the two applications, adding that some WTO Members appeared to apply similar provisions.

276. Some Members noted that Viet Nam had reconsidered amending Circular No. 23 TC/TCT of the Ministry of Finance of 9 May 1997 to provide uniform fees and charges for both foreigners and Vietnamese, as Viet Nam had taken the view that fees and charges levied in the area of industrial property were a matter of administrative procedures and thus a permitted exception to the national treatment principle (Article 2 of the Paris Convention). A Member pointed out that the exceptions to national treatment in Article 2 of the Paris Convention referred only to judicial and administrative procedures, jurisdiction, and the designation of an address for service or appointment of an agent, adding that the national treatment provision of the TRIPS Agreement expressly included matters affecting the acquisition and maintenance of intellectual property rights such as fees and related charges. This Member urged Viet Nam to amend Circular No. 23 TC/TCT as early as possible.

277. The representative of Viet Nam replied that his Government would consider this request. Differential fees and charges which could not be justified under the exemptions provided for in Article 2(i) of the Paris Convention would be annulled by a Circular amending Circular No. 23/TC-TCT. A the Draft Circular of the Ministry of Finance on industrial property fees and charges to substitute Circular No. 23/TC-TCT of 9 May 1997 had been prepared, and he expected the new Circular to be promulgated during 2004.

2. Substantive standards of protection, including procedures for the acquisition and maintenance of intellectual property rights

(a) Copyright protection

278. The representative of Viet Nam said that according to Article 747 of the 1995 Civil Code the literary, artistic, and scientific works in various forms subject to State copyright protection included

written works; lectures and speeches; theatrical works and other forms of artistic performance; cinematographic and video works; radio and television works; press works; musical works; architectural works; applied art work and fine art works; photographic works; scientific works, text books and teaching materials; graphics, drawings, sketches and maps related to topography, architecture or scientific projects; translated, adapted, rewritten, transformed, compiled, annotated, selected and anthological works, including compilations; computer software, including databases; and other works prescribed by laws. "Scientific works" covered works referring to sciences such as written theoretical works in the natural, social, technological, and economic sciences. "Press works" were works published in newspapers. "Other works" was an open provision referring to other forms of works not mentioned in the list, but subject to copyright protection. Protection would not be granted for the works above if they were found to be in violation of Article 749 of the Civil Code.

279. Copyright was provided for original works irrespective of form, language used for expression, and the quality of the works. Copyright arose from the moment the work was created in a certain material form. Works existing prior to the entry into force of the Civil Code were protected in accordance with paragraph 3 of the National Assembly Resolution on the implementation of the Civil Code if their term of protection had not expired and were not in violation of Civil Code provisions. Authorship was protected for the lifetime of the author and 50 years after his decease (in case of a co-authored work for 50 years after the death of the last surviving author). Cinematographic works; radio, television or video works; sound recording works; and works published posthumously were protected for a period of 50 years from the date of first publication.

280. The Civil Code also regulated the registration of and application for the protection of author's right and the right to ownership of a work (Article 762); the rights of the author, owner of work and the time-limit for author's right protection (Articles 751, 752 and 766); and the rights of performers, individuals or organizations producing audio tapes, video tapes and disks, and broadcasting organizations (Articles 775, 777 and 779); the rights of registration of and application for the protection of authorship/ownership of work (Articles 759 and 762); the rights of copyright transfer (Article 763); the rights of inheritance (Articles 764 and 765); and rental rights (Article 751). Article 8.2 of Decree No. 76/CP regulated import rights of duplicates. Phonogram producers were protected under the related rights provision (Articles 776 and 777 of the Civil Code), and unfixed performances under Article 775 of the Civil Code. Concerning radio and television broadcasts, Viet Nam had no specific regulation covering pre-programme or encrypted signals, or transmission by cable. The definition of broadcasting included only transmission by wireless means received directly by the public. Protection of pre-programme and encrypted signals would be considered in the preparation of the appropriate legal documents.

281. The registration process was governed by Article 762 of the Civil Code and Articles 23, 24, 25, 26 of Government Decree No. 76/CP of 29 December 1996 on Implementation of Certain Provisions Concerning Copyright of the Civil Code. The author or the copyright owner of a work filed the application and related documents with the Copyright Office of Viet Nam (COV). The COV decided on the granting of a Registration Certificate within 10 days from the date of receipt of the application.

282. Copyright arose from the moment a work was created in a concrete material form irrespective of whether or not it was a registered work (Article 754 of the Civil Code and Article 6 of Decree No. 76/CP). Unless the declaration in the application for copyright protection was false, an author or owner of a registered work would not be obliged to justify his/her ownership right over the work in case of dispute.

283. Pursuant to Article 836 of the Civil Code and Article 12 of Decree No. 60/CP of 6 June 1997, the works of foreign individuals or foreign organisations which were protected in Viet Nam included (i) works created and displayed in a certain material form in Viet Nam, (ii) works made known publicly or disseminated in Viet Nam for the first time, and (iii) works protected in Viet Nam under international treaties signed or adopted by Viet Nam.

284. Right holders had the exclusive right of reproduction (Article 751.1.d of the Civil Code) and translation (Articles 757 of the Civil Code). Limitations to author's rights were laid down in Article 760 of the Civil Code, which provided that individuals and organisations could use works which had been made known public or disseminated if duplication of the works was not prohibited, for non-commercial use, did not affect the normal exploitation of the works, and did not infringe on other rights of the works' author or owner. Individuals or organisations using these works would not be required to apply for permission or pay royalties to the author or owner of the work, but would be required to include the name of the work's author and the source of the works.

285. Pursuant to Article 761 of the Civil Code and Article 12 of Decree 76/CP, free use of published works included duplication for personal use, archives or for use in libraries; quotation without falsifying the intent of the author for commentary or illustration in other works (reports, periodical publications, documentary films, broadcasts or television programmes) or for teaching and educational purposes; performance of theatrical works and other forms of artistic performance in public; direct audio and visual recording of performances for newscast or educational purposes; introduction of works of publicly displayed sculptures, architecture, photography and applied arts; translation and dissemination of works in Vietnamese into the languages of ethnic minorities in Viet Nam and vice versa; and the conversion of printed works into Braille characters (for the blind). However, according to item 1b, c

and d of Article 761 of the Civil Code, a quotation from a published work should not become the main part of a new work, and quotations would be limited only to the extent of introduction, commentary or clarification of issues raised in the work of the person making the quotation, and should spell out clearly the name of the author and the source of the quoted work (Article 12.2 of Decree No. 76/CP). He added that the Ordinance on Libraries No. 31/2000/PL-UBTVQH10 of 28 December 2000 required libraries and governmental offices to comply with Viet Nam's legislation on intellectual property (Article 13.2).

286. Authors or owners of works whose rights were being infringed were entitled to require the person having committed the acts of infringement to apologize, rectify, compensate for damages and to stop his infringement acts, or to request the competent State authority to force the person to do so (Article 759). Criminal remedies were stipulated in Article 131 of the Criminal Code. Violators could face a fine of 200 million Dong or up to three years imprisonment. Recourse to civil remedies would depend upon the level of damage caused by the person making the infringement acts. Eight copyright infringement cases had been brought before the civil courts so far. Pursuant to Articles 57 and 58 of the Customs Law (2001), the right holder could also request customs offices to halt clearance temporarily of infringing imported or exported goods.

287. A Member had been informed by industry sources that the virtual absence of legally authorized distribution of first-run motion pictures in Viet Nam created incentives and opportunities for piracy, and asked what steps Viet Nam intended to take to allow legal importation of first run motion pictures.

288. The representative of Viet Nam replied that all films on show in Viet Nam were legally authorized. The Ministry of Culture and Information approved all imports of motion pictures, videotapes and DVD. Imports were effected through FAFIM under the Ministry of Culture and Information (Article 15 of Government Decree 48/CP of 17 July 1995). However, Government Decree No. 26/CP of 3 August 2000 and Article 3 of Circular No. 28/2000/TT-BVHTT of the Ministry of Culture and Information authorized cinema businesses possessing or having held using rights for cinema theatre motion pictures for minimum five years, and whose cinema theatres met the requirements set by the Ministry of Culture and Information and the Ministry of Construction, to import motion pictures - not necessarily through FAFIM - to be shown in their cinema theatres. The monopoly rights conferred to FAFIM extended only to the importation of video tapes and DVD. In deciding the number of foreign films approved for importation, the Ministry would take into account the number of films produced locally and the capacity of the domestic distribution network. All locally-produced and imported films were screened pursuant to Decision No. 2455/QD-DA on movie

inspection of 8 August 1997. Viet Nam television coordinated importation of films for broadcasting with the Ministry of Culture and Information.

289. Asked specifically about Viet Nam's regulation of digital copyright issues, the representative of Viet Nam said that the Civil Code, while providing protection to works in "determined physical forms", i.e. customary and traditional forms, did not specifically include the digital format and did not regulate temporary copies. Protection of temporary copies would be considered in the revision of Viet Nam's legislation on copyright and related rights. The principles and forms of fair use exceptions permitted according to Articles 760 and 761 of the Civil Code did not include copied computer software. Viet Nam had no direct and specific regulation on technological protection measures for protected copyright. As to Internet services, Article 6.1 of Decree No. 55/2001 required compliance with the respective regulations under the Law on Newspapers, the Law on Publishing, the Ordinance on Protection of State Secrets, and other laws and regulations on intellectual property and Internet information management. The Decree prohibited strictly theft and unlawful use of passwords, codes and private information of individuals or entities on the Internet.

290. A Member noted that Article 7 of the Ordinance on Copyright Protection of 1 July 1994 contained wide provisions for denial of copyright and wondered whether any amendment would be required to comply with Article 9.2 of the Berne Convention. Referring to the Berne Convention requirement for automatic protection free of formalities, the Member also requested an explanation for the reference in Article 5 of the Ordinance to grant protection to authors who did not register but "have needs for copyright", in contrast to the reference to protection granted on the basis of registration.

291. The representative of Viet Nam replied that the Ordinance on Copyright Protection of 1994 had expired on 1 July 1996 and that all copyright-related provisions had been incorporated in the Civil Code of 1995 (Chapter 1, Part Six). He added that implementation of the TRIPS Agreement and accession to the Berne Convention for the Protection of Literary and Artistic Works would require Viet Nam to amend and improve its legislation on copyright protection in some areas. Existing legislation was inadequate with respect to detailed regulations on the protection of computer programs and compilations of databases (Article 10); provisions on the term of protection of performers (Article 14.1); provisions on the rights of fixation and communication to the public of broadcasts (Article 14.3); provisions on rental rights of phonograms (Article 14.4); and provisions on the right of communication to the public in respect of performance of dramatic, dramatic-music and musical works (Article 9.1). Moreover, the limitations on the rights of authors of published works in respect of performance of dramatic, dramatic-musical, musical and the fixation of musical works in Sections 774 and 776 of the 1995 Civil Code were inconsistent with the requirements of Article 9.1 of the

TRIPS Agreement. Amendments required to implement the TRIPS Agreement properly were in preparation, but the timeframe for their adoption had yet to be determined.

(b) Trademarks, including service marks

292. The representative of Viet Nam said that trademarks were protected in accordance with Article 785 of the Civil Code. He noted that the scope of trademark protection in Viet Nam had been narrower than the requirement in Article 16.1 of the TRIPS Agreement, but had recently been extended by Decree No. 06/2001/ND-CP of 1 February 2001. Trademarks for pharmaceutical products were regulated by the general laws and regulations on trademarks. Mandatory registration was not required for any goods or services. All trademark registrations were published in the Official Gazette of Industrial Property.

293. A trademark could be a word, an image or a combination of such elements represented in one or many colours. A sign capable of distinguishing goods or services of the same kind, and not being objects excluded from protection in accordance with trademark laws and regulations, could be registered for protection as trademarks. While Viet Nam's laws did not list the signs protectable as trademarks, personal names were *ex officio* recognized as registerable signs. Applications for registration of marks were filed with the competent State authority (the National Office of Intellectual Property). Foreign natural and legal persons filed applications for trademark registration through a legally operating industrial property representative of their choice, or through their branches or wholly-owned companies in Viet Nam. Use was not a condition for entitlement to file an application for registration of a trademark. A sign which did not possess distinctive character could be protected if it had been used widely and had a good reputation in Viet Nam. Current laws and regulations also applied to service marks. Well-known marks were protected in accordance with the Paris Convention.

294. Examination of marks was mandatory, and included examination as to form and substance. The National Office of Intellectual Property conducted *ex officio* substantive examination of trademark applications and decided on refusal of registration if a trademark failed to meet the protection requirements. Prevailing Vietnamese laws had provisions on opposition to a trademark application prior to registration. Not recognized as marks were signs not possessing distinctive character; signs describing goods in terms of quality, property, utility etc.; signs that could mislead the public; signs representing State flags, armorial bearings or emblems of Viet Nam or other countries (unless authorized by the relevant persons or authorities); names or emblems of international organizations (per Article 6ter of the Paris Convention); signs contrary to law, public order and morality; and signs identical or similar to marks previously registered in Viet Nam or protected by an international convention to which Viet Nam was party in respect of the same kind of goods.

295. The owner of a trademark had the exclusive right to use, transfer, and licence the trademark to other persons. He had the right to request a third party to stop infringement or to request the competent authority to handle such infringements. A trademark was protected for ten years counted from the filing date and was renewable for periods of ten years without limitation. The owner of a trademark was obliged to use the registered mark. Failure to use a trademark for five consecutive years without plausible reason would lead, upon request of a third party, to the nullification of the protection certificate. Examples of justifiable reasons were natural disasters, war, governmental restrictions on use, etc. Licensing of a trademark would not be considered effective use, but the use of the trademark by the licensee would be considered an act of use (Section 46(3) of Decree No. 63/CP). A registration would not be invalidated in the absence of a request for termination of validity, or if the owner had begun use of the trademark when such a request was made, even if the period of non-use had been longer than five years. Applications requesting termination or cancellation of a Trademark Registration Certificate were processed in accordance with procedures laid down in Section 27 of Decree No. 63/CP.

296. Any contract of assignment of a trademark right needed to be registered with the National Office of Intellectual Property. An assignment contract which had not been registered would be invalid. In response to a specific question, he noted that Viet Nam's laws did not oblige a trademark assignor to transfer, together with the trademark, the business to which the trademark belonged. Thus, the trademark owner had the right to assign his trademark without the transfer of business in compliance with Article 21 of the TRIPS Agreement.

297. Legal entities, including charitable organizations, could apply for trademark registration only if legally engaged in commercial activities. However, charitable entities not engaged in commercial activities were protected against non-authorized registration of signs and designations identical to or similar to their emblems or designations according to Decree No. 63/CP, Section 6, subsection 2(g).

298. Concerning co-ownership of trademarks, a Member noted that Viet Nam appeared not to allow a trademark to have more than one owner. Several countries allowed joint ownership of trademarks, not to be confused with collective trademark rights, and against this background Viet Nam's provisions would seem unduly restrictive – possibly due to a misinterpretation of Article 5(c) of the Paris Convention – and could provide a limitation on the rights of foreign trade mark owners to seek protection in Viet Nam.

299. In reply, the representative of Viet Nam said that neither the TRIPS Agreement nor the Paris Convention required recognition of jointly owned trademarks. As the function of a trademark was to help consumers distinguish between goods and services of different businesses, co-ownership might cause confusion. His Government would nevertheless consider this matter further.

300. A Member requested information about the right of appeal of administrative decisions provided for in the TRIPS Agreement, as Viet Nam appeared not to be in compliance with the requirement for judicial review of administrative decisions. The representative of Viet Nam replied that decisions relating to the establishment, maintenance, invalidation and cancellation of trademarks, having been appealed to the Director General of the National Office of Intellectual Property, could be appealed further, at the appellant's discretion, either to the Administrative Court according to the Ordinance on the Judgement of Administrative Cases, or to the Minister of Science and Technology according to Article 27(4) of Decree No. 63/CP. Decisions of the Minister of Science and Technology on the legal effect of the decision under appeal were final and could not be further appealed to the Administrative Court. As such, in his view, existing laws and regulations provided an opportunity for both judicial and administrative review in compliance with the TRIPS Agreement. Viet Nam did not yet have detailed regulations on procedures for the judgement of administrative cases relating to the establishment, maintenance, cancellation and invalidation of trademarks (in particular, and of industrial property rights in general). For the time being, the promulgation of a circular guiding the judgement of cases relating to industrial property rights of the Supreme Court and related authorities was under consideration and scheduled to be completed after the promulgation of the Civil Procedures Code at the end of 2004.

301. He added that on 1 February 2001 his Government had promulgated Decree No. 06/2001/ND-CP on amendments to Decree No. 63/CP of 24 October 1996. Decree No. 06/2001/ND-CP broadened the scope of protection of trademark rights in compliance with the TRIPS Agreement. In particular, the Decree stipulated as infringement of a trademark owner's rights "the use of signs which are identical with the trademark protected by a Trademark Registration Certificate or by an International Registration for goods or services similar to, or related to goods or services in the list registered with the trademark and/or the use of signs which are similar to the protected trademark for goods or services identical with, or similar to, or related to goods or services in the list registered with the trademark, if such use is liable to create confusion of the origin of goods or services". Decree No. 06/2001/ND-CP defined a "well-known trademark" as a trademark used continuously for so reputable goods or services that the trademark was widely known (Article 1, para.2 of the Decree). Well-known trademarks did not need to be registered or used within the territory of Viet Nam to be protected. The industrial property rights of well-known trademarks were protected without time limit from the date on which the trademark had been recognised by a competent State authority as a well-known trademark. Procedures for the recognition of well-known trademarks would be provided for in a Circular of the Minister of Science and Technology on the implementation of Decree No. 63/CP, as amended by Decree No. 06/2001/ND-CP, to be promulgated in 2004. Pursuant to the draft Circular, requests for recognition would need to be accompanied by documents proving the well-known status

of the trademark, including information on the number of relevant consumers knowing the mark by purchasing or using the goods or services bearing the trade mark; the number of countries in which the trade marked goods and services were being sold, providing trademark protection or recognizing the trademark as well-known; generated sales revenue; period of continuous use; indications of widespread reputation; the value of the trademark in terms of licensing, contribution to an investment asset, etc. He confirmed that in drafting the Circular Viet Nam had taken account of the provisions of the Joint Recommendation concerning the Provisions on the Protection of Well-Known Marks adopted by the Assembly of the Paris Union and the General Assembly of the World Intellectual Property Organization (WIPO) in September 1999. He considered Viet Nam's system for the recognition of well-know marks to be fully consistent with the TRIPS Agreement, as well as with paragraph 1 of Article 6*bis* of the Paris Convention.

(c) Geographical indications, including appellations of origin

302. The representative of Viet Nam said that geographical indications in general were protectable under Government Decree No. 54/2000/ND-CP on the protection of industrial property rights of business secrets, geographical indications, trade names and protection against unfair competition, notably Articles 10-13 and 19. Article 5 of this Decree stipulated that industrial property rights of geographical indications would be established automatically if all prescribed conditions were fully satisfied without requirement for registration with any competent State authority. Article 10 of Decree No. 54/2000/ND-CP, which specified the criteria for protection of geographical indications, allowed protection for geographical indications other than geographical names. Regions and localities within a country, as well as territories crossing international borders, were protected if they complied with all requirements stipulated by laws. The provisions were, in his view, in compliance with Article 22.1 of the TRIPS Agreement. According to Article 23 of Decree No. 54/2000/ND-CP, acts infringing geographical indications would be handled in accordance with the procedures for handling infringement of other industrial property rights. Civil remedies for wrongful use of a geographical indication were provided for in paragraph 1 of Article 21 of Decree No. 54/2000/ND-CP, and criminal penalties were stipulated in Article 171 of the Criminal Code of 1999.

303. Geographical indications of a special kind, namely appellations of origin, were protectable under Decree No. 63/CP of 24 October 1996 as amended by Decree No. 06/2001/ND-CP of 1 February 2001. Appellations of origin had to be registered to enjoy protection. The term of protection was indefinite. The right to use appellations of origin was subject to certification by the National Office of Intellectual Property pursuant to the procedures provided for in Circular No. 3055/TT-SHCN, dated 31 July 1996, of the Ministry of Science, Technology and Environment. The time-limit for formality examination was three months from the filing date and six months for

substantive examination. A person having the right to use an appellation of origin could request the competent State authorities to stop unlawful use of such appellation, and demand compensation from unlawful users for the damage caused. However, he would not have exclusive right to such appellation of origin, and could not transfer the right of use to other persons. Three appellations of origin were currently protected in Viet Nam.

304. Article 19.3 of Decree No. 54/2000/ND-CP of 3 October 2000 provided additional protection for wines and spirits. Provisions on the protection of appellations of origin applied generally to goods of all kinds, prohibiting "the illegal use of an appellation of origin or signs confusingly similar thereto, including the case where the true origin of the product or the appellation of origin is indicated or accompanied by wordings such as ""kind", "type", "imitating", or similar words to that effect" (Section 47(1)(b) of Decree No. 63/CP). Infringements could be dealt with under civil, administrative or criminal procedures and the provisions were, in his view, consistent with the requirements of Article 23.1 of the TRIPS Agreement.

305. As to the relationship between the protection of geographical indications and trademarks, Article 6.1(f) of Decree No. 63/CP of 24 October 1996 prohibited the registration of a trademark identical with or confusingly similar to protected geographical indications, including appellations of origin. The time to be taken into consideration for the protection of geographical indications was the priority date of the trademark application, or the date of requesting recognition of a well-known trademark. A Protection Title issued by mistake could be cancelled through the appeals procedure. Viet Nam's provisions were, in his view, in conformity with Articles 22.3 and 23.2 of the TRIPS Agreement, and also accommodated the conflict between trademarks and geographical indications dealt with in Article 24.5 of the Agreement.

(d) Industrial designs

306. The representative of Viet Nam said that industrial designs - a specific appearance of a product embodied by lines, three-dimensional forms, colours or a combination thereof of world-wide novelty capable of serving as a pattern for a product of industry or handicraft – were protected in accordance with Article 784 of the Civil Code. Textile designs were protectable in the same manner as other industrial designs. Applications for registration of industrial designs were filed with the competent State authority (the National Office of Intellectual Property) and subject to examination as to form and substance. The initial term of protection of an industrial design was five years, counting from the filing date, and it could be renewed for two consecutive terms of five years (Section 9(2)(c) of Decree No. 63/CP).

307. The owner of a protected industrial design had the exclusive right to use, transfer or licence the right to use such industrial design to other persons, the right to request the competent State authority to compel other persons to stop infringements, and the right to claim compensation for damages caused by such acts of infringement (Article 796 of the Civil Code). In his view, the current laws and regulations of Viet Nam were in compliance with the requirement of Article 26.1 of the TRIPS Agreement. Although the relevant provisions had not been phrased in the exact same wording as the TRIPS Agreement, the provisions also covered the making, selling or importing of articles embodying designs which were "substantially a copy" of a protected design.

308. The rights were restricted when provisions on prior user or compulsory licensing were applied. The rights of prior users were provided in Article 801 of the Civil Code. According to Article 802 of the Civil Code and Section 51 of Decree No. 63/CP, compulsory licensing could only be applied (i) for reason of non-use or improper use; (ii) if the proposed user had failed to reach an agreement with the owner on reasonable commercial terms and conditions; or (iii) for reasons of national defense and security, the prevention and treatment of diseases or other needs of the society. The transferee of an industrial design by compulsory licensing was required to pay royalties to the owner. Viet Nam's laws and regulations were, in his view, in compliance with Article 26.2 of the TRIPS Agreement. He added that provisions on compulsory licensing had been amended by Decree No. 06/2001/ND-CP of 1 February 2001 to be brought into conformity with Article 31 of the TRIPS Agreement.

(e) Patents

309. The representative of Viet Nam said that inventions (involving novelty, inventive step and industrial applicability) were protected in accordance with Article 782 of the Civil Code. Patent applications were subject to examination as to form and substance. The time-limit for formality examination was one month and 12 months for substantive examination as stipulated in Sections 16.1 and 30.1 of Circular No. 30/TT-BKHCN. By 31 December 2003, 4,021 invention patents had been granted, and the National Office of Industrial Property had a staff of 148.

310. Subject matter excluded from protection fell within three main categories, i.e. (i) those not considered as inventions, including scientific ideas, principles and discoveries, theories and mathematical methods; aesthetic creations; economic management methods and systems; educational, teaching, training methods and systems; computer programs; designs and planning schemes for construction works; projects for regional development and planning; (ii) subject matter which should be protected under other forms of protection than patents, e.g. layout design of integrated circuits, or plant and animal varieties; and (iii) those not industrially applicable such as methods for the prevention, diagnose, and treatment of human or animal diseases, essentially biological processes for the production

of plants or animals other than non-biological and microbiological processes (Section 4(4) of Decree No. 63/CP as amended by Decree No. 06/2001/ND-CP of 1 February 2001). Pharmaceutical products and processes to manufacture pharmaceutical products were protectable under Vietnamese law as they did not fall under the list of the objects excluded from protection under Section 4(4) of Decree No. 63/CP. Responding to a Member, who considered Viet Nam's exclusions from protection far exceeded the exceptions permitted under Article 27.3 of the TRIPS Agreement, the representative of Viet Nam said that the exclusions in Section 4(4) of Decree 63/CP were essentially equivalent to those of the European Patent Convention and did not, in his view, go well beyond the provisions of Article 27.3 of the TRIPS Agreement. Inventions could also be excluded from patentability for reasons of public order and morality in accordance with Article 787 of the Civil Code. This provision applied irrespective of whether the commercial exploitation of such inventions was prohibited by law.

311. The owner of the invention (patent) had the exclusive right to use, transfer, and license the right to use the invention to other persons. He had the right to demand that other persons stop infringements, and he could seek compensation for damages caused by acts of infringement. The term of a Patent for Invention began on the grant date and expired at the end of 20 years counting from the official filing date according to Section 9 of Decree No. 63/CP and was, in his view, in compliance with Article 33 TRIPS Agreement. He added that utility solutions, which did not require protection under the TRIPS Agreement, were protected in Viet Nam. Any technical solution possessing world-wide novelty with industrial applicability in any economic or social area could be protected by a utility solution patent valid for ten years.

312. The owner of an invention was obliged to use the invention (or transfer the right of use) in conformity with the requirements of socio-economic development of Viet Nam, and pay remuneration to the author of the invention if the owner was not the same as the author. The rights to a patent (invention) could be restricted by provisions on prior use right (Article 801 of the Civil Code) and compulsory licensing (Article 802 of the Civil Code). The transferee of an invention by compulsory licensing was required to pay royalty to the owner. Compulsory licensing could only be applied (i) for reason of non-use or improper use; (ii) if the proposed user had failed to reach an agreement with the owner on reasonable commercial terms and conditions to no avail within a reasonable period of time; or (iii) for reasons of national defense and security, the prevention and treatment of diseases or other urgent needs of the society. He confirmed that importation would satisfy the "use" requirement stipulated in Viet Nam's legislation.

313. Conditions and procedures for granting non-voluntary licences were laid down in Section 51 of Decree No. 63/CP, as amended and supplemented by Decree No. 06/2001/ND-CP of 1 February 2001. Pursuant to Section 51, compulsory licences could be granted only upon the expiration of a four year

period after the filing of an application for a Protection Title or three years after a Protection Title had been granted. The patent owner was entitled to request the termination of the use of a non-voluntary licence if the circumstances which led to it had ceased or were unlikely to recur, provided such termination would not prejudice the grantee of the non-voluntary licence. The Ministry of Science and Technology was responsible for granting and suspending non-voluntary licences. The Ministry notified the patent owner within 15 days upon receipt of a request for a compulsory licence, and the owner then had 30 days to give his opinion. The Ministry could request the parties to renegotiate with a view to agreeing to a voluntary contractual licence, but if no agreement could be reached the Ministry had three months to issue a decision. The decision to grant a non-voluntary licence had to be published in the Official Gazette on Industrial Property within one month from the date of issuance of the licence. Specific conditions, corresponding to the provisions of Article 31 paragraphs (c), (d), (e), and (h), were attached to the licence and the right holder had one month to comply with the conditions. The patent owner and the transferee could appeal against the Ministry's decision to the Minister of Science and Technology and, in last instance, to the Prime Minister or initiate an administrative court case.

314. Compulsory licences for an invention could only be granted under the circumstances prescribed in Article 802 of the Civil Code. He noted that no compulsory licence has been granted in Viet Nam thus far. Although the conditions prescribed in Articles 31(f), (k) and (l) of the TRIPS Agreement were not provided for expressly in legal documents, Viet Nam would comply with the requirements during the application of provisions on the granting of compulsory licenses. Provisions incorporating the wording of Articles 31(f), (k) and (l) would be promulgated either by amending the respective existing provisions or be included in the new Intellectual Property Law and related regulations.

315. The patentee's right to assign or inherit his patent and to conclude a licence contract (Article 28.2 of the TRIPS Agreement) was ensured by Article 796 of the Civil Code, section 1, item b and section 2. The assignment or licensing of a patented invention was subject to certain restrictions permitted by Articles 30 and 40 of the TRIPS Agreement. The approval procedure of the Ministry of Science, Technology and Environment applicable to licensing and assignment contracts provided for in Decree No. 63/CP had been abolished through Decree No. 06/2001/ND-CP. In response to concerns expressed by a Member about limitations on royalty payments applied by Viet Nam, the representative of Viet Nam said that the abolition of ceilings on royalty payments for intellectual property rights had been included in a draft amendment to Decree No. 45/1998/ND-CP on Technology Transfer, to be promulgated in 2004.

316. In exceptional cases, the use of a protected invention would not be considered infringement, i.e. use for non-commercial purposes; distribution, circulation and use of products having been marketed by the owners, prior users or persons to whom the right of use had been transferred; or when

use of the invention took place on foreign means of transportation in transit or temporarily staying in the territory of Viet Nam and such use was aimed solely at maintaining the operation of such means.

317. Procedures for the termination and invalidation of invention patents were regulated by the provisions of Section 27 of Decree No. 63/CP as well as by the Ordinance on the settlement of administrative cases. There were two routes to appeal against decisions of the National Office of Intellectual Property, and as which route to choose was up to the interested parties, "an opportunity for judicial review", i.e. by the Administrative Court, was fully ensured. In case a rightful appellant appealed to the Ministry of Science and Technology, it would be understood that he would not take advantage of the opportunity for judicial review, as the Minister's decision would be final. He considered Viet Nam to be in full compliance with Article 32 of the TRIPS Agreement.

318. Asked about procedures for patent applications in respect of micro-organisms, he said that the Ministry of Science and Technology had promulgated Circular No. 30/2003/TT-BKHCN of 5 November 2003 containing provisions on patent applications for micro-organisms and the examination thereof.

319. Concerning the reversal of the burden of proof in civil proceedings, he expected provisions to be included in the Civil Procedure Code and/or in a Joint Circular of the Supreme People's Court, the Supreme People's Prosecution Institute and the Ministry of Science and Technology. The draft Circular provided guidelines for the judgement of cases relating to industrial property and included provisions which in his view complied with Article 34.1 of the TRIPS Agreement. He expected the Civil Procedures Code to be submitted for promulgation before the end of 2004, with the Joint Circular to follow.

(f) Plant variety protection

320. The representative of Viet Nam said that Decree No. 31/CP on Innovations and Inventions, Inter-ministerial Circular No. 01/NN-KCM on the Remuneration to the Authors of Plant Varieties and Animal Species, and Decree No. 07/ND-CP of 1996 on the Management of Plant Varieties constituted the legal basis for the protection of plant varieties. A plant variety needed to be novel, stable, uniform and useful to obtain protection, and only the creator of a plant variety was entitled to be registered with the Ministry of Science, Technology and Environment for author's rights. Authors were protected by a system of Plant Variety Author Certificates, valid for 15 years from the date of filing of the application. Apart from moral rights, the author of a protected plant variety had the right to remuneration paid by the users. The exclusive right over the plant variety belonged to the Government.

321. Having studied the compliance of its laws and regulations on the protection of plant varieties with the requirements of the TRIPS Agreement, his Government had decided to promulgate provisions on the protection of new plant varieties in accordance with UPOV standards. His Government had issued Decree No. 13/2001/ND-CP on the protection of new plant varieties on 20 April 2001. The Government Decree had been supplemented by Circular No. 119/2001/TT-BNN of the Ministry of Agriculture and Rural Development. These provisions, as well as recommendations of the UPOV Council, had been incorporated into the Ordinance on Plant Varieties, issued by the National Assembly on 24 March 2004. The Ordinance had a higher legal effect than the earlier Government Decree.

(g) Layout designs of integrated circuits

322. The representative of Viet Nam said that his Government had promulgated Decree No. 42/2003/ND-CP on Protection of Industrial Property Rights in respect of Layout Designs of Semiconductor Integrated Circuits on 2 May 2003. The Ministry of Science and Technology had also drafted a Circular guiding the implementation of the Decree for promulgation in 2004. The Decree offered the same protection to "discrete" layout design as to other layout designs.

323. Asked about intentions to join to the Treaty on Intellectual Property in Respect of Integrated Circuits, he said that Viet Nam had not yet taken a decision on accession to the IPIC Treaty. Viet Nam believed that such accession would not be necessary, because the standards provided for in the TRIPS Agreement were almost equivalent to or higher than those of the Treaty, and the WTO had far more members than the IPIC Treaty.

(h) Requirements on undisclosed information, including trade secrets and test data

324. The representative of Viet Nam said that Government Decree No. 54/2000/ND-CP of 3 October 2000, in particular Articles 6-9 and 18, provided protection for business secrets, including trade secrets and test data. Business secrets would be protected as long as they satisfied fully all prescribed conditions without being required for registration. As provided for in Decree No. 54/2000/ND-CP, owners of business secrets had the right to demand injunctions from the State competent authorities to stop infringements and to claim damages (Article 21). The protection of undisclosed test or other data submitted as a condition for approving the marketing of pharmaceutical or agricultural chemical products was addressed in Article 18.4 of Decree No. 54/2000/ND-CP, and the authorities concerned – the Office of Pharmaceutical Administration under the Ministry of Public Health and the Office of Plant Protection under the Ministry of Agriculture and Rural Development – were required to keep test data secret in accordance with regulations on data protection by State agencies as long as the data would satisfy the criteria for the protection of undisclosed information.

325. Some Members were of the opinion that Article 18.4 of Decree No. 54/2000/ND-CP did not specify how Viet Nam's Government itself would protect pharmaceutical or agricultural chemical test data provided to it for marketing approval purposes. The representative of Viet Nam replied that the competent authorities were required to ensure the secrecy of test data submitted under the secret-keeping rules of the administrative authorities. Moreover, the State authority was not allowed to rely on test data submitted by one manufacturer to approve the products of another manufacturer, and this principle would be subject to further elaboration in a document guiding the implementation of Decree No. 54/2000/ND-CP, to be issued in 2004.

3. Measures to control abuse of intellectual property rights

326. The representative of Viet Nam said that violations of the regulations or procedures establishing a right in relation to an object of industrial property could lead to the annulment of the granted protection certificate. Non-performance of the owner's obligations such as failure to pay maintenance fees or remuneration to the author, or use or transfer of an object already protected could result in annulment of the protection certificate or the competent authority could decide to compel the owner of the protection certificate to fulfil his/her obligations as stipulated by law.

327. He added that legal provisions had been promulgated to enable Viet Nam to take appropriate measures to prevent or control anti-competitive practices in contractual licences. Section 17.4 of Circular No. 3055/TT-SHCN stipulated restrictions on the contractual licensing of industrial property between the right owners and the licensees (industrial property licensing contracts), applicable to both Vietnamese and foreigners.

328. While acknowledging that Article 8 of the TRIPS Agreement allowed appropriate measures to prevent the abuse of intellectual property rights, unreasonable restraints on trade, or adverse effects on the international transfer of technology, some Members noted that Viet Nam had established a system of controlling technology transfer agreements in Circular No. 3055/TT-SHCN and Articles 32-37 of Government Decree No. 45/1998/ND-CP of 7 January 1998 which might slow the transfer of technology to Viet Nam, while the link to any abuse of intellectual property rights was unclear. The system introduced limitations on the duration of royalty payments for patents and know-how, and capped royalty payments for trademark licences. A Member requested Viet Nam to set terms for technology transfer agreements that would reflect the minimum term for the duration of a patent stipulated in Article 33 of the TRIPS Agreement.

329. The representative of Viet Nam replied that the duration of technology transfer agreements were agreed among the related parties, in which the time period for royalty payments for intellectual property rights should be within the relevant protection term. The abolition of ceilings on royalty

payments for intellectual property rights had been introduced in the draft amendment to Decree No. 45/1998/ND-CP on Technology Transfer, to be promulgated in 2004.

4. Enforcement

(a) Civil judicial procedures and remedies

330. The representative of Viet Nam said that People's Courts (Civil Court), at provincial and higher level, had the authority of jurisdiction over disputes or infringement relating to industrial property rights. The People's Court could adjudicate cases with respect to claims of abuse of industrial property rights, disputes concerning royalty or remuneration, claims on application right and the right of authorship, and disputes relating to contracts concerning transfer of ownership right or licensing contract for the right to use objects of industrial property. Lodging a claim or bringing a suit before the Court, the plaintiff or his/her lawful representative would need to provide evidence of his/her industrial property right as well as evidence of infringement of the rights. The defendant had the right to refute the evidence and arguments of the plaintiff before the Court. The Court had the right, upon request of either party or on its own initiative, to demand further evidence or documentation and request examination, as necessary (Article 41 of the 1989 Ordinance on procedures for handling civil cases). Detailed provisions on the procedures for providing the necessary evidence would be promulgated in a joint Circular of the Supreme People's Court, the Supreme People's Prosecution Institute and the Ministry of Science and Technology after the promulgation of the Civil Procedures Code in 2004. Procedures existed for amicable settlement of disputes over royalty, remuneration, licensing contracts and contracts to transfer ownership rights.

331. The Court could rule that the act of infringement be stopped, recognize the legitimate rights to objects of industrial property, request that the competent State authorities undertake procedures for the purpose of acquisition of rights, and award damages. The compensation amount was determined based on the "actual material damage" or profit obtained illegally by the infringing party, and "mental damages". The calculation of "actual material damages" took into account property losses, costs of preventing or minimizing the damages, and lost income (Article 310.2 of the Civil Code). "Mental damages" related to damages to the life, health, honour, dignity and prestige of the victim (Article 310.3 of the Civil Code). The joint Circular of the Supreme People's Court, the Supreme People's Prosecution Institute and the Ministry of Science and Technology would contain detailed provisions on the determination of damages and the level of compensation. People's Courts could order that provisional measures be applied. The Court would decide upon the apportioning of legal costs based on the rights and faults of the parties concerned. The parties could appeal decisions of the first instance civil judgment and request a hearing at higher instance.

332. He added that detailed provisions concerning indemnification of the defendant in the case of abuse of civil enforcement procedures by the complainant would be stipulated in the Civil Procedure Code and in joint Circulars of the Supreme People's Court, the Supreme People's Prosecution Institute and the Ministry of Science and Technology. He noted that the intellectual property right owner, when requesting the suspension of customs procedures, was required to deposit an amount equal to 20 per cent of the value of the goods at the State Treasury, or provide a guarantee ensuring compensation to the owner of the goods (Article 14.1.b of Decree No. 101/2001/ND-CP of 31 December 2001).

333. Referring to Article 41.2 of the TRIPS Agreement, a Member asked Viet Nam to extend the period to file a suit for the settlement of an economic dispute involving infringement of intellectual property rights to minimum three years in order to provide sufficient protection. The representative of Viet Nam replied that a two-year period for filing suits in economic disputes, including those involving infringement of intellectual property rights, had been introduced in the draft Civil Procedures Code, to be submitted for promulgation in 2004.

(b) Provisional measures

334. The representative of Viet Nam said that the Courts having authority of jurisdiction over violations and disputes in relation to industrial property rights could decide on the application of provisional measures. Detailed provisions were laid down in the Ordinance on procedures for judgement of civil cases of 1989. The competent State bodies could also impose temporary administrative measures. Provisional measures included the search and detention of material evidence or the facilities of infringement; compelling the infringing party to stop the infringement; confiscation of infringed goods; and temporary seizure of goods for the purpose of ensuring proper compensation. Provisional measures could be lifted when no longer considered necessary by the imposing authority.

335. The Court could order provisional measures to be taken on its own initiative or at the request of the Prosecution Institute or the parties concerned. Having heard the opinion of the parties, the Court could take an immediate decision which would also be effective immediately. The decision could be appealed by either party, in which case the Prosecution Institute would have the right to make a proposal to Court or to the Chief of Justice, who was required to respond within three days. Further detailed provisions on provisional measures would be promulgated in the Civil Procedures Code or in a joint Circular of the Supreme People's Court, the Supreme People's Prosecution Institute and the Ministry of Science and Technology.

(c) Administrative procedures and remedies

336. The representative of Viet Nam said that Viet Nam had no special agency for the enforcement of Intellectual Property Rights. The competent bodies which could take administrative action in relation to violation of intellectual property rights were the market control organizations of the trade administration, customs offices, specialized inspection authorities such as the Culture and Information Inspection, the Science and Technology Inspection, the Economic Police, and the People's Committees at various levels. A radical reform of the industrial property enforcement system was being envisaged under a Decree amending Decree No. 12/1999/ND-CP, to be promulgated before the end of 2004, whereby the administrative enforcement system would have a focal point to receive complaints and to coordinate other bodies in the system.

337. Administrative measures and remedies were regulated by Government Decree No. 12/1999/ND-CP of 6 March 1999 on administrative measures against violations in the field of industrial property, Circular No. 825/2000/TT-BKHCHNMT of 3 May 2000 of the Ministry of Science, Technology and Environment as amended and supplemented by Circular No. 49/2001/TT-BKHCHNMT of 14 September 2001, and Government Decree No. 31/2001/ND-CP of 26 June 2001 on administrative measures against violations in the field of culture and information. Any natural or legal person, including non-resident foreigners or foreign legal entities without a representation in Viet Nam, had the right and obligation to denounce a violation by informing the competent authorities in writing or by other means. Further provisions on closed procedures for judgement and measures to protect undisclosed information would be provided for in the Civil Procedure Code, to be submitted for promulgation in 2004, or in a joint Circular of the Supreme People's Court, the Supreme People's Prosecution Institute and the Ministry of Science and Technology, to be issued thereafter.

338. Administrative measures included the issue of warnings or monetary fines up to 100 million Dong (about US\$6,700); seizure of material evidence or the facilities of infringement; destruction of infringement articles and counterfeits and related materials (such as product labels and packaging); revocation of business licences and professional licences (with or without time-limit); and the imposition of compensation - up to 1 million Dong - for damages. The procedures to be followed in the confiscation and subsequent treatment of material evidence were laid down in Articles 18 and 19 of Decree No.12/1999/ND-CP. Detailed provisions on additional administrative remedies would be elaborated in the Decree amending Decree No. 12/1999/ND-CP. Customs procedures for imports and exports could be suspended to protect intellectual property rights in accordance with Articles 57, 58, 59 of the Customs Law of 29 June 2001 and Decree No.101/2001/ND-CP of 31 December 2001.

339. Decisions to impose an administrative penalty were issued in writing within ten days following the reporting of the violation, or 30 days in complicated cases. Appeals procedures were regulated according to the 1995 Ordinance on procedures for judgement of administrative cases, as amended and supplemented by the Appeal and Denounce Law of 1998. Administrative decisions could be appealed by either party, first to the authority having issued the decision and subsequently either to the administrative court or to a superior administrative body. If the latter option was chosen, the decision of the superior administrative body would be final and could not be challenged before a court.

340. He added that the administrative system played an important role in the enforcement of intellectual property rights, and would be further strengthened. Although the award of damages was limited to 1 million Dong (around US\$65), administrative procedures were speedy, simple, inexpensive, and equitable, and right owners relied heavily on the administrative authorities, especially the market control agencies. The purpose of an administrative remedy was to prevent further infringement, not to offer just compensation, as the right holder could still seek redress under civil procedures. Compensation for damage was currently conducted only under civil procedures. The injunctions were, in his opinion, powerful enough to prevent further infringement as most infringements were minor and unintentional. The combination of administrative procedures and remedies and compensation under civil procedures provided, in his view, the deterrent effect foreseen in Article 41 of the TRIPS Agreement and the indemnification of the defendant stipulated in Article 48.

341. Asked about the allocation of staff to fight IPR crime and plans, if any, to create and/or designate specialized staff or units, he said that Viet Nam entrusted this task to general law enforcement agencies and had no officials specialized in this area. No particular incentives were available to these officials to encourage investigation and prosecution of IPR infringements.

(d) Special border measures

342. The representative of Viet Nam said that Customs Departments had the authority to detain imported or exported goods temporarily upon request of the right holder. A request for temporary detention of goods had to be accompanied by evidence to substantiate lawful ownership right and use right to the object, and evidence testifying the infringement. The right holder would also be required to deposit an amount equal to 20 per cent of the contractual value of the goods or provide a guarantee ensuring compensation in case of a wrongful request. Decisions to suspend the release of goods from customs were issued by the Chief of the Customs Bureau pursuant to Article 14 of Decree No. 101/2001/ND-CP of 31 December 2001, and the parties concerned would be notified accordingly. Goods could be suspended from release for ten days from the date the decision was issued, and an additional ten days in certain circumstances. Evidence of infringement would need to be produced

during this period. The owner of the seized goods would also be given an opportunity to provide evidence or justifications relating to the industrial property right of the detained goods. The Customs office would take a decision to release or prohibit circulation of the goods in consultation with the State management bodies for Intellectual Property (the National Office of Intellectual Property and the Copyright Office).

343. In response to specific questions, he added that Viet Nam's legislation did not provide customs offices the right to suspend the release of goods *ex officio*, and detailed provisions allowing right holders or importers to inspect the detained goods to reinforce their claims had yet to be elaborated. The exemption for *de minimis* imports allowed under Article 60 of the TRIPS Agreement was addressed in Article 760 of the Civil Code which referred to "usage for non-business purposes that does not conflict with the normal exploitation of the works and does not unreasonably prejudice the legitimate interests of the author" as not being considered infringement of copyright. Provisions covering goods imported or exported for non-commercial purposes, goods exempted under diplomatic procedures, gifts, souvenirs, personal luggage etc. would be elaborated further in a joint Circular of the Ministry of Finance and the Ministry of Science and Technology on border enforcement of industrial property rights. The joint Circular would be submitted for promulgation before the end of 2004.

(e) Criminal procedures

344. The representative of Viet Nam said that the Criminal Code of 1999 included provisions on copyright infringement (Article 131), production and trade in counterfeits (Article 156), deceptive practices (Article 162), false advertising (Article 168), and infringement of industrial property rights (Article 171). Any person misappropriating copyrights, wrongfully assuming an author's name, or illegally amending, publishing or disseminating copyrighted works was subject to a fine of 20 to 200 million Dong or non-custodial probation of up to two years (Article 131). Infringements of organized character or carrying very serious consequences, and repeated offence were punishable by imprisonment from six months to three years. Offenders also risked fines from 10 to 100 million Dong and being banned from holding certain positions or practising certain professions during one to five years. Persons manufacturing or trading counterfeits valued up to 150 million Dong risked six months to five years imprisonment, or three to ten years for organized or professional counterfeiting, recidivism, abuse of position, abuse of names of organizations, counterfeits priced between 150 to 500 million Dong, large illicit profits, and acts resulting in very serious consequences (Article 156). In case of counterfeited value exceeding 500 million Dong, very large illicit profits and extremely serious consequences, the penalty would be increased to seven to 15 years imprisonment. Offenders would also face a fine of 5 to 50 million Dong, possible confiscation of property, interdiction to hold certain

positions and practise certain professions during one to five years. Any person causing losses to customers due to fraudulent behaviour could receive a warning or a fine of 5 to 50 million Dong, and be liable to non-custodial probation for up to three years or imprisonment ranging from three months to three years (Article 162). Repeated offence or large illegal gains were punishable by seven to 15 years imprisonment. Offenders could also be fined 3 to 30 million Dong. Persons falsely advertising goods or services were subject to a fine ranging from 10 to 100 million Dong, non-custodial probation for up to three years or imprisonment of six months up to three years (Article 168). They also risked a fine of 5 to 50 million Dong and an interdiction to practise certain professions during one to five years. According to Article 171, infringements of industrial property rights constituting criminal acts would be subject to a fine of 20 to 200 million Dong or non-custodial probation of up to two years. Violations of organized character or carrying very serious consequences, and repeated infringements, were punishable by six months to three years imprisonment. Offenders also risked a fine of 10 to 100 million Dong and an interdiction to hold certain posts and practise certain professions during one to five years. He considered these provisions effective deterrents and in compliance with Article 61 of the TRIPS Agreement.

345. Some members considered the application of death penalty for serious counterfeiting of trademarks unacceptable and requested Viet Nam to eliminate this provision as soon as possible. The representative of Viet Nam replied that the Criminal Code of 1999 only authorized death penalty for production and trade in counterfeited foodstuff, medicines and prophylactics having extremely serious consequences. He considered these provisions necessary to protect public health and nutrition, and consistent with the principle provided for in Article 8.1 of the TRIPS Agreement.

346. Asked about the relationship between administrative penalties and criminal enforcement, the representative of Viet Nam said that any infringement of copyright and industrial property rights dealt with administratively and subsequently repeated would be considered a crime in accordance with Articles 131 and 171 of the Criminal Code of 1999. Administrative remedies thus served as a deterrent tool and, in the event of non-compliance with administrative penalties, compelling measures could be taken pursuant to Article 64 of the 2002 Ordinance on the handling of administrative measures against violations. The Criminal Code did not contain provisions providing for criminal penalties in case of violation of an administrative order, except in the event of recidivism as stipulated in Articles 131 and 171. He added that the 2002 Ordinance provided for the immediate transfer of administrative cases including a criminal element to the competent criminal authorities and, in the event an administrative decision having already been issued, the nullification of that decision and the transfer of the case within three days, unless the time-limit for criminal prosecution had expired (Articles 62.1 and 62.2). Evidence collected during an administrative procedure could be used by the civil court if necessary in accordance with Article 3 of the Ordinance on procedures for handling civil cases of 1989.

347. A Member urged Viet Nam to implement the TRIPS Agreement upon accession without recourse to a transitional period, stressing the importance of establishing appropriate laws and regulations, and adequate enforcement mechanisms. Some Members noted that although Viet Nam had implemented many intellectual property laws, Viet Nam also needed adequate enforcement mechanisms and sanctions to ensure protection of intellectual property rights, including civil procedures allowing plaintiffs to bring forward actions regarding infringement, enforcement by the police, and border measures by the customs authorities.

348. In reply, the representative of Viet Nam referred to the Action Plan on the Implementation of TRIPS Agreement provided in document WT/ACC/VNM/21, and revised in documents WT/ACC/VNM/21/Rev.1 and Rev.2. He emphasized that his Government would endeavour to complete its intellectual property regulations, in particular those related to dispute settlement, remedies, and border measures, and strengthen enforcement mechanisms.

349. [The representative of Viet Nam confirmed that his Government would apply [fully] all the provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights from the date of accession to the WTO, without recourse to any transitional period. The Working Party took note of this commitment.]

Policies affecting trade in services

350. The representative of Viet Nam said that most services sectors were still in the early stages of development in Viet Nam. According to the General Statistical Office, services had accounted for 42.5 per cent of Viet Nam's GDP in 1995.

351. The main Ministries and agencies involved in the regulation of services activities were the Ministries of Agriculture and Rural Development; Trade; Planning and Investment; Transportation; Information and Culture; Finance; Construction; Science, Technology and Environment; Labour, War Invalids and Social Affairs; and Industry; the State Bank; the Ministry of Posts and Telematics; the General Department of Tourism; the Civil Aviation Administration; the Navigation Administration; the Directorate for Standards and Quality; the Broadcasting and Television Authorities; and the Cinematography Office. In addition to governmental agencies, provincial level people's committees were also authorized to administer local services industries in conformity with the national legal system. Information on the existing regime in the area of services in the format of document WT/ACC/5 was provided in document WT/ACC/VNM/5 of 24 August 1998.

352. Concerning professional services, he said that foreign law firms could be present in Viet Nam in the form of a branch (maximum two branches). Pursuant to Government Decree

No. 92/1998/ND-CP of 10 November 1998 on legal consultancy of foreign lawyers in Viet Nam, minimum five years of experience in legal consultancy was required for the heads of foreign law firm branches in Viet Nam. The experience could be obtained in any country. Foreign lawyers in Viet Nam were not allowed to advise on Vietnamese laws, and were only permitted to advise on foreign and international law in the areas of business, investment, and commerce. Foreign law firms could enter into legal consulting cooperation contracts with Vietnamese legal services suppliers to receive advice on Vietnamese laws. Foreign auditing firms could operate in Viet Nam in the form of a joint-venture with a Vietnamese auditing firm. Wholly foreign-owned auditing firms had to be licensed as provided for in the Foreign Investment Law and other related legal acts. Advertising was a new activity in Viet Nam, and the market would be liberalized gradually.

353. Engineers and architects had to be certified in accordance with the Regulation on Granting Certificate for Design Practice of Construction Work. Renewable certificates valid for five years were delivered by the Construction Departments of cities and provinces. The Ministry of Construction was responsible for supervising the granting of certificates. Works covered by the Regulation included general layout design, architectural design, exterior and interior design, structural design, electrical and mechanical design, as well as design relating to water supply and sewage, energy supply, ventilation and air conditioning, communications, and fire protection. Engineering and architectural services providers were required to hold a Bachelor or higher degree, have minimum three years experience in the design of construction works, and have participated in the design of minimum 3 projects within a list of registered design works.

354. The Ordinance on Posts and Telecommunications had been enacted in October 2002, being the highest legal normative document passed by the Standing Committee of the National Assembly. The Ordinance governed the regulatory, operational and business activities in posts, telecommunications and radio frequency management, created an important legal framework for market liberalization, and a level playing field for competitors. Together with this Ordinance, several governmental decrees, Ministerial circulars and decisions had been promulgated on interconnection, tariffs and pricing, frequency and numbering, inspection, the settlement of disputes, and illegal services. Long-term development plans and strategies had been approved and published. The regulatory and business environment had been improved to become more transparent, predictable and pro-competitive.

355. The organization and operation of credit institutions and the banking activities of other organizations were governed by the Law on Credit Institutions and some other legal documents. The State Bank of Viet Nam had issued regulations to guide the implementation of the Law on Credit Institutions. The Law specified the licensing requirements for the establishment and operation of

credit institutions in Viet Nam. The process included an economic needs test. Foreign credit institutions could operate in Viet Nam in the form of a representative office, a bank branch, a joint-venture bank, a joint-venture finance company, or a wholly owned foreign finance company, a joint venture financial leasing company, or a wholly owned financial leasing company. Pursuant to Article 32 of the Law on Credit Institutions, credit institutions were permitted to establish subsidiaries. However, up to now, only State owned commercial banks, joint-venture banks and shareholding commercial banks had been allowed to establish subsidiaries. Operating licences for representative offices were valid for five years, 20 years for branches of foreign banks, 30 years for joint-venture banks, and 50 years for joint-venture finance companies, wholly foreign-owned finance companies, joint-venture financial leasing companies and wholly foreign-owned financial leasing companies, and these operating licences could be extended. Minimum capital requirements had been established for Joint-Venture banks (US\$10 million), branches of foreign banks (US\$15 million), and joint-venture or wholly foreign-owned non-banking credit institutions (US\$5 million). The contribution of the foreign party in a joint-venture bank acting as a commercial bank could not exceed 50 per cent of the bank's registered capital, while the foreign party in a joint venture non-banking credit institution needed to account for at least 30 per cent of the registered capital. A foreign legal entity or foreign individual was not allowed to own more than 10 per cent of the registered capital of a Vietnamese joint-stock commercial bank or joint-stock financial company, and the aggregate share of foreign shareholders could not exceed 30 per cent of the registered capital.

356. The establishment of foreign insurance companies in the Vietnamese market was subject to an economic needs test. Vietnamese individuals and organizations were not allowed to purchase insurance abroad for risks arising in Viet Nam. The National Assembly had approved the Law on Insurance Business on 9 December 2000. The Law had entered into force on 1 April 2001. A securities trading center had been established in Ho Chi Minh City, and plans existed to establish a center also in Hanoi. Foreign securities companies wishing to trade securities in Viet Nam would be required to set up joint-ventures with Vietnamese partners and operate in conformity with the Enterprise Law and Government Decree No. 114/2003/ND-CP on securities and stock exchange, and other applicable laws and regulations.

357. As a member of the Association of Southeast Asia Nations (ASEAN) and the Asia-Pacific Economic Cooperation Forum (APEC), Viet Nam was participating in negotiations to liberalize trade in services. Viet Nam had offered certain commitments in some services sectors such as telecommunications, tourism, transportation, and financial services under the ASEAN Framework Agreement on Services (AFAS).

358. In response to requests from Members that Viet Nam phase out business co-operation contracts (BCC) in favour of more attractive arrangements for foreign investors, as well as the lifting of limitations on foreign participation in joint ventures in several services sectors, the representative of Viet Nam said that these matters could be discussed further in the bilateral market access negotiations.

Transparency

Publication of information on trade

359. A Member noted that Viet Nam was considering a bill to amend the Law on the Promulgation of Legal Documents to include procedures for publication and public comment. This Member urged Viet Nam to adopt the bill promptly, and thereby develop a system for easy and prompt access to relevant legal documents. Some WTO Agreements required the provision of an opportunity for transparent review and comment on the regulations and rulings of government agencies, and generalized to other sectors, in particular those relating to international trade and customs, services and intellectual property, would be an immense step forward for Viet Nam. This Member also encouraged government agencies and people's committees to respond in a prompter and more reliable manner in the future to queries regarding the interpretation of legal documents.

360. The representative of Viet Nam said that as a general rule, stipulated in the Law on the Enactment of Legal Documents of 12 November 1996, legal documents were required to be published in the Official Gazette or made known to the public through the mass media. As the effective dates of most legal documents were attributed to the time of publication in the Official Gazette as regulated by the Law, the Official Gazette was published almost daily. On average, Viet Nam issued 3 to 4 volumes of its Official Gazette every month. According to the amended Law on Promulgation of Legal Documents, approved by the National Assembly on 16 December 2002, legal documents were required to be published in the Official Gazette and would only become effective 15 days thereafter, or at a later date if so specified. He added that legal documents were accessible on the Internet, for the time being in Vietnamese only. Legal documents issued by local authorities and provincial People's Councils were put up in notice on their premises.

361. Viet Nam had issued the Law on the Enactment of Legal Documents (amended in 2002) to ensure the transparency of the legal system of Viet Nam from the stage of drafting to implementation. Since the implementation of this Law, comments on drafts of legal documents had been collected widely from related agencies and individuals. The obligation to seek the opinions of those directly affected by the legal documents, and the possibility to take account of these opinions in the drafting process, was laid down in Articles 3, 26.4 and 61.4 of the amended Law on Enactment of Legal

Documents. Articles 62.2 and 65.4 of the amended Law required the Office of the Government to publish draft Government Resolutions and Decrees and Decisions and Instructions of the Prime Minister in the mass media and on the internet for comment by agencies, organizations and individuals.

362. Draft trade-related legislation was made available to residents and non-residents for comment through the Vietnamese Chamber of Commerce and Industry, and through other channels. Annual and long-term legislative plans adopted by the National Assembly were published in accordance with the Law on the Enactment of Legal Documents. Pursuant to this Law, agencies drafting legal documents were required to accept the comments collected and revise their drafts accordingly. Asked whether laws, regulations or administrative orders could take effect prior to publication, the representative of Viet Nam said that according to the Law on the Enactment of Legal Documents, Viet Nam's legislation applied retroactively only in extreme cases. The Law also stipulated non-retroactivity in case of (i) new legal obligations imposed on actions happening at a time when such legal obligations had not been provided by law; and (ii) new legal obligations which were higher than those applied at the time when such actions took place.

Notifications

363. [The representative of Viet Nam said that, at the latest upon entry into force of the Protocol of Accession, Viet Nam would submit all initial notifications required by any Agreement constituting part of the WTO Agreement. Any regulations subsequently enacted by Viet Nam which gave effect to the laws enacted to implement any Agreement constituting part of the WTO Agreement would also conform to the requirements of that Agreement. The Working Party took note of this commitment.]

Trade Agreements

364. The representative of Viet Nam said that, as of April 1995, Viet Nam had acceded to 73 multilateral agreements and treaties. He provided a list of 55 foreign trade agreements, 17 general treaties and 17 tax treaties in document WT/ACC/VNM/3/Add.1, Annex 8. The trade agreements provided for MFN treatment, granted on a reciprocal basis. At present, preferential rates of import duty were applicable only to ASEAN countries and on 243 tariff lines of textile items imported from the European Union (in return for increased import quotas on Vietnamese exports of textiles to the EU). Viet Nam had become member of ASEAN in July 1995 and as part of its membership commitments, Viet Nam had signed 21 ASEAN Agreements and two Memoranda of Understanding. As of 2000, the Inclusion List of Viet Nam comprised 4,233 tariff lines, the Temporary Exclusion List contained approximately 1,900 tariff lines, the General Exclusion List covered 131 products and the Sensitive List of Unprocessed Agricultural Products included 51 tariff lines. Viet Nam did not have a

list of highly sensitive products. Viet Nam had not entered into any labour market integration agreements.

365. Some Members noted that Viet Nam, in the context of its commitments under the Agreement on a Common Effective Preferential Tariff (CEPT) implementing the ASEAN Free-Trade Area, had referred to its list of sensitive agricultural products to be fully phased into the inclusion list by 2013 with final bound rates at 5 per cent. Viet Nam was requested to provide a copy of the list of sensitive products to the Working Party, and to indicate whether the list overlapped with imports subject to line management or other forms of import restriction.

366. The representative of Viet Nam replied that sensitive unprocessed agricultural products and highly sensitive products had not been included in the CEPT/AFTA framework prior to 1995. Since then, ASEAN members had established a special mechanism for tariff reduction and elimination of non-tariff barriers on these products. Viet Nam had signed a Protocol in September 1999, according to which Viet Nam was committed to reducing its tariffs on sensitive unprocessed agricultural products to 0-5 per cent for other members of ASEAN by 2013.

367. Some Members noted that Viet Nam was required – under a bilateral agreement on textiles and clothing - to reduce its tariffs on a number textile products imported from the EU during a period of ten years starting from 1 January 1996. These Members asked whether the tariff reductions were implemented on an MFN basis and, if not, how Viet Nam would abide by Article I of the GATT as a Member of the WTO. Some Members requested that Viet Nam provide a copy of its bilateral trade agreement with the United States to the Working Party. A Member requested Viet Nam to clarify how provisions in this agreement would be applied in relation to other Members of the WTO.

368. The representative of Viet Nam replied that Viet Nam would comply with the MFN principle within the meaning of Article I of GATT 1994 upon accession to the WTO. The bilateral agreement with the United States had come into force at the end of 2001.

369. [The representative of Viet Nam confirmed that Viet Nam would observe all WTO provisions, including those of Article XXIV of the GATT 1994 and Article V of the GATS in the trade agreements to which it belongs, and would ensure that the provisions of these WTO Agreements for notification, consultation and other requirements concerning free trade areas and customs unions of which Viet Nam was a member were met from the date of accession. He confirmed that Viet Nam would submit notifications and copies of the Free Trade Area and Customs Union Agreements to which it belongs to the Committee on Trade in Goods for transmittal to the Committee on Regional Trade Agreements (CRTAs) for review. The Working Party took note of this commitment.]

Conclusions

370. The Working Party took note of the explanations and statements of Viet Nam concerning its foreign trade regime, as reflected in this Report. The Working Party took note of the commitments given by Viet Nam in relation to certain specific matters which are reproduced in paragraphs [] and [] of this Report. The Working Party took note that these commitments had been incorporated in paragraph 2 of the Protocol of Accession of Viet Nam to the WTO.

371. Having carried out the examination of the foreign trade regime of Viet Nam and in the light of the explanations, commitments and concessions made by the representative of Viet Nam, the Working Party reached the conclusion that Viet Nam be invited to accede to the Marrakesh Agreement Establishing the WTO under the provisions of Article XII. For this purpose, the Working Party has prepared the draft Decision and Protocol of Accession reproduced in the Appendix to this Report, and takes note of Viet Nam's Schedule of Concessions and Commitments on Goods (document WT/ACC/VNM/..Add.1) and its Schedule of Specific Commitments on Services (document WT/ACC/VNM/..Add.2) that are annexed to the draft Protocol. It is proposed that these texts be adopted by the General Council when it adopts the Report. When the Decision is adopted, the Protocol of Accession would be open for acceptance by Viet Nam which would become a Member thirty days after it accepts the said Protocol. The Working Party agreed, therefore, that it had completed its work concerning the negotiations for the accession of the Socialist Republic of Viet Nam to the Marrakesh Agreement Establishing the WTO.

ANNEX 1

Laws, Regulations and Other Information Provided to the Working Party by Viet Nam

- National Assembly's Resolution No. 51/2001/QH10 on amendment of and supplement to some Articles of the 1992 Constitution of the Socialist Republic of Viet Nam of 25 December 2001;
- Law on Profit Tax of 1 October 1990;
- Law on Enterprise Income Tax (1997) of 10 May 1997;
- Law on Agricultural Land Use Tax (1993) of 10 July 1993;
- Law on Transfer of Land use Right Tax of 22 June 1994;
- Ordinance on Income Tax on High-Income Earners of 19 May 2001;
- Ordinance of the Standing Committee of the National Assembly on Income Tax of High Income Earners (1994) of 19 May 1994, as amended;
- Ordinance of the State Council on Royalties of 30 March 1990;
- Decision No. 396/TTg dated 4 August 1994 On Amendments of and Additions to Foreign Currency Control in the Prevailing Circumstances;
- Circular No. 08/1998/TT-NHNN7 of 30 September 1998 on Guiding the Implementation of Decision 173/1998/QD/TTg on the obligation to sell and rights to buy foreign currencies from Residents which are organizations (the State Bank of Viet Nam (SBV) provides guidance for this Decision);
- Decree No. 63/1998/ND-CP of 17 August 1998 on Foreign Exchange Management of the Government;
- Decision of Compulsory Selling Rate of Foreign Currency with Respect to Current Sources of Income of Residents Being Economic or Social Organizations (Decision No. 46-2003-QD-TTg of 2 April 2003);
- Law on Cooperatives (1996);
- Law on Companies of 21 December 1990, as amended 1 July 1994;
- Law on Private Enterprises of 21 December 1990, as amended 1 July 1994;
- Commercial Law No. 05/1997/QH9 of 10 May 1997;
- Law on Business Bankruptcy of 30 December 1993;
- Law No. 13/1999/QH10 – The Enterprise Law;
- Law on Promotion of Domestic Investment (1994) of 22 June 1994;
- Law on Foreign Investment in Viet Nam of 12 November 1996;
- Law on amendment of and addition to a number of articles of the Law on Foreign Investment In Viet Nam of 9 June 2000;
- Governmental Decree No. 12/CP of 18 February 1997 Providing Regulations on Foreign Investment in Viet Nam (1997);
- Circular No. 74 TC/TCT of 20 October 1997 Providing Guidance On the Implementation of Tax Provisions Applicable to Various Forms of Investment Under the Law on Foreign Investment in Viet Nam;
- Government Decree Providing Detailed Regulations on the Implementation of the Law on Foreign Investment in Viet Nam (Decree No. 24-2000-ND-CP of 31 July 2000);
- Ordinance on Price of 26 April 2002;
- Petroleum Law of 6 July 1993;
- The Law on amendment of and addition to a number of articles of the Law on Petroleum of 9 June 2000;
- Law on Land of 31 May 2001;
- Law No. 10/1998/QH10 mending and complementing a number of Articles of the Land Law dated 2 December 1998;
- Labour Code (1994) of 23 June 1994;
- Law on the amendment of and supplement to a number of Articles of the Labour Code of 2 April 2002;

- Law on State Enterprises of 20 April 1995 (Presidential Order No. 39-L/CTN of 30 April 1995 to promulgate the Law on State Enterprises and the Law on Amendments and Supplements to a number of Articles of the Law on Viet Nam Civil Aviation);
- Law on the Promulgation of Legal Documents of 12 November 1996;
- Law on Amendment and Addition to a Number of Articles of the Law on Promulgation of Legal Instruments (Law No. 02-2002-QH11 of 16 December 2002);
- Ordinance on Commercial Arbitration (No. 08-2003-PL-UBTVQH11 of 25 February 2003);
- Ordinance on Procedure for Settlement of Economic Disputes of 1 July 1994;
- Ordinance on Most-Favoured-Nation and National Treatment in International Trade of 7 June 2002;
- Law on Customs (Law No. 29-2001-QH10 of 29 June 2001);
- Decree on Customs Procedures, Customs Inspection and Control, Making Detailed Provisions for Implementation of a Number of Articles of the Law on Customs (Decree No. 101-2001-ND-CP of 31 December 2001);
- Decision No. 79/TCHQ-GQ of 14 June 1998 On Customs Procedure of Border Imports-Exports;
- Decision No. 50/1998/QD-TCHQ of 10 March 1998 of the Director General of the General Department of Customs on Handbook and Guideline on Customs Procedure 1995;
- Decision No. 299/1998/QD-TCHQ of 12 September 1998 On Amendment and Addition to Instruction of the Customs Procedures for Import-Export of Goods (1998) (issued in conjunction with Decision No. 50/1998/QD-TCHQ of 10 March 1998 of the General Department of Customs);
- Decision No. 287/TCHQ/KTTT of 19 December 1995 of Director General of the General Department of Customs on the Issuance of New Form of Customs Declaration for Import-Export Commodities;
- Instruction No. 224/TCHQ-GSQL of 10 November 1994 On Measures of Import-Export Inspection for Customs Supervision and Management (1994);
- Decision No. 189/TCHQ-GSQL of 7 October 1994 On Issuing Regulation On Inspection of Exported and Imported Goods (1994);
- Regulations No. 296-TMDL/XNK of 9 April 1992 on the Issuance of Import-Export Business Permit;
- Viet Nam's List of Effective Import Tariff (MFN Rates);
- Ordinance on Levies and Fees of 30 August 2001;
- Law on Export and Import Duties (1991) of 26 December 1991, as amended 16 January 1992 and 5 July 1993;
- Law on Export and Import Duties (1993) of 26 December 1991, as amended 16 January 1992 and 5 July 1993;
- Governmental Decree No. 54-CP of 28 August 1993 on Export-Import Duty (1993);
- Law No. 02/1997/QH9 of 10 May 1997 on Value Added Tax;
- Schedule of VAT on Imports (2003);
- Law on Turnover Tax (1993) of 30 June 1990, as amended 5 July 1993;
- Law on Special Sales Tax of 30 June 1990, as amended 5 July 1993 and 28 October 1995;
- Circular No. 98-TC/TCP Providing Guidance on the Implementation of Governmental Decree No. 97/CP of 27 December 1995 which provides detailed provisions for the implementation of the Law on Special Sales Tax and the Law on the Amendments of and Additions to a number of Articles of the Law on Special Sales Tax;
- Detailed Guidance on the Application of Special Sales Tax (1995) (Appendix attached with Circular of the Ministry of Finance No. 98-TC/TCP of 30 December 1995);
- Special Consumption Tax Schedule for Imports (with HS Code reference);
- List of the Commodities Banned from Export and Import in 1997 (Decision of the Prime Minister No. 28-TTg of 13 January 1997);
- Decision of the Prime Minister No. 28-TTg of 13 January 1997 on Import-Export Management Policy (1997);

- Circular of the Ministry of Trade No. 02-TM/XNK of 21 February 1997 Guiding the Implementation of Decision No. 28-TTg of 13 January 1997;
- Decree No. 89 of 4 April 1996 on Revoking the Procedures for Granting Export or Import Permits for Each Consignment;
- Decision of the Prime Minister No. 864-TTg of 30 December 1995 Regarding the Policy on Commodities and the Regulation on Import-Export in 1996;
- Regulations of the Ministry of Commerce and Tourism No. 297-TMDL-XNK of 9 April 1992 on Export-Import Licence;
- List of Second Hand Consumer Goods Subject to Import Prohibition (issued together with Circular 11/2001/TT-BTM of 18 April 2001 of the Ministry of Trade);
- Decree on Prescribing the Determination of Tax Calculation Values of Imported Goods According to the Principles of the Agreement Implementing Article VII of the GATT (Decree No. 60/2002/ND-CP of 6 June 2002);
- Decision No. 155/1998/QD-TTg of 27 May 1998 On Issuing the Regulations On Determination of Dutiable Value of Imports and Exports;
- Decision No. 590A/QD/BCT of 29 April 1998 On Promulgation of the Table of Dutiable Values;
- Regulation No. 192/TCHQ/KTTH of 15 May 1995 On Promulgating Application of Dutiable Value of Goods for Import and Export Duties (1998);
- Decision No. 918-TC/QD/TCT of 11 November 1997 on the Promulgation of the Minimum Purchase Price Table at Border Gates for Import Duty Calculation;
- Ordinance on Safeguards in the Import of Foreign Goods into Viet Nam (No. 42/2002/PL-UBTVQH10 of 1 September 2002);
- Ordinance on Safeguard Measures of 7 June 2002;
- Ordinance on the Quality of Goods of 27 December 1990;
- Ordinance on Weights and Measures (1990) of 16 July 1990;
- Order No. 20/2003/L-CTN Promulgating the Ordinance on Food Hygiene and Safety (passed on 26 July 2003) of 7 August 2003;
- Decision No. 1091/1999/QD-BKHCNMT Promulgating the Regulation on the State Control of Import-Export Goods Quality of 22 June 1999;
- Ordinance on Veterinary Activities (1993) of 27 November 1993;
- Decision No. 389 NN-TY/QD of 15 April 1995 On Promulgating the Regulation On Procedures for Animal Quarantine, Veterinary Control for Animal Slaughtering, Animal Products and Hygienic Inspection (1995);
- Veterinary Quarantine and Inspection Subjects List Attached to Decision No. 607 NNTY/QD of 9 June 1994 by the Minister for Agriculture and Food;
- Ordinance on Plant Protection and Inspection of 25 July 2001;
- Decree on Tendering (Decree No. 88-1999-ND-CP of 1 September 1999, amended on 5 May 2000);
- Decree on Amendments and Additions to a Number of Articles of the Regulations on Tendering Issued with Decrees of the Government No. 88-1999-ND-CP Dated 1 September 1999 and No. 14-2000-ND-CP Dated 5 May 2000 (Decree No. 66-2003-ND-CP of 12 June 2003);
- Decree No. 43/CP of 16 July 1996 on Procurement;
- Part VI of the Civil Code – Intellectual Property Rights and Technology Transfer;
- Decree No. 63/CP of October 1996 on Detailing the Regulations on Industrial Property;
- Governmental Decree on Detailed Regulations Concerning Industrial Property (Decree No. 63/CP of 24 October 1996, amended and supplemented by Governmental Decree No. 06/2001/ND-CP of 1 February 2001);
- Circular No. 3055-TT/SHCN (1996) of 31 December 1996 Guiding the Implementation of the Regulations on the Procedures for Establishing Industrial Property Rights and Other Regulations in Decree No. 63/CP;

- Decree on Amendment and Addition of a Number of Articles of Decree 63-CP of the Government Dated 24 October 1996 on Industrial Property (Decree No. 06-2001-ND-CP of 1 February 2001);
- Circular No. 23-TC/TCT dated 9 May 1997 Guiding the Collection, Payment and Management of Industrial Property Service Charges and Fees;
- Decree on Penalties for Administrative Offences in Relation to Industrial Property (Decree No. 12-1999-ND-CP of 6 March 1999);
- Ministry of Science, Technology and Environment's Circular No. 825/2000/IT-BKHCMNT of 3 May 2000, as Amended and Supplemented by the Ministry's Circular No. 49/2001/TT-BKHCMNT of 14 September 2001, Guides the Implementation of Decree No. 12/1999-ND-CP of 6 March 1999 on the Handling of Administrative Violations in the Field of Industrial Property;
- Decree on Copyright Providing Guidelines for the Implementation of a Number of the Provisions of the Civil Code with Respect to Copyright (Decree No. 76-CP of 29 November 1996);
- Decree on the Protection of New Plant Varieties;
- Circular on the Implementation of Government Decree No. 13/2001/ND-CP Dated 20 April 2001 on the Protection of New Plant Varieties;
- Decree on Protection of Industrial Property Rights with Respect to Trade Secrets, Geographical Indications and Trade Names and Protection of Rights to Fight Against Unfair Competition Relating to Industrial Property (Decree No. 54-2000-ND-CP) of 3 October 2000;
- Ordinance on Advertisement of 16 November 2001;
- Ordinance on Post and Telecommunication of 7 June 2002;
- Law on Insurance Business of 9 December 2000;
- Decree No. 64-CP dated 9 October 1995 On Organization and Operation of Finance Leasing Companies;
- Circular No. 03-TT-NH5 dated 9 February 1996 On Finance Leasing Companies (providing guidelines for the implementation of the temporary regulations on organization and operation of finance leasing companies in Viet Nam);
- Ordinance on Lawyer Organization of 25 July 2001;
- Decree No. 42-CP dated 8 July 1995 On Legal Consultancy Practices of Foreign Law Firms in Viet Nam;
- Circular No. 791-TT-LS-TVPL dated 8 September 1995 On Foreign Law Firms (providing guidelines for the implementation of the Regulations on legal consultancy practices of foreign law firms in Viet Nam);
- Decree on Management, Provision and Use of Internet Services (Decree No. 55-2001-ND-CP);
- Decree on Dealing with Administrative Offences in the Sector of Culture and Information (Decree No. 31-2001-ND-CP of 26 June 2001);
- Decree on Cinematographic Organizations and Activities (Decree No. 48-CP of 17 July 1995);
- Decree on Amendment and Addition to Decree 48-CP of the Government Dated 17 July 1995 on Cinematographic Organizations and Activities (Decree No. 26-2000-ND-CP);
- Ordinance on the Conclusion and Implementation of International Treaties (1989) of 17 October 1989;
- Decree No. 18-CP of 4 April 1996 of the Government Issuing the List of Commodities and Import Tariffs in Implementing the Programme of Reducing Tariffs on Goods Imported from the European Communities in the years 1996-1997;
- Import-Export Statistics for 1997; and
- Ordinance on Entry, Exit, Residence and Travel of Foreigners in Viet Nam of 28 April 2000.

Table 1(a): Differential Price Surcharges Collected on Imported Goods

No	HS Code	Description of goods	Rate of payable price differentials (%)
1	2917.32.00	Diocetyl orthophthalates	5
2	Ex. 4804	Paperboards and flat cartons used for packing, having a maximum horizontal pressure resistance of 3 kgf/cm ² and vertical pressure resistance of 14 kgf	10
3	6910.10.00 6911.90.00	Sanitary ceramic wares	20 20
4	6910.10.00 7013.10.00 7013.29.00 7013.32.00 7013.39.00 7013.99.00	Drinking glasses, cups and kitchenware of porcelain or china Drinking glasses, cups and kitchenware of glass other than of lead crystal	20 20 20 20 20 20
5	8414.51.00	Table, floor, ceiling, wall and roof fans of a power below 100W	20
6	7012.00.00 9617.00.10	Glass inners for commonly-used vacuum flasks of a capacity not exceeding 2.5 litre Commonly-used vacuum flasks of a capacity not exceeding 2.5 litre, other than piston vacuum flasks and self-boiling vacuum flasks)	30 40
7		Welded and zinc-galvanized pipes and tubes in steel	10
8		Bars and rods in steel CT3, not further worked, reinforced bars and rods in steel CT5	10
9		Steel sheets CT3 and CT3C	4
10		PVC powder	5
11	4802.51.10 4802.52.10 4802.60.10 4823.51.10 4823.59.10	Uncoated printing paper, writing paper	10 10 10 10 10
12	6810.11.00 6810.19.10 6910.19.90 6904.10.00 6904.90.00 6907.10.00 6907.90.00 6908.10.00 6908.90.00	Ceramic and granite flooring tiles not exceeding 400 x 400 mm and those kinds of which either side is 400mm or less	10 10 10 10 10 10 10 10 10
13	2523.10.00	Clinker	10
14	7003.12.00 7003.19.90 7004.20.90 7004.90.90 7016.90.00	Light brown sheet glass of a thickness between 5mm and 12 mm; dark green sheet glass of a thickness between 3mm and 6 mm; white (transparent) and flat sheet glass of a thickness between 1.5mm and 12 mm (not including flower-worked glass, multi-layer glass, safety glass, wired glass, glass having reflecting layer)	10 (as from 1 January 2002) 10 (as from 1 January 2002) 10 (as from 1 January 2002) 10 (as from 1 January 2002) 10 (as from 1 January 2002)
15	7213.10.10 7214.20.20	Bars and rods of steel for construction in wound or twisted coils (containing indentations, ribs, grooves), measuring from 10-40mm in diameter	10 (as from 1 January 2002) 10 (as from 1 January 2002)
16	7214.10.20 7214.99.00 7215.50.90 7215.90.90	Bars and rods of steel for construction, not further worked, measuring from 6-40mm in diameter	10 (as from 1 January 2002) 10 (as from 1 January 2002) 10 (as from 1 January 2002) 10 (as from 1 January 2002)

No	HS Code	Description of goods	Rate of payable price differentials (%)
17	7216.50.10 7216.50.90	V angle sections of steel of a height of 20-125mm; C-shaped sections of steel of a height not exceeding 160mm	10 (as from 1 January 2002) 10 (as from 1 January 2002)
18	7216.21.00 7216.40.10	L angle sections of steel of a height of 20-125mm	10 (as from 1 January 2002) 10 (as from 1 January 2002)
19	7216.10.00 7216.31.10 7216.31.90	U-shaped sections of steel of a height not exceeding 160mm	10 (as from 1 January 2002) 10 (as from 1 January 2002) 10 (as from 1 January 2002)
20	7216.10.00 7216.32.10 7216.32.90	I-shaped sections of steel of a height not exceeding 160mm	10 (as from 1 January 2002) 10 (as from 1 January 2002) 10 (as from 1 January 2002)
21	7216.10.00 7216.33.10 7216.33.90	H-shaped sections of steel of a height not exceeding 160mm	10 (as from 1 January 2002) 10 (as from 1 January 2002) 10 (as from 1 January 2002)
22	7210.41.10 7210.49.10 7210.61.10 7210.69.10 7210.70.40 7210.70.50 7210.70.90 7210.90.40 7210.90.50	Flat-rolled steel, zinc-galvanized, of a thickness of 0.25-0.55mm and length not exceeding 3500mm; flat-rolled steel, zinc-galvanized, corrugated; flat-rolled steel, galvanized with non-ferrous metals, corrugated	10 (as from 1 January 2002) 10 (as from 1 January 2002) 10 (as from 1 January 2002) 10 (as from 1 January 2002) 10 (as from 1 January 2002) 10 (as from 1 January 2002) 10 (as from 1 January 2002) 10 (as from 1 January 2002) 10 (as from 1 January 2002)

Table 1(b): Differential Price Surcharges Collected on Exported Goods

No	HS Code	Description of goods	Rate of payable price differentials (per cent)
1		Raw cashew nuts for export	10
2		Unprocessed rubber latex for export	6

Table 2: Customs fees levied in accordance with
Inter-Ministerial Circular No. 71/2000/TTLT/BTC-TCHQ of 19 July 2000
of the Ministry of Finance and the General Department of Customs

Customs Clearance Fee			
No.	Kind of goods	Calculation unit	Fee rates (VND)
I	Ordinary cargo:		
1	Cargo transported by ships, barges (bulk goods, goods of different sorts contained in bags, cans, drums, barrels, tanks, reservoirs)		
a.	- Minimum fee rate for 1 ton or less	VND/ton	20,000
	- Fee rate for the second ton onwards	VND/ton	1,200
b.	Goods transported by ships (goods of the same sort): fee rate per ton	VND/ton	500
	Maximum customs clearance fee rate for:		
	- Ships of a capacity of less than 10,000 GRT (Gross registered tonnage)	Ship	Not exceeding 3 million
	- Ships of a capacity of between 10,000 and less than 20,000 GRT	Ship	Not exceeding 6 million
	- Ships of a capacity of between 20,000 and less than 70,000 GRT	Ship	Not exceeding 15 million
	- Ships of a capacity of 70,000 GRT or more	Ship	Not exceeding 20 million
2	Goods transported by land		
a.	- Goods transported by car	VND/ton	5,000
b.	- Goods transported by train	VND/ton	2,000
3	Postal packages, parcels		
	- Of a weight of between 5 kg and less than 20 kg	VND/clearing case	7,000
	- Of a weight of between 20 kg and 50 kg	VND/clearing case	10,000
	- Of a weight of more than 50 kg, for every extra 10 kg a surcharge shall be collected	VND/10 kg	500
	- Of a weight of 1 ton or more, a surcharge shall be collected	VND/ton	3,000
II	Cargo contained in containers		
1	Cargo contained in 20-feet containers	VND/container	60,000
2	Cargo contained in 40-feet containers	VND/container	120,000
III	Cargo being automobiles and motorcycles of all kinds		
1	Automobiles of all kinds		
	- Automobiles in complete units	VND/unit	18,000
	- Automobile components in complete sets	VND/set	20,000
2	Motorcycles (units and complete sets)	VND /unit or set	6,000
IV	Cargo being gold and gemstone		
	- Fee rate for 1 tael (37.5 gr) or less	VND/clearing case	15,000
	- Fee rate for the second tael (37.5 gr) onwards	VND /tael	1,000
	- Maximum fee rate for each clearance case		Not exceeding 1.5 million
V	Import and export of foreign currencies		
	- Import, export of less than US\$100,000 (or equivalent amounts of other foreign currencies)	VND	100,000
	- For every extra US\$100,000, a surcharge shall be collected	VND	80.000
	- Maximum rate for each clearance case	VND	Not exceeding 1.5 million

Customs Clearance Fee			
No.	Kind of goods	Calculation unit	Fee rates (VND)
Fees For Goods and Luggage Consigned and Put at Customs Warehouses (Customs Warehouse Fee)			
1	Automobiles of all kinds		
	- Trucks of a capacity of 2 tons or more, passenger cars with 15 seats or more	Unit	50,000
	- Trucks of a capacity of less than 2 tons, tourist cars with 14 seats or less	Unit	30,000
2	Motorcycles, mopeds	Unit	10,000
3	Computers, fax machines, photocopiers	Unit	10,000
4	Air-conditioners, radios, cassettes, communication machines, television sets, video sets	Unit	5,000
5	Gold	Tael (37.5 gr)	7,000
6	Gemstone	Tael	10,000
7	Other goods		
a.	Small postal parcels of a weight of less than 20 kg	Parcel	2,000
b.	Small postal parcels of a weight of between 20 kg and 100 kg	Parcel	4,000
c.	Goods packages of a weight of between more than 100 kg and 1,000 kg	Package	5,000
d.	Goods packages of a weight of more than 1,000 kg	Package	10,000
Administrative Fee			
Free rate for re-certification of cargo, luggage documentation		Case	12,000

Note: Transit and transit-related fees are enumerated in Table 13(a) and 13 (b).

Table 4: Viet Nam's Non-Tariff Measures (April 2004)

HS	Description	Rationale	Note
1207 91 00	Poppy seeds	Materials for production of opium	
1302 11 00	Opium, anhydrous morphine anhydrous content	Materials for production of opium	
2402, 2403	Tobacco, cigarettes, and other kinds of manufactured tobacco	Limit the consumption of cigarettes.	Import prohibition to be abolished upon accession
2618 00 00	Granulated slag (slag sand) from the manufacture of iron or steel	Residues causing environmental pollution	
2619 00 00	Slag, dross (other than granulated slag), scalings and other waste from the manufacture of iron or steel	Residues causing environmental pollution	
2620	Ash and residues (other than from the manufacture of iron or steel) containing metals or metal compounds	Residues causing environmental pollution	
2621 00 00	Other slag and ash, including seaweed ash (kelp)	Residues causing environmental pollution	
3601 00 00	Propellant powders	Materials for production of explosives	
8710 00 00	Tanks and other armored fighting vehicles, motorized, whether or not fitted with weapons, and parts of such vehicles	Military equipment	
ex 8711	Motorcycles of a cylinder capacity exceeding 175cc	Security and traffic safety	
9301 00 00	Military weapons, other than revolvers, pistols and the arms of heading 307: revolvers, pistols	Military equipment	
9302 00 00	Revolvers and pistols, other than those of heading 9303 or 9304	Weapons	
9304	Other arms (for example, spring, air or gas guns and pistols, truncheons), excluding those of heading 9307	Weapons	
9305	Parts and accessories of articles of headings 9301 to 9304	Weapons	
9306	Bombs, grenades, torpedoes, mines, missiles and similar munitions of war and parts thereof; cartridges and other ammunition and projectiles and parts thereof, including shot and cartridge wads	Weapons	
9307	Swords, cutlasses, bayonets, lances and similar arms and parts thereof and scabbards and sheaths thereof	Weapons	
NA	Second-hand consumer goods, including: - Textiles and clothes; footwear - Electronic goods - Refrigerating equipment and products - Household electric goods - Furniture - Household goods made from porcelain, clay, glass, metal, resin, rubber, plastic, and other materials	Product safety	

HS	Description	Rationale	Note
NA	Used materials and equipment, including: - Used machines, structures, inner tires, tires, accessories, motors of automobiles, tractors, 2-wheel and 3-wheel motorbikes - Internal combustion engines and machines with internal combustion engines having capacity below 30 CV - Bicycles, 2-wheel and 3-wheel vehicles; - Passenger cars of less than 16 seats, trucks with loading capacity of less than 5 tons, ambulances.	Traffic safety	
NA	Toxic chemicals <i>List published by the Ministry of Industry</i>	Environment protection, protection of human health	
NA	Garbage and waste materials which may cause environmental pollution and epidemics <i>List published by the Ministry of Science and Technology</i>	Environment protection, protection of human health	
NA	Depraved and reactionary cultural products	Public morals	
NA	Children toys having adverse effect in moral education, public order and security	Public morals & social security	
NA	Narcotics	Protection of human life	
NA	Firecrackers (excluding fire signal used for maritime safety and other purposes as stipulated by the Prime Minister in the official Document No.1383/CP-KTTS dated 23/11/1998)	Protection of human health & life	
NA	Right-hand steering vehicles (including their components and those modified to left-hand drive ones prior to importation into Viet Nam), except for specialized right-hand steering vehicles operating in small areas such as cranes, trench and canal digging machines, garbage trucks, road sweepers, road construction trucks, airport passenger transportation buses, fork-lifts used at warehouses and ports.	Traffic safety	
NA	Asbestos products and materials under amphibole group	Protection of human health	
NA	Specialized encryption machines and encryption software subject to State secret	National security	

Note: NA Not applicable

These products are not allowed to be circulated in the domestic market on a normal commercial basis. Importation for non-commercial purposes might be permitted in exceptional circumstances.

Table 4.1.a: Import Prohibitions- Highly Toxic Chemicals

No.	Name of chemicals	Formula	Concentration
1	Aldrin	$C_{12}H_8Cl_6$	
2	BHC (lindane)	$C_6H_6O_6$	
3	Chordane		
4	DDT		
5	Dieldrin		
6	Eldrin		
7	Heptachlor	$C_{10}H_5Cl_5$	
8	Isobenzen		
9	Isodrin		
10	Methamidophos	$C_2H_8NO_2PS$	
11	Monocrotophos	$C_7H_{14}NO_5P$	
12	Methyl Parathion	$C_8H_{10}NO_5PS$	
13	Ethyl Parathion		
14	Phosphamidon		
15	Polychlorocamphere		
16	Strobane		
17	Captan		
18	Captofol		
19	Hexachlorobenzen	C_6Cl_6	
20	24,5 T (Broctoc, Decamine)		
21	Axit cyanhydric and its salts	HCN	0.0003
22	Hexacloro cyclohexan	$C_6H_6Cl_6$	0.0001
23	Methyl parathion (demetil paranitro photpho, volfatoc...)		0.0001

No.	Name of chemicals
1	O-Alkyl (\leq C10, including cycloalkyl), Alkyl (Me, Et, n-Pr or i-Pr) phosphonofluoridates
2	O-Alkyl (\leq C10, including cycloalkyl), N,N-dialkyl (Me, Et, n-Pr or i-Pr) phosphoramidocyanidates
3	O-Alkyl (H or C, 10, including cycloalkyl), S-2-dialkyl (Me, Et, n-Pr or i-Pr)-aminoethyl alkyl (Me, Et, n-Pr or i-Pr) phosphonothiolates and respective alkylat or protonat salts
4	Sulfur mustards: 2-Chloroethylchloromethylsulfide, (2625-76-5) Mustard gas: Bis(2-chloroethyl) sulfide, (505-60-2), Bis(2-chloroethylthio) methane, (63869-13-6) Sesquimustard: 1,2-Bis(2-chloroethylthio)ethane, (3563-36-8) 1,3-Bis(2-chloroethylthio)-n-propane, (63905-10-2) 1,4-Bis(2-chloroethylthio)-n-butane, (142868-93-7) 1,5-Bis(2-chloroethylthio)-n-pentane, (142868-94-8) Bis(2-chloroethylthiomethyl) ether, (63918-90-1) O-Mustard: Bis(2-chloroethylthioethyl) ether, (63918-89-8)
5	Lewisites: Lewisite 1: 2-chlorovinylchloroarsine, (541-25-3) Lewisite 2: Bis(2-chlorovinyl)chloroarsine, (40334-69-8) Lewisite 3: Tris(2-chlorovinyl)arsine, (40330-70-1)
6	Nitrogen mustards: HN1: Bis(2-chloroethyl) ethylamine, (538-07-8) HN2: Bis(2-chloroethyl) methylamine, (51-75-2) HN3: Tris(2-chloroethyl) amine, (555-77-1)
7	Saxitoxin, (35523-89-8)
8	Ricin, (9009-86-3)
9	Alkyl (Me, Et, n-Pr or i-Pr) phosphonyldifluorides
10	O-Alkyl (H or \leq C10, including cycloalkyl) O-2-dialkyl (Me, Et, n-Pr or i-Pr)-aminoethyl alkyl (Me, Et, n-Pr or i-Pr) phosphonites and respective alkylat or protonat salts
11	Chlorasine: O-Isopropyl methylphosphonochloridate, (1445-76-7)
12	Chlorosoman: O-Pinacolyl ethylphosphonochloridate, (7040-57-5)
13	Amiton: O,O-Diethyl S-[2-(diethylamino)ethyl] phosphorothiolate, (78-53-5) and respective alkylat or protonat salts
14	PFIB: 1,1,3,3,3-Pentafluoro-2-(trifluoromethyl)-1-propene, (382-21-8)
15	BZ: 3-Quinuclidinyl beilate, (6581-06-2)
16	Methylphosphonyl dichloride, (676-97-1), Dimethyl methylphosphonate, (756-79-6)
17	N,N-Dialkyl (Me, Et, n-Pr or i-Pr) phosphoramidic dihalides
18	Diakyl (Me, Et, n-Pr or i-Pr) N,N-dialkyl (Me, Et, n-Pr or i-Pr)phosphoramidates
19	2,2-Diphenyl-2-hydroxyacetic acid, (76-93-7)
20	Quinuclidine-3-ol, (1619-34-7)
21	N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethyl-2-ols and respective protonat salts
23	N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethane-2-thiols and respective protonat salts
24	Thiodiglycol: Bis (2-hydroxyethyl) sulfide, (111-48-8)
25	Pinacolyl alcohol: 3,3-Dimethylbutane-2-ol, (464-07-3)
26	Phosgene: Carbonyl dichloride, (75-44-5)
27	Chloropicrin: Trichloronitromethane, (76-06-2)

Table 4.1.b: Import allowed conditionally -
Toxic Chemicals and Products Containing Toxic Chemicals

No.	Name of chemicals	Formula	Concentration
1	Acetonitril	CH ₃ -CN	
2*	Anilin	C ₆ H ₇ -N	
3*	Benzene	C ₆ H ₆	
4	Choloroform	CHCl ₃	
5*	Furfurol	C ₅ H ₄ O ₂	
6	n-Hexan	CH ₃ (CH ₂) ₄ CH ₃	
7	Piridin	C ₅ H ₅ N	
8	Carbon tetra chloro	CCl ₄	
9*	Tuluén	C ₇ H ₈	
10*	Ethylen Glycol	CH ₂ OH-CH ₂ OH	
11*	n-Butanol	CH ₃ (CH ₂) ₂ CH ₂ OH	
12*	Aldehyd acetic	CH ₃ CHO	
13*	IsoPropanol	CH ₃ CHOHCH ₃	
14*	Asbestos raw material		
15*	Selen and selen compounds	Se	
16*	Cadmium and cadmium compounds	Cd	
17	Thallium	Tl	
18*	Xylen	C ₆ H ₄ (CH ₃) ₂	
19*	Acid Pechloric	HClO ₄	
20	Acrolein	CH ₂ =CH-CHO	+0.002
21*	Amoniac	NH ₃ NH ₄ OH	+0.002
22	Anhydric acsenio and anhydrit acsenic (asen pentoxide)	As ₂ O ₃ As ₂ O ₅	+0.0003
23	Acsenua hydrogen	AsH ₃	+0.0003
24*	Anhydrit carbonic	CO ₂	0.1 per cent mg/l
25*	Anhydrit cromatic	CrO ₃	0.0001 mg/l
26*	Anilin	C ₆ H ₅ -NH ₂	0.005
27*	Antimony	Sb	0.0005
28*	Hydrochloric acid and hydrochlorua (calculated as hydrochlorua)	HCl	0.010
29*	Acid nitric (calculated as N ₂ O ₅)	HNO ₃	0.005
30*	Acid acetic	CH ₃ COOH	0.005
31	Cyanhydric calculated as HCN		
32*	Acid sulfuric and anhydrit sulfuric	H ₂ SO ₄	0.002
33*	Acid phosphoric	H ₃ PO ₄	
34*	Acid picric	C ₆ H ₃ K ₈ O ₇	
35*	Bary oxide containing 10 per cent free SiO ₂	BaO	0.005
36*	Bary + dissolvable compound	(Ba)	
37*	Benzidin	C ₁₂ H ₂₂ N ₂	0.001
38*	Brom	Br ₂	1 ml/m ³
39*	Bromua metyl	Br-CH ₃	10 ml/m ³
40*	Bromofoc	CHBr ₃	
41*	Bicromat alkali	Cr ₂ O ₇ -(NaK)	0.0001
42*	Lead and inorganic compounds of lead	Pb	0.00001 0.0001
43*	Chlorine	Cl ₂	0.050
44*	Chlorinebenzene	C ₆ H ₅ Cl	0.001
45	Chlorinediphenyl		0.0005
46	Chlorine oxydiphonyl		0.001
47	Chlorinenaphtaline (trichlorinenaphtalin)	C ₁₀ H ₇ Cl	0.005
48	High level tetra and pentanaphtalin mixture		
49	Chlorineropren	CH ₂ =CH-CCl=OH ₂	0.002
50	Chlorinepycrin	CC ₃ NO ₂	20 mg/m ³ 60 mg/m ³

No.	Name of chemicals	Formula	Concentration
51*	Limestone chlorinerua (calculating as Cl)	CaCl_2	0.001
52*	Metylic spirit	CH_3OH	0.050
53*	Dimetyl amin	$(\text{CH}_3)_2\text{NH}$	0.001
54	Dimetyl focmanit	$\text{CH}_3\text{HCO-N} < \text{CH}_3$	0.001
55	Dichlorinebenzene	$\text{C}_6\text{H}_4\text{Cl}_2$	
56	Dinitrochlorinebenzene	$(\text{NO}_2)_2\text{C}_6\text{H}_3 < \text{Cl}$	0.001
57	Dinitrotoluen	$(\text{NO}_2)_2\text{C}_6\text{H}_3\text{-CH}_3$	0.001
58	Dinitrobenzene and identicals		
59	Dioxide Chlorine	ClO_2	0.0001
60*	Copper (salt)		0.00005
61	Etyl mercury phosphate		0.00005
62*	Focmaldehyt	HCHO	0.005
63	Etyl mercury chlorinerua		
64*	Florua hydrogen	FH	0.0005
65	Salt of acid flohydric (calculating as HF)	FH	0.0005
66	Salt of acid flohydric (calculating as HF)		0.001
67	Florosilicat metal dissolved and undissolved		
68	Hexachlorinero cychlorinehexan		0.00005
69*	Isome (gamma)		
70	Hydrazin and derivatives		0.0001
71	Isopropylnitrat	$\text{C}_3\text{H}_7\text{NO}_2$	0.005
72*	NaOH gas, KOH gas		
73*	Mangan and mangan compounds (calculating as MnO_2)	MnO_2	0.0003
74*	Metaldehyl		
75	Nitrobenzene and its compounds	$\text{C}_6\text{H}_5\text{NO}_2$	0.005
76	Nitrochlorinebenzene	$\text{Cl C}_6\text{H}_4 < \text{NO}_2$	0.001
77	Nicotin		0.0005
78	Metal nitrit	NO_2	
79	Ozon	O_3	0.0001
80*	Oxide carbon	CO	0.030
81*	Oxide etylen		0.001
82*	Oxide zinc	ZnO	0.005
83*	Oxide nito, calculating as N_2O_5	$\text{N}_2\text{O}, \text{NO}, \text{NO}_2, \text{N}_2\text{O}_3, \text{N}_2\text{O}_5$	0.005
84*	Oxide niken	NiO	0.005
85	Oxide iron including fluo and mangan compound		0.004
86	Photpho white (sesquisulfur phesphore)	P_4	0.0003
87	Photphotrichlorinerua compound		0.00005
88	Photphua hydrogen	PH_3	0.0003
89	Photphua metal		0.15-0.30g
90*	Photphorit (ore of under 10 per cent free SiO_2)		0.0005
91	Photgen	COCl_2	0.0005
92*	Phenol	$\text{C}_6\text{H}_5\text{OH}$	0.005
93	Photphat dietyl	$\text{C}_{10}\text{H}_{14}\text{NO}_5\text{PS}$	0.00005
94	Paranitropheny		5mg/kg
95	(Pration, thiophot)		(insecticide)
96	Sunfur lead	PbS	0.0005
97	Sunfua carbon	SC_2	0.010
98	Sunfua hydrogen	H_2S	0.010
99*	Tetrachlorinerua carbon	CCl_4	0.050
100	Tetrachlorineheptan		0.001
101	Tetra etyl lead	$\text{Pb}(\text{C}_2\text{H}_5)_4$	0.000005
102	Tetra nitrometan	$\text{CH}_3(\text{NO}_2)_4$	0.00003
103	Metal mercury and mercury inorganic	Hg	0.00001

No.	Name of chemicals	Formula	Concentration
	compound, excluding HgC12 (sublime)		
104	Mercury (II)		
105	Chlorinerua (sublime)	HgCl ₂	0.0001
106	Trinitro chlorinebenzene		0.001
107	Trichlorineetylen		0.001
108	Trichlorineetylen	C ₂ H ₃ Cl ₃	0.050
109	Trinitrobenzene and its compounds	C ₆ H ₃ (NO ₂) ₃	0.001
110	Toluen dihydrogenxyanat		0.0005
111	Nitro Toluen	CH ₃ -C ₆ H ₄ -NO ₂	0.003
112	Tetraetyl	C ₁₀ H ₂₀ N ₂ S ₄	

No.	Name of chemicals
1	Phosphorus oxochloride, (10025-87-3)
2	Phosphorus trichloride, (7719-12-2)
3	Phosphorus pentachloride, (10026-13-8)
4	Trimethyl phosphite, (121-45-9)
5	Triethyl phosphite, (122-52-1)
6	Dimethyl phosphite, (868-85-9)
7	Diethyl phosphite, (762-04-9)
8	Sulfur monochloride, (10025-67-9)
9	Sulfur dichloride, (10545-99-7-0)
10	Thionyl chloride, (7719-09-7)
11	Ethyldiethanolamine, (139-87-7)
12	Methyldiethanolamine, (105-59-9)
13	Triethanolamine, (102-71-6)
14	Asen and asen compounds
15	Cyanide compounds
16	PCB (Polychlorinated biphenyls) and PCB-containing compounds
17	Mercury and mercury-containing compounds

Table 5: Products subject to import licensing (as of 1 May 1997)

No.	Name of items	Licensing competence	Licensing purpose	Related legal documents	Note
A. Import Prohibited Goods					
					Some of the banned goods shall still be imported if permitted by the Prime Minister (PM).
1	Weapons, ammunition, explosives, technical military equipment	Prime Minister (PM)	National security	Decision No. 28/TTg dated 13 January 1997 by PM	Only allowed to meet requirements of security and military
2	Toxic chemicals	PM	Environment protection, protection of human health and fauna, flora life	Decision No. 28/TTg dated 13 January 1997 by PM	Possibly permitted by PM in cases of serving agricultural production
3	Second-hand consumer goods	PM	Environment protection, protection of human health and fauna, flora life	Decision No. 28/TTg dated 13 January 1997 by PM	Possibly permitted by PM in cases of humanitarian aid.
4	Used spare parts of automobiles, 2-wheel and 3-wheel motorbikes	PM	Traffic safety	Decision No. 28/TTg dated 13 January 1997 by PM	Prohibition shall be absolutely applied to this group, excluding used motorbike tyres which may be considered for import by the PM.
B. Products Subject to Licence of the Ministry of Trade					
1	Explosives for purpose of agricultural production	MOT	National security	Decision No. 28/TTg dated 13 January 1997	
2	Petroleum and petroleum products	MOT	Management in terms of demand and supply	Decision No. 28/TTg dated 13 January 1997 Circular No. 01/TM-XNK dated 24 January 1997 and No. 02/TM-XNK dated 21 February 1997 by MOT	
3	Fertilizer	MOT	Management in terms of demand-supply	Decision No. 28/TTg dated 13 January 1997 Circular No. 01/TM-XNK dated 24 January 1997 and No. 02/TM-XNK dated 21 February 1997 by MOT	

No.	Name of items	Licensing competence	Licensing purpose	Related legal documents	Note
4	Some kinds of steel and steel billets	MOT	Management in terms of demand-supply	Decision No. 28/TTg dated 13 January 1997 Circular No. 01/TM-XNK dated 24 January 1997 and No. 02/TM-XNK dated 21 February 1997 by MOT	
5	Cement and clinker	MOT	Management in terms of demand-supply	Decision No. 28/TTg dated 13 January 1997 Circular No. 01/TM-XNK dated 24 January 1997 and No. 02/TM-XNK dated 21 February 1997 by MOT	
6	Sugar	MOT	Management in terms of demand-supply	Decision No. 28/TTg dated 13 January 1997 Circular No. 01/TM-XNK dated 24 January 1997 and No. 02/TM-XNK dated 21 February 1997 by MOT	
7	White and clear construction glass with thickness from over 3mm to under 12mm	MOT	Management in terms of quantity	Decision No. 28/TTg dated 13 January 1997 Circular No. 01/TM-XNK dated 24 January 1997 and No. 02/TM-XNK dated 21 February 1997 by MOT	
8	Paper, toilet paper, cardboard, smooth carton, carton duplex	MOT	Management in terms of quantity	Decision No. 28/TTg dated 13 January 1997 Circular No. 01/TM-XNK dated 24 January 1997 and No. 02/TM-XNK dated 21 February 1997 by MOT	
9	Road freight vehicles and components in form of SKD and CKD1	MOT	Creating a balance between the quantity of means of transport and infrastructures conditions	Decision No. 28/TTg dated 13 January 1997 Circular No. 01/TM-XNK dated 24 January 1997 and No. 02/TM-XNK dated 21 February 1997 by MOT	
10	Land transporting vehicles for passengers and components in form of SKD and CKD1	MOT	Creating a balance between the quantity of means of transport and infrastructures conditions	Decision No. 28/TTg dated 13 January 1997 Circular No. 01/TM-XNK dated 24 January 1997 and No. 02/TM-XNK dated 21 February 1997 by MOT	

No.	Name of items	Licensing competence	Licensing purpose	Related legal documents	Note
11	Two-wheel and three- wheel and spare parts in form of SKD and CKD	MOT	Creating a balance between the quantity of means of transport and infrastructures conditions	Decision No. 28/TTg dated 13 January 1997 Circular No. 01/TM-XNK dated 24 January 1997 and No. 02/TM-XNK dated 21 February 1997 by MOT	
12	Bicycles	MOT	Quantitative restriction	Decision No. 28/TTg dated 13 January 1997 Circular No. 01/TM-XNK dated 24 January 1997 and No. 02/TM-XNK dated 21 February 1997 by MOT	
13	Electric fans	MOT	Quantitative restriction	Decision No. 28/TTg dated 13 January 1997 Circular No. 01/TM-XNK dated 24 January 1997 and No. 02/TM-XNK dated 21 February 1997 by MOT	
14	Separated machines of over US\$100,000 and complete equipment of over US\$500,000 procured by State budget	MOT	Management in terms of demand and supply	Decision No. 28/TTg dated 13 January 1997 Circular No. 01/TM-XNK dated 24 January 1997 and No. 02/TM-XNK dated 21 February 1997 by MOT	
C. Products Subject to Licence of the Line Ministries					
1	Some chemicals	Ministry of Industry	Quantitative restriction	Decision No. 28/TTg and Circular No. 03 dated 26 March 1997 by Ministry of Industry	
2	Intermediate chemicals for production of toxic chemicals	Ministry of Industry	Protection of human health and fauna, flora life	Circular No. 03/TT-KHDT dated 26 March 1997 by Ministry of Industry	
3	Unprocessed wood and forestry products	Ministry of Agriculture and Rural development	Contribution to environmental protection in the world	Decree No. 89/CP dated 15 December 1995 by the Government and Decision No. 28/TTg dated 13 January 1997 by Prime Minister	Imported wood from Cambodia must be permitted by PM
4	Complete equipment for forestry production and wood processing industry	Ministry of Agriculture and Rural Development	Management of quality and standards of imported breeds	Decree No. 89/CP dated 15 December 1995 by the Government	Not applied to separate equipment

No.	Name of items	Licensing competence	Licensing purpose	Related legal documents	Note
5	Animals and plants to be used as breeds and seeds in agriculture and forestry	Ministry of Agriculture and Rural Development	Management in terms of quantity of imported breeds	Decree No. 89/CP dated 15 December 1995 by the Government. Decree No. 07/CP dated 5 February 1996 by the Government. Circular No. 02/NN-KNKL/TT dated 1 March 1997 by Ministry of Agriculture and Rural development	
6	Flora protective chemicals and materials for production thereof	Ministry of Agriculture and Rural Development	Protection of environment, human health and fauna flora life	Decision No. 28/TTg dated 13 January 1997 by PM	
7	Veterinary medicines and materials for production thereof	Ministry of Agriculture and Rural Development	Protection of human health and fauna, flora life.	Decision No. 28/TTg dated 13 January 1997 by PM	
8	Feeder and materials for production of feeder	Ministry of Agriculture and Rural Development	Protection of human health and fauna, flora life	Decree No. 89/CP dated 15 December 1995 by the Government and Decision No. 28/TTg dated 13 January 1997 by Prime Minister	
9	Pharmaceuticals, substances causing addiction, pre-substances.	Ministry of Health	Protection of human health	Decree No. 89/CP dated 15 December 1995 by the Government	
10	Some of health care machinery and equipment	Ministry of Health	Protection of human health	Decree No. 89/CP dated 15 December 1995 by the Government	
11	Aqua-products to be used as breeds	Ministry of Aquaculture	Protection of human health and fauna, flora life	Decree No. 89/CP dated 15 December 1995 by the Government	
12	Some kinds of rare aqua-products	Ministry of Aquaculture	Protection of human health and fauna, flora life	Decree No. 89/CP dated 15 December 1995 by the Government	
13	Medicines for aqua-culture cultivation	Ministry of Aquaculture	Protection of human health and fauna, flora life	Decree No. 89/CP dated 15 December 1995 by the Government	
14	Feeds for aqua-culture cultivation	Ministry of Aquaculture	Protection of human health and fauna, flora life	Decree No. 89/CP dated 15 December 1995 by the Government	
15	Radio transmitters, receivers, and other radio emitting equipment, telephone exchanges	General Department of Posts and Telecommunications	Protection of national security and social order	Decree No. 89/CP dated 15 December 1995 by the Government	

No.	Name of items	Licensing competence	Licensing purpose	Related legal documents	Note
16	Books and newspapers, pictures and photographs, other publications (except labels and catalogues)	Ministry of Culture and Information	Maintenance of social ethics and protection of copyrights	Decree No. 89/CP dated 15 December 1995 by the Government Inter-ministerial Circular No. 26/TTLB dated 19 April 1994 by Ministry of Culture and Information - Ministry of Trade	
17	Cinematographic works	Ministry of Culture and Information	Maintenance of social ethics and protection of copyrights	Decree No. 89/CP dated 15 December 1995 by the Government Inter-ministerial Circular No. 26/TTLB dated 19 April 1994 by Ministry of Culture and Information - Ministry of Trade	
18	Programmed video tapes	Ministry of Culture and Information	Maintenance of social ethics and protection of copyrights	Decree No. 89/CP dated 15 December 1995 by the Government Inter-ministerial Circular No. 26/TTLB dated 19 April 1994 by Ministry of Culture and Information - Ministry of Trade	
19	Special printing equipment	Ministry of Culture and Information	Protection of national security and social order	Decree No. 89/CP dated 15 December 1995 by the Government Inter-ministerial Circular No. 26/TTLB dated 19 April 1994 by Ministry of Culture and Information - Ministry of Trade	
20	Specialized banking equipment	State Bank of Vietnam	Protection of national security and social order	Decree No. 89/CP dated 15 December 1995 by the Government.	
21	Materials and technologies concerning the manufacture and repair of weapons and military technical equipment	Ministry of National Defence	Protection of national security	Decree No. 89/CP dated 15 December 1995 by the Government.	
22	Military equipment and supplies	Ministry of National Defence	Protection of national security and social order	Decree No. 89/CP dated 15 December 1995 by the Government.	
23	Waste materials	Ministry of Science, Technology and Environment	Environment protection	Inter-Ministerial Circular No. 2880/KCM-TM dated 19 February 1996	
24	Humanitarian aid	Ministry of Finance	Management of humanitarian aid	Decree No. 89/CP dated 15 December 1995 by the Government	

No.	Name of items	Licensing competence	Licensing purpose	Related legal documents	Note
25	Products relating to labour safety	State Inspectorate in charge of labour safety under the Ministry of Labour, Invalids and Social Affairs	Human protection	Decree No. 06/CP dated 20 January 1995 by the Government Inter-Ministerial Circular No. 26/TTLB dated 3 October 1995 by Ministry of Trade - Ministry of Labour, Invalids and Social Affairs	
26	Mother's milk simulation products	Ministry of Health	Children's health protection	Decision No. 307/TTg dated 10 June 1994 by PM Inter-Ministerial Circular No. 18/TTLB dated 3 November 1994 Circular No. 07/BYT-TT dated 18 April 1995 by Ministry of Health	

Table 5.1: Products subject to line management (import licence by line Ministry)

Code	Description	Office in charge
Chapter 1	Live animals	
	Live horses	
0101.1110	- Pure-bred breeding animals	Agr
	Live bovine animals	
0102.1010	- Pure-bred breeding animals	Agr
	Live swine	
0103.10	- Pure-bred breeding animals	Agr
	Live sheep	
0104.1010	- Pure-bred breeding animals	Agr
	Live goats	
0104.2010	- Pure-bred breeding animals	Agr
0105	Live poultry, that is to say, fowls of the species Gallus Domesticus, ducks, geese, turkeys and guinea fowls	
0105.10	- Weighing not more than 185g:	
0105.1010	-- Fowls of species Gallus Domesticus	
	--- Pure-bred breeding animals	Agr
0105.1090	Other:	
	-- Pure-bred breeding animals	Agr
0105.90	Weighing more than 185g:	
0105.9010	-- Fowls of species Gallus Domesticus	
	--- Pure-bred breeding animals	Agr
0105.9090	Other:	
	-- Pure-bred breeding animals	Agr
0106.00	Other live animals	
0106.0010	- Pure-bred breeding animals	Agr
Chapter 3	Fish and crustaceans, molluscs and other aquatic invertebrates	
0301	Live fish	
0301.90	- Other live fish:	
0301.9010	-- Pure-bred breeding animals	Aqu
0301.93	- Carp:	
0301.9310	-- Pure-bred breeding animals	Aqu
0301.99	- Other:	
0301.9910	-- Pure-bred breeding animals	Aqu
0306.00	Crustaceans, whether in shell or not, live, fresh, chilled, frozen, dried, salted or in brine; crustaceans, in shell, cooked by steaming or by boiling in water, whether or not chilled, frozen, dried, salted or in brine; flours, meals and pellets of crustaceans, fit for human consumption	
0306.0010	-- Pure-bred breeding animals	Aqu
0307.00	Molluscs, whether in shell or not, live, fresh, chilled, frozen, dried, salted or in brine; aquatic invertebrates other than crustaceans and molluscs, live, fresh, chilled, frozen, dried, salted or in brine; flours, meals and pellets of aquatic invertebrates other than crustaceans, fit for human consumption	
0307.0010	-- Pure-bred breeding animals	Aqu
Chapter 4	Dairy produce; birds' eggs; natural honey; edible products of animal origin, not elsewhere specified or included	
0407.00	Birds' eggs, in shell, fresh, preserved or cooked	
0407.0010	- For hatching	Agr
Chapter 5	Products of animal origin, not elsewhere specified included	
0501.00	Human hair, unworked, whether or not washed or scoured; waste of human hair	Agr

Code	Description	Office in charge
0502.00	Pigs', hogs' or boars' bristles and hair; badger hair and other brush making hair; waste of such bristles or hair	Agr
Chapter 6	Live trees and other plants; bulbs, roots and the like; cut flowers and ornamental foliage	
0601.00	Bulbs, tubers, tuberous roots, corms, crowns and rhizomes, dormant, in growth or in flower; chicory plants and roots other than roots of heading No. 12.12	Agr
0602.00	Other live plants (including their roots), cuttings and slips; mushroom spawn	Agr
Chapter 10	Cereals	
1005.0010	Maize (corn) for sowing	Agr
1006.1010	Rice in the husk (paddy or rough) for sowing	Agr
Chapter 12	Oil seeds and oleaginous fruits; miscellaneous grains, seeds and fruit; industrial or medicinal plants; straw and fodder	
1209.00	Seeds, fruit and spores, of a kind used for sowing	Agr
Chapter 14	Vegetable plaiting materials; vegetable products not elsewhere specified or included	
1401.00	Vegetable materials of a kind used primarily for plaiting (for example, bamboos, rattans, reeds, rushes, osier, raffia, cleaned, bleached or dyed cereal straw, and lime bark)	Agr
Chapter 23	Residues and waste from the food industries; prepared animal fodder	Importation of all the products in this Chapter are subject to line-management of Environment Department, Ministry of Science, Technology and Environment
Chapter 26	Ores, slag and ash	
2618.00	Slag and ash	Sci
2619.00	Slag, dross (other than granulated slag), scalings and other waste from the manufacture of iron or steel	Ind
2620.00	Ash and residues (other than from the manufacture of iron or steel), containing metals or metals compounds	Ind
2621.00	Other slag and ash	Ind
Chapter 29	Organic chemicals	
2936	Provitamins and vitamins, natural or reproduced by synthesis (including natural concentrates), derivatives thereof used primarily as vitamins, and intermixtures of the foregoing, whether or not in any solvent	MoH
2937	Hormones, natural or reproduced by synthesis; derivatives thereof, used primarily as hormones; other steroids use primarily as hormones	MoH
2938	Glycosides, natural or reproduced by synthesis, and their salts, ethers, esters and other derivatives	MoH
2939	Vegetable alkaloids, natural or reproduces by synthesis, and their salts, ethers, esters and other derivatives	MoH
2941	Antibiotics	
2941.10	- Penicillins and their derivatives with a penicillanic acid structure; salts thereof	MoH
2941.1010	Penicillins G (for injection)	MoH
2941.1020	Penicillins V all kind of finish products (Vegacilline) of any content (for drinking)	MoH
2941.1030	Penicillin sodiquet Procain (for injection)	MoH
2941.1040	Benzathin penicillin, benzathin benzil penicillin (for injection)	MoH

Code	Description	Office in charge
2941.1090	Other	MoH
2941.20	- Streptomycins and their derivatives; salts thereof	MoH
2941.2010	Streptomycins sulphate (for injection)	MoH
2941.2020	Derivatives of streptomycins (for injection)	MoH
2941.2090	Other	MoH
2941.30	- Tetracyclines and their derivatives; salts thereof:	
2941.3010	Tetracyclines of any content (for drinking)	MoH
2941.3020	Tetracycline of any content (for injection)	MoH
2941.3090	Other	MoH
2941.40	- Chloramphenicol and its derivatives; salts thereof	
2941.4010	Chloramphenicol of any content (for drinking)	MoH
2941.4020	Chloramphenicol of any content (for drinking)	MoH
2941.4090	Other	MoH
2941.50	- Erythromycin and its derivatives; salts thereof	
2941.5010	Erythromycin base, estolat, ethylsuccinat, lacto-biarat (for injection)	MoH
2941.5020	Erythromycin (base, estolat, ethylsuccinat, lacto-biarat of any content (for drinking).	MoH
2941.5090	Other	MoH
2941.90	Other	
	Amoxicilin (for injection)	MoH
	Amoxicilin (for drinking)	MoH
	Ampixilin trihydrat, natrium (for injection)	MoH
	Ampixilin trihydrat, natrium of any content (for drinking)	MoH
	Methinciline sodium (for injection)	MoH
	Cloxacilline sodium (for injection)	MoH
	Gentamycin sunfat (for injection)	MoH
	Cephapirine sodique, cefalotine (for injection and drinking)	MoH
	Lyncomycin base vỹ c,c d'ng HCL (for injection)	MoH
	Lyncomycin base vỹ c,c d'ng HC- (for injection)	MoH
	Sulfamethoxarol (SMZ) (for injection)	MoH
	Trymethoroprin (TM) (for injection)	MoH
	Sulfamethoxarol (SMZ) (for drinking)	MoH
	Trymethoroprin (TM) (for drinking)	MoH
	Other	MoH
Chapter 30	Pharmaceutical products	Importation of all the products of this Chapter are subject to line-management of Ministry of Health
Chapter 37	Photographic or cinematographic goods	
370100	Film for printing industry	Cul
Chapter 38	Miscellaneous chemical products	
3808	Insecticides, rodenticides, fungicides, herbicides, anti-sprouting products and plant-growth, regulators, disinfectant and similar products, put up in forms or packings for retail sale or as preparations or articles (for example, sulphur-treated bands, wicks and candles, and fly-papers)	
	-Insecticides:	
38081010	Aerosol	Agr
38081090	Other	Agr
380820	- Fungicides:	Agr
38082010	Liquid	Agr
38082090	Other	Agr

Code	Description	Office in charge
380830	- Herbicides, anti-sprouting products and plant-growth regulators	Agr
Chapter 39	Plastics and articles thereof	
391500	Waste, parings and scrap, of plastic	Sci
Chapter 40	Rubber and articles thereof	
400400	Waste, parings and scrap of rubber (other than hard rubber) and powders and granules obtained therefrom	Sci
401400	Hygienic or pharmaceutical articles (including teats), of vulcanised rubber other than hard rubber, with or without fittings of hard rubber	MoH
Chapter 41	Raw hides and skins (other than furskins) and leather	
411000	Parings and other waste of leather or of composition leather, not suitable for the manufacture of leather articles; leather dust, powder and flour	Agr
Chapter 44	Wood and articles of wood; wood charcoal	
440100	Fuel wood, in logs, in billets, in twigs, in faggots or in similar forms; wood in chips or particles; sawdust and wood waste and scrap, whether or not agglomerated in logs, briquettes, pellets or similar form	Agr
440300	Wood in the rough, whether or not stripped of bark or sapwood, or roughly squared	Agr
440400	Hoopwood; split poles; piles, pickets and stakes of wood, pointed but not sawn lengthwise; wooden sticks, roughly trimmed but not turned, bent or otherwise worked, suitable for the manufacture of walking-sticks, umbrellas, tool handles or the like; chipwood and the like	Agr
440500	Wood wool, wood flour	Agr
440600	Railway or tramway sleepers (cross-ties) of wood	Agr
440700	Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding 6 mm.	Agr
440800	Veneer sheets and sheets for plywood (whether or not spliced) and other wood sawn lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness not exceeding 6 mm	Agr
440900	Wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rebated, V-jointed, beaded, moulded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed	Agr
441000	Particle board and similar board of wood or other ligneous materials, whether or not agglomerated with resins or other organic binding substances	Agr
441100	Fibreboard of wood or other ligneous materials, whether or not bonded with resins or other organic substances	Agr
441200	Plywood, veneered panels and similar laminated wood	Agr
441300	Densified wood, in blocks, plates, strips or profile shapes	Agr
Chapter 47	Pulp of wood or of other fibrous cellulosic material; recover (waste and scrap) paper or paperboard	
470700	Recovered (waste and scrap) paper or paperboard	Sci
Chapter 49	Printed books, newspaper, picture and other products of the printing industry; manuscripts, typescripts and plans	
4901	Printed books, brochures, leaflets and similar printed matter, whether or not in single sheets	
490110	- In single sheets, whether or not folded	Cul
	- Other:	

Code	Description	Office in charge
490191	-- Dictionaries and encyclopedias, and serial instalments thereof	Cul
490199	- Other:	Cul
49019910	--- Classbooks, economy or technology sciential or social sciential books	Cul
49019990	Other	Cul
4902	Newspapers, journals and periodicals, whether or not illustrated or containing advertising material.	
490210	Appearing at least four times a week:	
49021010	Economy or technology sciential or social sciential newspapers and journals	Cul
49021090	Other	Cul
490290	Other	
49029010	Issuing for advertisement purposes	Cul
49029020	Economy or technology sciential or social sciential newspapers and journals	Cul
49029090	Other	Cul
490300	Children,s picture, drawing or colouring books	Cul
490400	Music, printed or in manuscript, whether or not bound or illustrated	Cul
491000	Calendars of any kind, printed, including calendar blocks	Cul
491100	Other printed matter, including printed pictures and photographs	Cul
Chapter 50	Silk	
5003	Silk waste (including cocoons unsuitable for reeling, yarn waste and garnetted stock)	
500310	- Not carded or combed	Ind, Sci
500390	- Other	Ind, Sci
Chapter 51	Wool, fine or coarse animal hair; horsehair yarn and woven fabric	
510300	Waste of wool or of fine or coarse animal hair, including yarn waste but excluding garnetted stock	Agr, Sci
Chapter 52	Cotton	
5202	Cotton waste (including yarn waste and garnetted stock)	
520210	- Yarn waste (including thread waste)	Sci, Agr
Chapter 70	Glass and glassware	
7001	Cullet and other waste and scrap of glass; glass in the mass	Sci
Chapter 71	Natural or cultured pearls, precious or semi-precious stones, precious metals, metal clad with precious metals, and articles thereof; imitation jewellery; coin	
710100	Pearls, natural or cultured, whether or not worked or graded but not strung, mounted or set; pearls, natural or cultured, temporarily strung for convenience of transport	Aqu
710200	Diamonds, whether or not worked, but not mounted or set	SBa
710300	Precious stones (other than diamonds) and semi-precious stone, whether or not worked or graded but not strung, mounted or set; ungraded precious stones (other than diamonds) and semi-precious stones, temporarily strung for convenience of transport.	SBa
710400	Synthetic and reconstructed precious or semi-precious stones, whether or not work or graded but not strung, mounted or set; ungraded synthetic or reconstructed precious or semi-precious stones, temporarily strung for convenience of transport	SBa
710500	Dust and powder of natural or synthetic precious or semi-precious stones	SBa

Code	Description	Office in charge
21II - PRECIOUS METALS AND METALS CLAD WITH PRECIOUS METALS		
710600	Silver (including silver plated with gold or platinum), unwrought or in semi-manufactured forms, or in powder form	SBa
710700	Base metals clad with silver, not further worked than semi-manufactured	SBa
710800	Gold (including gold plated with platinum) unwrought or in semi-manufactured forms, or in powder form	SBa
710900	Base metals or silver, clad with gold, not further worked than semi-manufactured	SBa
711000	Platinum, unwrought or in semi-manufactured forms, or in powder form	SBa
711100	Base metals, silver or gold, clad with platinum, not further worked than semi-manufactured	SBa
711200	Waste and scrap of precious metal or of metal clad with precious metal; other waste and scrap containing precious or precious metal compounds, of a kind used principally for the recovery of precious metal.	Sci, SBa
Chapter 84	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof	
8442	Machinery, apparatus and equipment (other than the machine-tools of heading Nos.84.56 to 84.65), for type-founding or type-noting, for preparing or making printing blocks, plates, cylinders or other printing components; printing type, blocks, plates, cylinders and other printing components, blocks, plates, cylinders and lithographic stones, prepared for printing purposes (for example, planed, grained or polished)	
844210	- Phototype-setting and composing machines	Cul
844220	- Machinery, apparatus and equipment for type setting or composing by other processes, with or without founding device:	Cul
844230	- Other machinery, apparatus and equipment	Cul
844250	- Printing type, blocks, plates, cylinders and other printing components; blocks, plates, cylinders and lithographic stones, prepared for printing purposes (for example, planed, grained or polished)	Cul
8443	Printing machinery, including ink-jet printing machines, other than those of heading No. 84.71; machines for uses auxiliary to printing	
844310	- Offset printing machinery	Cul
844320	- Printing machinery for printing wording (not design), exclude flexographic printing machinery	Cul
844330	- Flexographic printing machinery	Cul
844340	- Gravure printing machinery	Cul
844350	- Other printing machinery	Cul
844360	- Machinery for uses of printing technology	Cul
Chapter 85	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles	
8524	Records, tapes and other recorded media for sound or other similarly recorded phenomena, including matrices and masters for the production of records, but excluding products of Chapter 37	Cul
8525	Transmission apparatus for radio-telephony, radio-telegraphy, radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras; still image video cameras and other video camera recorders	

Code	Description	Office in charge
852510	- Transmission apparatus	Pos
852520	- Transmission apparatus incorporating reception apparatus	Pos
8526	Radar apparatus, radio navigational aid apparatus and radio remote control apparatus	
852610	- Radar apparatus	Pos
	- Other:	Pos
852691	- - Radio navigational aid apparatus	Pos
852692	- - Radio remote control apparatus	Pos
8527	Reception apparatus for radio-telephony, radio-telegraphy or radio broadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock	
	- Radio-broadcast receivers capable of operating without an external source of power, including apparatus capable of receiving also radio- telephony or radio-telegraphy:	
852711	- - Combined with sound recording or reproducing apparatus	Pos
852719	-- Other	Pos
	- Radio-broadcast receivers not capable of operating without an external source of power, of a kind used in motor vehicles, including apparatus capable of receiving also radio-telephony or radio-telegraphy	
852721	- - Combined with sound recording or reproducing apparatus	Pos
852729	-- Other	Pos
	- Other radio-broadcast receivers, including apparatus capable of receiving also radio- telephony or radio-telegraphy	
852790	Other	Pos
Chapter 88	Aircraft, spacecraft, and parts thereof	
880200	Other aircraft (for examples, helicopters, aeroplanes); spacecraft (including satellites) and suborbital and spacecraft launch vehicles	Avi
Chapter 89	Ships, boats and floating structures	
8901	Cruise ships, excursion boats, ferry-boats, cargo ships, barges and similar vessels for the transport of persons or goods	
890110	- Cruise ships, excursion boats, and similar vessels principally designed for the transport of persons; ferry-boats of kinds	Tra
890120	- Tankers	Tra
890130	- Refrigerated vessels, other than those of subheading No. 8901.20	Tra
890190	- Other vessels for the transport of goods and other vessels for the transport of both persons and goods	Tra
890200	Fishing vessels; factory ships and other vessels for preserving fishery products	Tra
890400	Tugs and pusher craft	Tra
890500	Light-vessels, fire-floats, dredgers, floating cranes, and other vessels the navigability of which is subsidiary to their main function; floating docks; floating or submersible drilling or production platforms.	Tra
890600	Other vessels, including warships and lifeboats other than rowing boats.	Tra
Chapter 90	Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; parts and accessories thereof	
900900	Photo-copying apparatus incorporating an optical system or of the contact type and thermo-copying apparatus	MoH

Code	Description	Office in charge
901800	Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments	MoH
902200	Apparatus based on the use of X-rays or of alpha, beta or gamma radiations, whether or not for medical, surgical, dental or veterinary uses, including radiography or radiotherapy apparatus, X-ray tubes and other X-ray generators, high tension generator, control panels and desks, screens, examination or treatment tables, chairs and the like	MoH
Chapter 96	Miscellaneous manufactured articles	
960100	Worked ivory, bone, tortoise-shell, horn, antlers, coral, mother-of-pearl and other animal carving material, and articles of these materials (including articles obtained by moulding)	Agr
Chapter 97	Works of art, collectors' pieces and antiques	
970200	Original engravings, prints and lithographs	Cul

Agr: Ministry of Agriculture and Rural Development
 Aqu: Ministry of Aquaculture
 Sci: Ministry of Science, Technology and Environment
 Ind: Ministry of Industry
 MoH: Ministry of Health
 Cul: Ministry of Culture and Information
 SBa: State Bank of Vietnam
 Pos: General Department of Posts and Telecommunication
 Avi: Administration of Civil Aviation
 Tra: Ministry of Transportation

Table 6: Imported products subject to minimum customs value (April 2004)

Item	4-digit HS Code	Product description
1	2201, 2202, 2203, 2204, 2205, 2206, 2208	Beverages including those under Charter 22 of the current Import Tariff Nomenclature
2	4012, 4013, 4016	Tyres, inner tubes and plastic front strips for automobiles, motorcycles and bicycles
3	6810, 6904, 6907, 6908, 6910	Ceramic tiles and sanitary wares
4	7003, 7004, 7005, 7007, 7009, 7012, 9617	White and tinted flat glass and mirrors; vacuum flasks and glass inners for vacuum flasks
5	8407, 8408	Combustion piston engines, electric motors and generators (excluding those used in automobiles, motorcycles and specialized vehicles e.g. crane-trucks, bulldozers, etc)
6	8414	Electric fans (excluding industrial fans under HS code 84145900)
7	8711, 8714, 7315, 7318, 7320, 7415, 8301, 8407, 8408, 8409, 8413, 8414, 8421, 8482, 8483, 8484, 8507, 8511, 8512, 8539, 8544, 9405	Motorcycles and spare parts
8	2401, 2403	Tobacco leaves and stems, cigarettes
9	7315, 7318, 7320, 7415, 8301, 8407, 8408, 8409, 8413, 8414, 8421, 8482, 8483, 8484, 8507, 8511, 8512, 8539, 8544, 9405, 8702, 8703, 8704, 8706, 8707, 8708	Automobiles and spare parts

Table 7: Rates of export duties levied by Viet Nam

No.	Commodity Group and Individual Items	Rate (per cent)
0300	Fish and crustaceans, molluscs and other aquatic invertebrates.	
03010	Fish, live, fresh or chilled of heading 030200; frozen fish of heading 030300; fillets fish of heading 030400.	0
0306	Crustaceans (shrimp and crab) whether in shell or not, live, fresh, chilled, frozen, dried, salted or in brine; crustaceans, in shell, cooked by steaming or by boiling in water, frozen, dried; salted or in brine; and molluscs whether in shell or not, and other aquatic invertebrates of heading 030700, live, fresh, frozen, dried, salted or in brine.	
	- Shrimps and prawns, live, fresh, chilled, frozen, dried of all kinds	0
	- Crabs, live, fresh, chilled, frozen of all kinds	0
	- Cuttlefish, octopus and squid, live, frozen, chilled, dried of all kinds	0
	- Others of heading 0300	0
080100	Coconuts, cashew nuts, fresh or dried, whether or not shelled	0
	Except:	
08013010	- Cashew nuts, unprocessed	4
08013090	- Cashew nuts, processed	0
090100	- Coffee, whether or not roasted and decaffeinated, coffee substitutes containing coffee in any proportion	0
	Except:	
	- Coffee, not roasted	0
090200	- Tea of all kinds	0
090400	- Pepper, dried chilly fruits, crushed or ground	0
100500	Maize of all kinds	1
1006	Rice of all kinds	
100610	- Rice with broken more than 25 per cent	0
100690	- Other	1
121100	Plants and parts of plants (including seeds, fruits), of a kind used primarily in perfumery, in pharmacy, or for insecticide, fungicide or similar purposes, fresh or dried, whether or not cut, crushed or powdered.	0
12119010	- Aguilaria crassna and other aloe	20
140100	Vegetable materials of a kind used primarily for plaiting (e.g. bamboo, rattans, reeds, rushes, oster, raffia, cleaned, bleached or dyed cereal straw).	0
	Except:	
	- Rattans, unprocessed	10
	- Rattans, bleached, head – boiled, dyed or dried	3
160400	Prepared fish, caviar and caviar substitutes prepared from fish eggs	0
160500	Prepared products from crustaceans, molluscs and other aquatic invertebrates	0
2600	Ores, slag and ash.	0
	Except:	
260100	- Iron ores and concentrates	1
260200	- Manganese ores and concentrates	10
260300	- Copper ores and concentrates and ores of heading 260400, 260500	2
260600	- Aluminium ores and concentrates and ores of heading 260800	5
260700	- Lead ores and concentrates	5
260900	- Tin ores and concentrates	20
261000	- Chromium ores and concentrates, ores of heading 261100, 261200, 261300, 261400, 261500, 261600, 261700	1
261100	Tungsten ores, enriched tungsten ores and other ores of heading 261200, 261300, 261400, 261500, 261600, 261700	2
270110	Coal	0
270120	Briquettes, ovoids and similar solid fuels manufactured from coal	0
270900	Petroleum oils and oils obtained from bituminous minerals, crude	0

No.	Commodity Group and Individual Items	Rate (per cent)
	Except:	
27090010	- Crude oil	4
400100	Natural rubber, balata, gutta percha, guayule, chide and similar natural gums, in primary forms (including latex) or in plates, sheets or strips.	0
	Except:	
400110	- Natural rubber latex	0
400120	- Natural rubber in other forms	0
410000	Raw hides and skins (other than furs skins) and leather :	
	- Raw hides and skin of bovine or equine animals (fresh, or salted, limed, pickled)	10
	Other	0
4400	Wood and articles of wood	
	<u>Of natural wood</u>	
	- Round wood	20
	- Sawn wood	20
	- Parquet panels, shingle and shakes	20
	- Bar for electric pole, railway sleepers of various kinds	20
	- Poles of wood (electric poles, master pole for house etc.)	20
	- Door frames, window frames, frames and thresholds	15
	- Stairs or details of stairs	15
	- Coffins	15
	- Vehicle frames, chassis frames and thereof,	15
	- Pallets, shuttering	15
	- Pallet and load selves for stock	15
	- Packing cases, boxes, crates, drums, and high class packing (containing liquids) and thereof	10
	- Packing cases, boxes, crates, drums, and ordinary packing	10
	- Fools and roots of various kinds	10
	- Completed doors, windows and thereof	10
	- Refined wooden panels for domestic or decoration use (planks for ceiling decoration, wall covering boards, finished parquet panels - chipped, planed, grooved, rebated	10
	- Finished blackboard for teachers and thereof	10
	- Wooden frames of paintings, photographs mirrors, finished book shelves and thereof	5
	- Wooden painting, wooden statuettes	5
	- Finished wooden table ware, chairs, wardrobe (including wall wardrobe), beds and thereof	0
	-- bed of wood (wood parquetry and inlaid or with the addition of other materials such as come, resin, leather)	0
	-- Other	5
	- Particle boards made of shavings (whether of not concentrated or containing added other materials)	5
	- Wood wool (whether of not concentrated or containing other materials)	5
	- Plywood, wood wool, wood of particle board	7
	- Shaving of wood	10
	- Coal derived from wood (charcoal)	5
	- Other wooden items not elsewhere specified, without other materials	5
	- Other wooden items not elsewhere specified, but combine other materials	0
	<u>Of wood from planted forestry</u>	
	- Round woods	20
	- Sawn woods, parquet panels, bar for electronic poles, railways sleepers, poles of wood	15

No.	Commodity Group and Individual Items	Rate (per cent)
	- Shaving of wood	10
	- Above-mentioned wooden products with export tariff 15 per cent or 10 per cent of wood from natural	5
	Above mentioned wooden products with export tariff 7 per cent, 5 per cent or 0 per cent of wood from natural	0
710300	Synthetic or reconstructed precious or semi-precious stones (other than diamonds), whether or not worked or graded but not strung mounted or set; ungraded synthetic or reconstructed precious or semi-precious stones (other than diamonds), temporarily strung for convenience of transport.	
	- Precious tones and semi-precious stones whether not worked	5
	- Precious tones and semi-precious stones whether worked	1
710500	Dust and powder of precious stones of heading 710300	3
720000	Iron and steel	0
	Except:	
720400	- Ferrous waste and scrap of iron	35
720700	- Semi-finished products of iron or non-alloy steel and iron and steel of heading 720600	2
740000	Copper and copper articles	0
	Except:	
740400	- Copper waste and scrap	45
740700	- Copper bars, rods and profiles and copper of heading 740500, 740600, 740700, 740800, 740900, 741000	15
750000	Nickel and nickel articles	0
	Except:	
750300	- Nickel waste and scrap	45
750500	- Nickel bars, rods and profiles, nickel of heading 750400, 750600	5
760000	Aluminium and aluminium articles	0
	Except:	
760200	- Aluminium waste and scrap	45
760400	- Aluminium bars, rods and profiles and aluminium of heading 760300, 760500, 760600, 760700	5
780000	Lead and lead articles	0
	Except:	
780200	- Lead waste and scrap	45
780300	- Lead bars, rods and profiles, lead of heading 780400	10
790000	Zinc and articles thereof	0
	Except:	
790200	- Zinc waste and scrap	45
790400	- Zinc bars, rods and profiles, zinc of heading 790300, 790500	5
8000	Tin and tin articles	0
	Except:	
800200	- Tin waste and scrap	45
800400	- Tin bars, rods and profiles and tin of heading 790300, 790500	5
8100	- Other base metals, cermets; articles thereof	0
	Except:	
	- Base metal waste and scrap	45
	- Metal semi-finished products	10
	Other goods not mentioned above (excluding goods mentioned in import – export minimum tax tariff of Council of Ministers).	0

Table 8: Goods subject to export restriction
(except as indicated in the investment licences of FDI enterprises)

Export prohibition		
<ul style="list-style-type: none"> - Weapon, ammunition, explosives, technical military equipment - Antique - Narcotics - Toxic chemicals - Log, sawn timber, husked wood, fire wood, mining coal from wood or fire wood, other wooden products from group IA and high quality-manufactured pallet from group IIA (refer to the notice), rattan materials - Various kinds of wild animal and precious natural animals and plans 		
Products subject to export quota		
<ul style="list-style-type: none"> - Rice - Textile and garment exported to European Union, Canada, Norway and Turkey markets 		
Export subject to specific control		
<ul style="list-style-type: none"> - Coffee bean - Wild animals for export - Wild animals for breeding - Precious gems, metal and natural pearl - Wooden products (except handicraft; those produced from cultivated forest's wood, from imported wood and from artificial pallet implemented under the provision of the Prime Minister in Decision No. 136/1998/Q§-TTg ngày 31 July 1998) - Minerals 		
Notice		
Group IA	Group IIA	
Calocedrus macrolepis Taxus chinensis Cephalotaxus fortunei Podocarpus neriifolius Pinus kwangtugenis Pinus dalatensis Glyptostrobus pensillis Keteleeria calcarea Amentotaxus argotenia Abies nukiangensis Aquilaria crassana Copressus torulosa Ducampopinus krempfii	Dalbergia oliverii Gamble Dalbergia bariaensis Dalbergia oliverrii Gamble Dalbergia Dongnaiensis Afzelia xylocarpa Sindora cochinchinensis Sindora tonkinensis – A.Chev Pterocarpus pedatus Pierre Pterocarpus cambodianus Pierre Pterocarpus indicus Willd Chukrasia tabularis A.juss Chukrasia sp Chukrasia sp Dalbergia cochinchinensis Pierre Dalbergia annamensis Dalbergia cambodiana Pierre Fokienia hodginsii A.Henry et Thomas Diospyros mun H.lec Diospyros SP Markhamia pierrei Madhuca pasquieri Burretiodendron hsienmu Erythrophloeum fordii Padocarpus fleuryi Rauwolfia verticillata	Morinda officinalis Lilium brownii Panax Viet Nammensis Amomum longfiligulare Amomum tsaoko

Items classified as narcotics¹

No	International name	Scientific name
1.	Acetyl dihydrocodein	(5 , 6)- 4,5 - epoxy-3-methoxy-17 methyl-morphinan-6-olacetat
2.	Alfentanil	(N-[1-2(4-ethyl-4,5-dihydro-5-oxo-1 H-tetrazol-1-yl) ethyl]-4-(methoxymethyl)-4-piperidiny]-N-Phenylpropanamide monohydrochloride)
3.	Alphaprodin	(Alpha- 1,3-dimethyl-4-phenyl-4 propionoxypiperidine
4.	Anileridin	(1- para-aminophenethyl-4- phnylpiperidine-4-carboxylic acid ethyl ester)
5.	Bezitramid	(1-(3-cyano- 3,3-diphenylpropyl)- 4 (2- oxo- 3- propoonyl-1-benzimidazoliny)- piperidine)
6.	Butorphanol	(-)-17- (cyclobutylmethyl) morphinan- 3,14 diolhydrogen
7.	Ciramadol	(-)-2-(-Dimethylamino-3-hydroxybenzyl) Cyclohexanol
8.	Cocain	(Methyl ester cña benzoylecgonine)*
9.	Codein	(3- methylmorphine)
10.	Dextromoramid	((+)-4 [2-methyl-4-oxo-3,3-diphnyl-4 (1-pyrrolidiny)- butyl] – morpholine)
11.	Dextropropoxyphen	(-(+)-4-dimethylamino-1,2-diphenyl-2-butanol propionate)
12.	Dezocin	(-)- 13 - Amino- 5,6,7,8,9,10,11 , 12 octahydro- 5- methyl- 5, 11- methanobenzo – cyclodecen-3-ol
13.	Difenoxin	(1- (3 cyano-3,3-Diphenylpropyl)-4- Phenylisonip ecotic acid
14.	Dihydrocodein	7,8- Dihydro-3-O-methylmorphine-hydrogen
15.	Dipipanon	(+)- 4,4- Diphenyl-6-Piperidinoheptan-3.
16.	Drotebanol	(3,4- Dimethoxy- 17 –Methyl morphinan-6, 14 diol)
17.	Ethyl morphin	(3-Ethylmorphine)
18.	Fentanil	(1-Phenethyl-4-N-Propionylanilinopiperidine)
19.	Hydromorphon	(Dihydromorphinone)
20.	Ketobemidon	(4-meta-hydroxyphenyl-1-methyl-4-propionylpiperidine)
21.	Levomethadon	(3-Heptanone, 6- (dimethylamino)-4,4-Diphenyl, (R)
22.	Levorphanol	((-)-3-hydroxy-N-methylmorphinan)
23.	Meptazinol	(3-(3-Ethyl-1- methylperhydroazepin-3-yl) phenol
24.	Methadon	(6- dimethylamino-4,4-diphenyl-3-heptanone)
25.	Morphin	Morphinan-3,6 diol, 7,8-didehydro-4,5-epoxy-17 –methyl – (5,6)
26.	Myrophin	Myristyl Benzyl morphine
27.	Nalbuphin	17-Cyclobutylmethyl-7,8-dihydro-14-hydroxy-17-normorphine
28.	Nicocodin	Morphinan- 6- ol, 7,8- Dihydro- 4,5-epoxy- 3 methoxy-17-methyl-3-pyridin mecarboxxylate (ester), (5, 6)
29.	Nicodicodin	6- Nicotimylcodein
30.	Nicomorphin	(3,6- Dinicotylmorphine)
31.	Norcodein	N- Dimethylcodein
32.	Opium	Opium
33.	Oxycodon	(14- hydroxydihydrocodeinone)
34.	Oxymorphon	(14- hydroxydihydromorphinone)
35.	Pethidin	(1-methyl-4-phenylpiperodine-4-carboxylic acid ethyl ester)
36.	Phenazocin	(2'- Hydroxy-5,9-Dimethyl-2-Phenethyl-6,7- Benzomorphan)
37.	Pholcodin	(Morpholinylethylmorphine)
38.	Piritramid	(1-(3-cyano-3,3-diphenylpropyl-4-(1-piperidino)-piperidine-4-carboxylic acid amid)

¹ Attached to Decision No. 2033/1999/Q§_BYT dated 9 July 1999 of the Minister of Health

No	International name	Scientific name
39.	Propiram	(N- (1- Methyl- 2 piperidinoethyl- N- 2- pyridyl Propionamide)
40.	Sufentanil	(N- [4-(methoxymethyl)- 1- [2- (2-thienyl)- ethyl]-4 – piperidyl]- propionanilide)
41.	Thebacon	(Acetyl dihydro codeinone)
42.	Tonazocin mesylat	(+)-1-[(2 R- 6S –1, 2,3,4,5,6 – hexahydro – 8 –hydroxy- 3,6,11- Trimethyl – 2,6- methano-3-benzazocine-11-yl]
43.	Tramadol	(±)- Trans- 2- Dimethylaminomethyl- 1-(3- methoxyphenyl) cyclohexanol

Narcotics in the form of mixtures²

No	Name of the material	Content of base form per single dose product unit (mg)	Concentration of base form per multi dose product unit (mg)
1.	Acetyl dihydrocodein	100	2.5
2.	Cocain		0.1
3.	Codein	100	2.5
4.	Dextropropoxyphen	135	2.5
5.	Difenoxin	No more than 0.5mg Difenoxin and at least 0.025 mg Atropin Sulfat in per dosage unit of product.	
6.	Difenoxylat	No more than 2.5mg Difenoxylat and at least 0.025 mg Atropin Sulfat per dosage unit of product.	
7.	Dihydrocodein	100	2.5
8.	Ethyl morphin	100	2.5
9.	Opium	1 mg Morphin in base form	
10.	Nicocodin	100	2.5
11.	Nicodocodin	100	2.5
12.	Norcodein	100	2.5
13.	Pholcodin	100	2.5
14.	Propiram	100	2.5

² Attached to Decision No. 2033/1999/Q§_BYT dated 09 July 1999 of Minister of Health

Table 9: List of precious aquatic creatures requiring export approval by the Ministry of Aqua-culture

Names	Scientific Names
Red coral	Carallium Japonicus
Konojci red coral	Carallium Konojci
Leaf-shaped earth-worms	Phylum Spp.
Round earth-worms	Bibis Spp.
Grown batrachian	Ranidae
Lobsters	Panulirus Spp.
Sea Cods of various kinds	Ephinephelus Spp.
	Seriola Spp.
Awa	Chanos Chanos

Note: The list is attached to Government Decree No. 89/CP of 15 December 1995.

Table 10: Preferential tariff rates contingent on localization ratios for the manufacturing of motorcycles and mechanical-electric-electronic enterprises

Complete products of two-wheel motorbike:

Achieved localization ratio (%)	MFN import tariff rates contingent upon localization ratios (%)
1. Above 0 and up to 20	60
2. Above 20 and up to 30	50
3. Above 30 and up to 40	40
4. Above 40 and up to 50	30
5. Above 50 and up to 60	20
6. Above 60 and up to 70	10
7. Above 70 and up to 80	5
8. Above 80	3

Parts of two-wheel motorbike:

Achieved localization ratio (%)	MFN import tariff rates contingent upon localization ratios (%)			
	With respect to parts which are subject to MFN import tariff rate of 30%	With respect to parts which are subject to MFN import tariff rate of 40%	With respect to parts which are subject to MFN import tariff rate of 50%	
			Engines	Other parts
1. Up to 20	30	40	50	50
2. Above 20 to 35	20	30	30	40
3. Above 35 to 45	15	20	20	30
4. Above 45 to 55	10	10	10	20
5. Above 55 to 65	7	7	7	10
6. Above 65 to 80	5	5	5	7
7. Above 80	3	3	3	5

Electronic products:

Achieved localization ratio (%)	MFN import tariff rates contingent upon localization ratios (%)			
	With respect to parts which are subject to MFN import tariff rate of 30%	With respect to parts which are subject to MFN import tariff rate of 40%	With respect to parts which are subject to MFN import tariff rate of 50%	With respect to parts which are subject to MFN import tariff rate of 60%
1. Up to 20	20	30	40	40
2. Above 20 to 35	15	20	30	30
3. Above 35 to 50	10	10	15	15
4. Above 50 to 60	5	5	10	10
5. Above 60	3	3	3	3

Electronic parts:

Achieved localization ratio (%)	MFN import tariff rates contingent upon localization ratios (%)			
	With respect to parts which are subject to MFN import tariff rate of 30%	With respect to parts which are subject to MFN import tariff rate of 40%	With respect to parts which are subject to MFN import tariff rate of 50%	With respect to parts which are subject to MFN import tariff rate of 60%
1. Up to 15	20	20	30	40
2. Above 15 to 30	15	15	20	20
3. Above 30 to 40	10	10	10	10
4. Above 40 to 50	5	5	5	5
5. 5- Above 50	3	3	3	3

Mechanical-electric products:

Achieved localization ratio (%)	MFN import tariff rates contingent upon localization ratios (%)			
	With respect to parts which are subject to MFN import tariff rate of 30%	With respect to parts which are subject to MFN import tariff rate of 40%	With respect to parts which are subject to MFN import tariff rate of 50%	With respect to parts which are subject to MFN import tariff rate of 60%
1. Up to 20	20	30	40	50
2. Above 20 to 35	15	20	30	40
3. Above 35 to 50	10	10	20	20
4. Above 50 to 60	5	5	10	10
5. Above 60	3	3	3	3

Mechanical-electric parts:

Achieved localization ratio (%)	MFN import tariff rates contingent upon localization ratios (%)			
	With respect to parts which are subject to MFN import tariff rate of 30%	With respect to parts which are subject to MFN import tariff rate of 40%	With respect to parts which are subject to MFN import tariff rate of 50%	With respect to parts which are subject to MFN import tariff rate of 60%
1. Up to 15	20	20	30	40
2. Above 15 to 30	15	15	20	20
3. Above 30 to 40	10	10	10	10
4. Above 40 to 50	5	5	5	5
5. Above 50	3	3	3	3

Table 13(a): Fees for Cargo and Luggage in Transit Through Viet Nam

No.	Means of transport – Transiting Distance	Calculation unit	Fee rate (VND)
1	Automobiles		
	- Distance of less than 100 km	Unit	60,000
	- Distance of 100 km or more, a surcharge shall be collected for every extra 50 km	Unit	24,000
2	Train		
	- Distance of less than 100 km	Wagon	72,000
	- Distance of 100 km or more, a surcharge shall be collected for every extra 50 km	Wagon	36,000
3	Ship		
a.	Fee rates for ships of a weight of between 300 GRT and less than 1,000 GRT:		
	- Distance of less than 100 km	Ship	120,000
	- Distance of 100 km or more, a surcharge shall be collected for every extra 50 km	Ship	60,000
b.	Fee rates for ships of a weight of between 1,000 GRT and less than 3,000 GRT		
	- Distance of less than 200 km	Ship	300,000
	- Distance of 200 km and more, a surcharge shall be collected for every extra 50 km	Ship	70,000
c.	Fee rates for ships of a weight of between 3,000 GRT and 5,000 GRT		
	- Distance of less than 200 km	Ship	720,000
	- Distance of 200 km and more, a surcharge shall be collected for every extra 50 km	Ship	120,000
d.	Fee rates for ships of a weight of more than 5,000 GRT		
	- Distance of less than 200 km	Ship	1,200,000
	- Distance of 200 km and more, a surcharge shall be collected for every extra 50 km	Ship	240,000

Table 13(b): Fees for Escort and Sealing of Cargo

No.	Means of transport	Calculation unit	Fee rate (VND)
I	Customs escorting fee		
1	Automobiles:		
	- Escorting distance of less than 100 km	Unit	48,000
	- Escorting distance of between 100 km and 150 km	Unit	96,000
	- Escorting distance of more than 150 km, a surcharge shall be collected for every extra 50 km	Unit	30,000
2	Train		
	- Escorting distance of less than 100 km	Wagon	42,000
	- Escorting distance of between 100 km and 150 km	Wagon	96,000
	- Escorting distance of more than 150 km, a surcharge shall be collected for every extra 50 km	Wagon	20,000
3	Ship		
a.	Fee rates for ships of a weight of less than 300 GRT as those for river or sea barges (as indicated in item 4 below)		
b.	Fee rates for ships of a weight of between 300 GRT and 1,000 GRT:		
	- Escorting distance of less than 200 km	Ship	360,000
	- Escorting distance of between 200 km and 300 km	Ship	720,000
	- Escorting distance of more than 300 km, a surcharge shall be collected for every extra 50 km	Ship	100,000

No.	Means of transport	Calculation unit	Fee rate (VND)
c.	Fee rates for ships of a weight of more than 1,000 GRT:		
	- Escorting distance of less than 200 km	Ship	600,000
	- Escorting distance of between 200 km and 300 km	Ship	1,200,000
	- Escorting distance of more than 300 km, a surcharge shall be collected for every extra 50 km	Ship	150,000
4	River or sea barges		
	- Escorting distance of less than 200 km	Barge	240,000
	- Escorting distance of between 200 km and 300 km	Barge	300,000
	- Escorting distance of more than 300 km, a surcharge shall be collected for every extra 50 km	Barge	50,000
5	Crafts, boats		
	- Escorting distance of less than 100 km	Boat	60,000
	- Escorting distance of between 100 km and 150 km	Boat	120,000
	- Escorting distance of between 150 km and 200 km	Boat	180,000
	- Escorting distance of more than 200 km, a surcharge shall be collected for every extra 50 km	Boat	240,000
II	Customs sealing fee		
1	Paper seal fee:		
	- Seals which use less than 10 sealing papers	Per sealing procedure	5,000
	- Seals which use from 10 to less than 20 sealing papers	Per sealing procedure	10,000
	- Seals which use from 20 to less than 50 sealing papers	Per sealing procedure	20,000
	- Seals which use more than 50 sealing papers	Per sealing procedure	30,000
2	Lead seal fee	Per sealing case	5,000
3	Seal ring fee	Per sealing case	20,000