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Working Party on the Accession of Viet Nam

ACCESSION OF VIET NAM

Report of the Working Party on the Accession of Viet Nam

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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.23.

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 and 15 December 2004 under the Chairmanship of H.E. Mr. Seung Ho (Republic of Korea); and on 15 September 2005; 27 March, 19 July, 9 October and 26 October 2006 under the Chairmanship of H.E. Mr. Eirik Glenne (Norway).

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, Corrigendum 1 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, 3, 4 and 5; WT/ACC/VNM/12; WT/ACC/VNM/13 and Addenda 1 and 2; WT/ACC/VNM/14, Addenda 1 and 2 and Revision 1; WT/ACC/VNM/15 and Addenda 1, 2 and 3; 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/30; WT/ACC/VNM/31 and Revisions 1, 2, 3, 4 and 5; WT/ACC/VNM/32; WT/ACC/VNM/33; WT/ACC/VNM/34; WT/ACC/VNM/35; WT/ACC/VNM/36 and Addendum 1; WT/ACC/VNM/37; WT/ACC/VNM/38; WT/ACC/VNM/39; WT/ACC/VNM/40; WT/ACC/VNM/41; WT/ACC/VNM/42 and Revision 1; WT/ACC/VNM/44; WT/ACC/VNM/46; and WT/ACC/VNM/47 and Addendum 1), 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 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 526.

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 (VND), 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 VND 142.9 trillion in 2004, or 34.0 per cent of the total outstanding loans of credit institutions and 42.8 per cent of the total outstanding loans of Viet Nam's four main State-owned commercial banks − Viet Nam's fifth State-owned commercial bank was very small and usually excluded from the statistics. Non-performing loans owed by State-owned enterprises to State-owned commercial banks had amounted to VND 4.646 billion in December 2004, which represented 3.67 per cent of the banks' total loans. Financial institutions, including State-owned commercial banks, established their own lending procedures based on objective criteria such as the client's solvability, trading and production plans, feasibility assessment, and investment project efficiency assessment, in accordance with Decision No. 1627 of 31 December 2001 on Lending Regulations of Credit Organizations to Clients. Financial

institutions considered and decided themselves whether to provide loans to State-owned enterprises, on commercial terms. They were self-responsible for their credit activities. Support through the Development Assistance Fund had amounted to VND 917.1 billion in 2004, including VND 504.3 billion through medium- and long-term investment loans, VND 3 billion through short-term investment loans, and VND 109.9 billion in the form of post-investment interest support. He provided statistics about support provided under the Development Assistance Fund, including information about non-performing loans, in Annex 1 to document WT/ACC/VNM/39. He added that the question of non-performing public sector debt was addressed through equitization and restructuring of State-owned enterprises (see the "Privatization and equitization" section below).

11. He noted that a number of measures had been taken since 2001 to reorganize State-owned commercial banks with a view to enhancing their efficiency. Assets quality, disciplines, and risk management had been improved; policy lending had been separated from commercial credit activities and entrusted to social policy banks; State-owned commercial banks had been required to establish their own credit handbook, which had been applicable since late 2004-early 2005; and the credit risk management system had been brought into line with international standards. In addition, credit organizations and State-owned commercial banks were required, under the Law of Credit Organization, to put in place an internal audit system and a Supervisory Board responsible for supervising the organization's financial and accounting activities, ensuring the safety of credit operations, and conducting periodic internal audits. To enhance the stability of the banking sector and progressively adopt international standards in banking operations, the State Bank of Viet Nam (SBV) had also promulgated Decision No. 493/2005/QD-NHNN of 22 April 2005 on Debt Classification and Provisioning for Credit Risk Resolution in Banking Operations of Credit Institutions. Under this Decision, debts were classified into five categories. The first category, "qualified debt", had a provisioning ratio of zero per cent; the second category, "debt requiring attention", a provisioning ratio of 5 per cent; the third category, "below-standard debt", a provisioning ratio of 20 per cent; the fourth category, "doubted debt", a provisioning ratio of 50 per cent; and the fifth category, "possibly lost debt", a provisioning ratio of 100 per cent. Categories 3, 4 and 5 were considered bad debts. Credit institutions were allowed to use provisioning sources to write off debts or enter them under off-balance sheet items in case of bankruptcy or dissolution of the organization or enterprise being their client, death of their client or when the latter went missing, and in the event of debt belonging to the fifth category. In addition, credit institutions were required to monitor closely debt collection and to restructure their bad debts.

12. To further improve the operational efficiency of State-owned commercial banks, the State Bank intended to equitize most State-owned commercial banks by 2010. According to the Government's plan, two State-owned commercial banks were to be equitized in 2006 (see paragraph 83). The State Bank would remain responsible for State management, inspection and supervision over State-owned commercial banks and credit organizations.

13. The representative of Viet Nam said that the budget deficit was considered the main cause of inflation in the 1980s. The Government targeted a budget deficit ratio (according to the definition of the IMF) 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. In response to a question concerning the impact of directed lending and other subsidy programmes on the budget deficit, he noted that Viet Nam's subsidy programmes were insignificant and had a minimal effect on the budget deficit.

14. 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.

15. The 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 provided for a general tax rate of 28 per cent and preferential rates of 10, 15 and 20 per cent, and for a uniform set of criteria for entitlement to tax incentives for 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 tax on profit repatriation 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. 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 criteria used for determining the applicable tax rates were stipulated in the Ministry of Finance Circular No. 153/1998/TT-BTC of 26 November 1998 guiding the implementation of Government Decree No. 68/1998/CP of 3 September 1998. Pursuant to Point 3, section II of the Circular, tax rates were adjusted periodically according to the type of natural resource, its scarcity and economic value, whether recyclable or not, its use, and exploitation conditions. The tax was applied to all types of projects, except when the Vietnamese partner in a joint venture had contributed to the registered capital in the form of natural resources.

16. Legislation on personal income tax - the Ordinance on Income Tax of High Income Earners of 27 December 1990, last amended on 24 March 2004 (Ordinance No. 14/2004) – distinguished between Vietnamese residents, foreign residents in Viet Nam, and Vietnamese citizens working abroad. Successive amendments had aimed at gradually reducing the difference between the tax rates applied to Vietnamese residents, which originally ranged from zero to 60 per cent with a threshold of VND 1.2 million, and foreign residents and Vietnamese citizens working abroad, which had originally been taxed at rates from zero to 50 per cent with a threshold of VND 5 million. Under the newly amended Ordinance, Vietnamese and foreign residents were subject to the same progressive tax rates, ranging from zero per cent to 40 per cent, but to a different taxable income threshold. However, the monthly taxable income threshold for Vietnamese residents had been raised to VND 5 million in order to reduce the gap to the threshold applicable to foreign residents. The threshold for foreigners had

remained unchanged since 30 June 1999 and amounted to VND 8 million. He confirmed that new tax rulings were not applied retroactively.

17. 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 under the present system, foreigners were treated more favourably than Vietnamese nationals, which in his opinion created an enabling environment for investment. Nevertheless, the tax system was under review. A Law on Personal Income Tax, which would replace the Ordinance on Income Tax of High Income Earners, was expected to be submitted to the National Assembly in 2007. The Law would introduce a single tax system, broaden the scope of application of the personal income tax, and provide for a clearer definition of residents and non-residents in conformity with international rules. The objective was to offer tax paying workers appropriate incentives compatible with international norms and practices. The Law was at an initial stage of study. 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.

Foreign exchange and payments

18. 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.

19. 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. 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 were 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 were also 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.

20. Some Members noted that Viet Nam had imposed obligations to surrender foreign exchange in 1998 and appeared to maintain measures at odds with Articles XI and XVI (footnote 8) of the GATS. Viet Nam was asked to reconsider these measures. A Member also noted that Viet Nam applied a fee for inspecting and counting currencies remitted cross-border which varied according to the value of the transfer. The fee did not meet the requirements of Article VIII of the GATT 1994, and should be eliminated or changed into a flat fee for the processing of each application to import foreign exchange to meet the criteria of this Article.

21. 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, and had been set at zero per cent pursuant to Prime Minister's Decision No. 46/2003/QD-TTg of 2 April 2003. The Ordinance on Foreign Exchange Control, which had been passed by the Standing Committee of the National Assembly in December 2005, had removed the obligation for legal residents to sell their current revenues in foreign currencies to commercial banks. Foreign exchange controls would only be applied in exceptional cases, as determined by the Government of Viet Nam, to maintain the national financial and monetary security in accordance with the IMF Articles of Agreement and IMF Document No. 144 (52/51) of 14 August 1952.

22. Concerning the fee for inspecting and counting currencies remitted cross-border, he noted that this fee was applicable to the importation or exportation of physical currencies, not to the purchase or sale of foreign currency. This fee aimed at monitoring physical movements of foreign exchange and at preventing counterfeit currencies. The fee was determined per tranche of US$100,000. The first tranche was subject to a VND 100,000 fee (US$6), and each extra tranche to a VND 80,000 fee (US$5), with a maximum of VND 1.5 million (US$100) for each transaction (Inter-Ministerial Circular No. 71/2000/TTLT/BTC-TCHQ of 19 July 2000). He subsequently added that this fee had been abolished in November 2005.

23. Concerning Article XI and footnote 8 to Article XVI of the GATS, the representative of Viet Nam confirmed that all current account restrictions had been removed and that Viet Nam did not maintain any measures contrary to Articles XI and XVI (footnote 8) under Viet Nam's commitments on banking services and other financial services. Viet Nam fully complied with the obligations of Article VIII of the IMF Charter on current account payments and international remittances. Importers could purchase foreign currency at authorized banks to conduct current transactions and other permitted transactions in accordance with Circular No. 08/2003/TT-NHNN of the State Bank of Viet Nam of 21 May 2003, and the requirement to present documentation proving that fiscal obligations had been fulfilled had been eliminated by Government Decree No. 131/2005/ND-CP of 18 October 2005 on the Amendments of and Supplements to Government Decree No. 63/1998/ND-CP of 17 August 1998 on Foreign Exchange Control. This Decree, which had been prepared with the assistance of IMF experts, removed all remaining foreign exchange restrictions on payments and transfers for current account transactions and provided for international current account transactions rules compliant with the IMF definition. Non-residents and residents were free to buy and transfer foreign currencies and there were no more restrictions on the repatriation of profits and other legal income by foreign investors. The IMF Office had notified its approval of the Decree to the State Bank of Viet Nam and officially announced Viet Nam's acceptance of Article VIII of the IMF Articles of Agreement on 8 November 2005.

24. In respect of capital transactions, Viet Nam had relaxed capital transfers by foreign investors and foreign borrowing by resident organisations. 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 had to be registered with the State Bank of Viet Nam. However, enterprises were free to sign foreign loan contracts pursuant to Decree No. 134/2005/ND-CP of 1 November 2005. The obligation to register medium and long-term contracts with the State Bank was a procedural matter maintained for statistical purposes and in order to monitor medium- and long-term foreign borrowing by enterprises and maintain, in coordination with the Ministry of Finance, national foreign debts within a safety limit. He noted that 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. Viet Nam's foreign exchange regulations were being monitored by the IMF once a year as part of the Fund's missions under Article IV of the IMF Articles of Agreement.

25. 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 in accordance with Circular No. 05/2001/TT-BKH of 30 August 2001; (ii) open a foreign account with a credit institution, whether domestic or foreign, authorized to conduct foreign exchange transactions and channel all remittances through this account; and (iii) register the opening of the account and investment capital transfers with a State Bank's branch in the province or city of its head office. Documents to submit to obtain an overseas investment licence included the application for investment abroad; a copy of the decision of establishment or registration of the enterprise; the written approval of investment abroad by the competent authority of the host country, if any, and the contract with the foreign partner; information on the investment projects (objectives, sources of investment); information about the mode of investment, capital transfer, and profit repatriation; the enterprise's financial report; and for State-owned enterprises, the written approval of investment abroad by the body having taken the decision to establish the enterprise. Overseas investment licenses were issued within 30 days. The procedures for opening a foreign account with a foreign exchange authorized bank and to register the opening of the account with a State Bank's branch were stipulated in the State Bank of Viet Nam's Circular No. 01/TT-NHNN of 19 January 2001. The requirement to register the opening of the account and capital transfers aimed at monitoring the implementation of Vietnamese enterprises' overseas investment projects. Documents to submit for registration included the application for registration; a notarized copy of the business registration certificate; a notarized copy of the overseas investment licence; the written approval of investment by the host country (with a Vietnamese translation stamped and signed by the general director or director); and a document stating the timing of investment capital contributions. Requests for registration were dealt with within five working days.

26. He noted that Vietnamese enterprises allowed to invest abroad under Decree No. 22/1999/ND-CP included enterprises established under the Law on State-Owned enterprises, cooperatives established under the Law on Cooperatives, and enterprises established under the Enterprise Law. Foreign-invested enterprises and foreign individuals were not considered Vietnamese enterprises. They could, however, transfer the profits earned from their investments in Viet Nam anywhere abroad without having to go through the procedures applicable to Vietnamese enterprises.

27. Pursuant to Circular No. 04/2000/TT-NHNN of 18 May 2001, foreign-invested enterprises and foreign parties to business cooperation contracts could open accounts overseas to facilitate medium and long-term overseas borrowing as stipulated in Point 2, Item I, Chapter V, Part II of Circular No. 01/1999/TT-NHNN of 16 April 1999 on the implementation of Decree No. 63/1998/ND-CP. Foreign-invested enterprises and foreign parties to business cooperation contracts could also be permitted to open overseas accounts for other activities under special circumstances, i.e., if they carried out very important projects according to the Government's

programme; needed to open overseas accounts to implement their commitments (for BOT, BTO and BT foreign-invested projects); were engaged in international trade, including aviation, navigation, post and telecommunications, insurance, and tourism, and wished to open foreign currency accounts overseas to conduct clearing transactions in accordance with international practice; or needed to open overseas accounts for the operation of branches and representative offices abroad. In addition, overseas accounts could be opened for investment projects under the Petroleum Law. Such accounts had to be registered with the State Bank of Viet Nam within 15 days from the date of opening the account. The Governor of the State Bank of Viet Nam considered other requests on a case-by-case basis depending on the need to open an overseas account.

28. 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.

29. The representative of Viet Nam replied that the foreign exchange self-balancing requirement had been eliminated pursuant to Article 67 of Decree No. 24/2000/ND-CP of 31 July 2000 on the implementation 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.

30. 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. In response to a Member who enquired on what terms the Government was willing to offer foreign exchange to preferred customers if commercial banks were unable to meet preferred customers' demand and why Viet Nam, which was abolishing foreign exchange surrender and balancing requirements, needed to guarantee foreign exchange balancing to selected projects, the representative of Viet Nam said that under Vietnamese legislation all domestic and foreign investors could access commercial banks to purchase foreign exchange to meet their business demand. The State's guarantee of foreign exchange balancing to selected projects was not intended to limit access to foreign exchange supplying sources nor create any discrimination. The guarantee to balance foreign exchange in case commercial banks were not able to meet the demand had been introduced upon request of investors for investment projects with an important demand in foreign exchange facing high risks in foreign exchange balancing (construction projects, BOT, BTO and BT investment projects and other infrastructure projects − electricity supply, bridge and road toll, water supply, etc). This measure aimed at encouraging private sector participation in infrastructure development as State investment in this area remained limited. This measure existed in a number of countries and had been recommended by the World Bank and UNCITRAL.

31. The representative of Viet Nam stated that Viet Nam would implement its obligations with respect to foreign exchange matters in accordance with the provisions of the WTO Agreement and related declarations and decisions of the WTO that concerned the IMF. The representative of Viet Nam further recalled Viet Nam's acceptance of Article VIII of the IMF's Articles of Agreement, which provided that "no member shall, without the approval of the Fund, impose restrictions on the making of payments and transfers for current international transactions". He stated that, in accordance with these obligations, and unless otherwise provided for in the IMF's Articles of Agreement, Viet Nam would not resort to any laws, regulations or other measures, including any

requirements with respect to contractual terms, that would restrict the availability to any individual or enterprise of foreign exchange for current international transactions within its customs territory to an amount related to the foreign exchange inflows attributable to that individual or enterprise. The Working Party took note of these commitments.

Investment regime

- Regulations on establishment of enterprises

32. The representative of Viet Nam said that in June 1999, the National Assembly had passed the Enterprise Law, superseding the Laws on Companies and Private Enterprise adopted in 1990. The Enterprise Law had entered into force on 1 January 2000 and had been considered an important milestone in Viet Nam's economic reform process. With a view to further improving the business environment in accordance with international rules, the National Assembly had adopted a new Enterprise Law in November 2005. The new Law had entered into force on 1 July 2006. The Law regulated the establishment, management and operation of enterprises. It provided for four types of enterprises − limited liability companies, shareholding companies, partnerships, and sole proprietorships. Under the Law, any domestic and foreign legal person or individual had the right to establish and manage enterprises in Viet Nam, with the exception of cadres and civil servants; officers, non-commissioned officers, professional soldiers, army's workers, and units of the People's Police; leaders and managers of 100 per cent State-owned enterprises; State agencies and units of Viet Nam's People's armed forces using State assets to set up business enterprises for their own profit; minors and persons without or with limited capacity for civil acts; prisoners or persons prohibited to do business following a court judgment; and other organizations and individuals as stipulated by the Law on Bankruptcy. In the event of discrepancies between an international treaty to which Viet Nam was a party and the Enterprise Law, the provisions of such international treaty would prevail.

33. Business sectors were divided into (i) prohibited sectors, i.e., sectors in which "conducting business" was banned – prohibited to both domestic and foreign investors, regardless of ownership, for reasons of national defence, security, public order, social moral, human health, tradition, environment, plant protection and other reasons justified under the WTO Agreement (see Table 1); (ii) conditional business sectors, i.e., sectors in which enterprises could conduct business if they satisfied specific requirements laid down in the legislation; (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.

34. The relevant ministries, e.g. the Ministry of Industry and, for cultural products, the Ministry of Culture and Information, were responsible for determining whether a business application fit the categories of prohibited business. When Members asked about the meaning of the prohibition on trading in "superstitious, depraved and reactionary cultural products", the representative of Viet Nam noted that domestic and foreign investors could participate in activities such as publishing, media, information technology etc., provided they did not conduct business in "superstitious, depraved and reactionary cultural products" as provided in applicable laws (see also paragraphs 211-215).

35. Conditional business sectors included sectors subject to requirements on environment, hygiene standards, food safety, fire prevention and fire fighting, social order, traffic safety and other requirements on business activities, for which no business licence was required, and sectors subject to business licensing in accordance with relevant legislation. An exhaustive list of prohibited business sectors was set out in Table 1 of this Working Party Report; conditional sectors were listed in Table 2. The representative of Viet Nam confirmed that these Tables, also annexed to Government Decree No. 59-2006-ND-CP of 12 June 2006, would be updated if new sectors were added or removed. The representative of Viet Nam confirmed that any additions to the lists of conditional and prohibited business sectors would be undertaken only in full conformity with Viet Nam's WTO obligations,

including those under GATS and Viet Nam's Schedule of Specific Commitments. He added that his Government would review business conditions on a regular basis to identify provisions of the Enterprise Law overlapping or conflicting with other related laws and regulations or hindering the operation of enterprises (Article 7.4 of the Enterprise Law). His Government would propose amendments or revocation of business conditions to the National Assembly for action. Any changes to existing conditions would be made in full compliance with the Law on the Promulgation of Legal Normative Documents. He further confirmed that all future additions and deletions to the list of prohibited or conditional business sectors would comply with WTO rules.

- Measures specific to foreign investment

36. With respect to foreign-invested enterprises, during the past 20 years, foreign direct investment (FDI) activities in Viet Nam had been regulated by 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. The representative of Viet Nam stated that this Law, along with the legal system and policies concerned, had created a favourable environment for foreign investors. As of December 2005, there were 6,341 foreign investment projects in operation in Viet Nam − with a total registered capital of US$53.6 billion. 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.

37. The representative of Viet Nam noted that the National Assembly had adopted a new Investment Law in November 2005 with a view to further enhancing the investment environment for investors of all economic sectors. This Law, which superseded the 1987 Investment Law, as amended, and the Law on Domestic Investment Promotion, had entered into force on 1 July 2006. The Law regulated investment activities, investors' rights and obligations, the allocation of incentives, State administration of investment activities in Viet Nam (encouraging, guiding and supporting investors in the implementation of their projects and formulating strategies and policies for the development of investment), and offshore investment from Viet Nam. The 2005 Law also included guarantees against nationalization or confiscation of investors' assets (nationalization or confiscation of assets was only possible in case of public interest and was subject to fair and adequate compensation in accordance with the law). He further stated that 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 49 countries and territories, agreements on the avoidance of double taxation with 45 countries and territories, the Framework Agreement on ASEAN Investment (AIA), the MIGA and the New York Convention, etc. He confirmed that if an international treaty to which Viet Nam was a party contained provisions which were different from the provisions in the 2005 Investment Law, the provisions of such international treaty would prevail.

38. The 2005 Investment Law prohibited investments detrimental to national defence and security, historical and cultural ethics, Vietnamese traditions and fine customs, and the environment. The Law also defined the sectors in which investment was conditional, including: (i) sectors having an impact on national defence and security, social order and safety; (ii) banking and finance; (iii) sectors having an impact on public health; (iv) culture, information, press and publication; (v) recreational services; (vi) real estate; (vii) survey, prospecting, exploration and mining of natural resources; (viii) education and training; and (ix) a number of other sectors in accordance with the law. Investment in certain sectors was not subject to the provisions of the Investment Law, but rather, was subject to the laws regulating investment in those particular sectors: the Law on Credit Institutions for the banking sector, the Law on Insurance Business for the insurance sector, the Law on Securities for securities trading, and the Law on Lawyers for the legal services sector.

39. According to the representative from Viet Nam, the 2005 Investment Law applied uniformly to domestic and foreign investors and guaranteed investors' autonomy in doing business. Foreign investors were free to select the sector(s) in which they wished to invest, the form of investment, capital raising methods, the geographical location and scale of investment, investment partners and the duration of investment in accordance with Viet Nam's laws and Viet Nam's commitments under the international treaties to which Viet Nam was a party. He added that the Law guaranteed investors' equal access to sources of capital, foreign exchange, land and natural resources, legal instruments and data on the national economy and investment opportunities, and ensured the investors' right to lodge claims, make denunciations or initiate legal proceedings. The Law provided for the principle of non-retroactivity in case of changes in policies and instituted a mechanism for dispute resolution and enforcement of court judgments in line with international practices to enhance investors' confidence. The Law also eliminated all discrimination in terms of prices and charges applied to investors. He noted that under the new Laws on Investment and Enterprises, as well as Government Decree No. 108/2006/ND-CP dated 22 September 2006 guiding the implementation of the 2005 Investment Law, investment/business registration procedures applied to foreign investors had been harmonized; investment certificates served as business registration certificates. Thus, foreign companies having an investment project did not need to make a separate business registration in accordance with the Enterprise Law. In response to a question from a Member, he noted that any change to an investment activity, including for projects valued less than VND 300 billion and not included in the list of conditional or prohibited sectors, had to be re-registered. This requirement aimed at ensuring the legitimate rights and benefits of investors.

40. Procedures for obtaining the requisite investment certificate were set out in Articles 45 to 49 of the 2005 Investment Law, and Articles 57-70 of Government Decree No. 108/2006/ND-CP dated 22 September 2006 guiding the implementation of this Law. The Law provided for two types of procedures for granting investment certificates, "investment registration" and "investment evaluation". Domestic investment projects valued less than VND 15 billion, and which were not included in the list of conditional investment sectors, did not have to be registered. Investment registration was required, however, for (1) domestic investment projects valued between VND 15 billion and VND 300 billion, and not included in the list of conditional investment sectors, and (2) foreign investment projects valued at less than VND 300 billion and not included in the list of conditional investment sectors. In the former case, no investment certificate was delivered; in the latter case, investment certificates were granted within 15 days.

41. Investment evaluation was required for both domestic and foreign investment projects valued at, at least, VND 300 billion, as well as domestic and foreign investment projects in conditional sectors. Evaluation focussed on (i) compliance with master plans for technical infrastructure, land use, construction, utilization of natural resources and minerals, (ii) compliance with land use requirements, (iii) the project implementation schedule, and (iv) environmental conditions. Evaluation was carried out within 30 days, a period which could be extended, in case of necessity, up to 45 days. Evaluation procedures and criteria for "important national investment projects" would be determined by the National Assembly on a case-by-case basis (Article 47). Pursuant to Resolution No. 15/1997/QH10 of 29 November 1997, "important national projects" included (a) projects with an invested capital of VND 10,000 billion or more (at 1997 prices); (b) projects having a major impact or a potentially major impact on the environment; (c) projects resulting in the displacement of 50,000 people or more in populous areas, or 20,000 people or more in mountainous areas and areas of ethnic minorities; (d) projects located in areas especially important for the national defence and security or having important historical and cultural relics or special natural resources; and (e) projects requiring special mechanisms or policies that needed to be considered and decided by the National Assembly.

42. Pursuant to the 2005 Enterprise Law and Government Decree No. 108/2006/ND-CP dated 22 September 2006 guiding the implementation of the Investment Law, 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. 108/2006/ND-CP dated 22 September 2006 guiding the implementation of the Investment Law. Procedures and formalities for opening branches and representative offices of foreign business entities were provided for in Government Decree No. 72/2006/ND-CP dated 25 July 2006 on Representative Offices and Branches of Foreign Business Entities. Foreign-invested enterprises established before the entry into force of the new Enterprise Law had to re-register within two years after the entry into force of the Law. In the absence of re-registration, such enterprises could only operate within the scope of business and time period stipulated in their investment licence, and would continue to enjoy investment incentives under their investment licence, except as otherwise provided for under the international treaties to which Viet Nam was a party. He added that the new Investment Law guaranteed foreign investors the right to remit invested capital, profits and other legitimate income abroad.

43. A Member noted that the 2005 Enterprise Law did not appear to require the re-registration of existing enterprises. The Member asked Viet Nam to explain what governing law would apply to an enterprise that chose not to re-register, as the previous Law on Foreign Investment had become redundant on 1 July 2006 and the 2005 Investment Law and the 2005 Enterprise Law did not provide guidance on such enterprises. The Member also asked Viet Nam whether, once the two-year time limit for re-registration had passed (as stipulated by the 2005 Enterprise Law), an enterprise could still choose to re-register if this subsequently became a desired option. The representative of Viet Nam replied that a foreign-invested enterprise set up prior to the date of entry into force of the 2005 Enterprise Law and the 2005 Investment Law that chose not to re-register was still allowed to conduct business operations within the scope of its business lines, the terms stated in its investment licence and its corporate charter. With respect to the issues that were not specifically stipulated in its investment licence and corporate charter, such enterprise would be subject to the two above-mentioned Laws.

44. Some Members encouraged Viet Nam to continue deregulating and simplifying 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. Some Members also asked Viet Nam to allow stock-holding companies as one form of investment, and urged Viet Nam to ensure that all company specific information obtained through the licensing procedures would remain confidential.

45. A Member asked Viet Nam to confirm whether under the 2005 Enterprise Law and its decrees, a foreign investor could register a stock-holding enterprise and under that same enterprise form, apply to establish a number of different investment projects, without the need to register new enterprises each time a new investment project is developed. The Member also requested Viet Nam to advise in which Decrees specific guidance on this issue would be provided. The representative of Viet Nam replied that in accordance with the 2005 Investment Law and its implementing regulations, foreign-invested enterprises that had been established in Viet Nam, including a stock-holding enterprise, would be permitted to carry out new investment projects without the need to register for a new enterprise, unless otherwise provided for by the laws.

46. Some Members noted that foreign investors had faced various serious difficulties in Viet Nam. Some of these difficulties were caused by complicated and burdensome procedures, and included governmental investigation and a public tender requirement for the construction of factories. 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. Only joint-ventures, business co-operation

contracts (BCC), and projects with more than 30 per cent of State-owned shares were subject to the Regulation on Tendering. Public tender was not required for projects set up by domestic or foreign investors on a private basis. In his view, Viet Nam's legislation on tendering did not include any discriminatory provisions. He added that inspections of construction sites guaranteed the quality of the works in accordance with Viet Nam's construction standards. In this respect, he noted that three Decrees had been issued to guide the implementation of the 2003 Construction Law: a Decree on construction quality management, a Decree on the management of construction investment projects, and a Decree on construction planning and management.

47. Some Members stated that 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. The representative of Viet Nam noted that land was subject to public ownership and State administration in Viet Nam. Thus, even Vietnamese nationals could not own or mortgage land. The Land Law of 26 November 2003 (as amended) nevertheless permitted foreign-invested enterprises 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 also lease land in connection with investment projects. Pursuant to Article 67.3 of the Land Law (as amended), the duration of the lease should normally not exceed 50 years. However, the lease could be extended upon termination of the initial duration. In the case of projects with a large amount of invested capital, a long capital return or conducted in socio-economic difficult areas, 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 to domestic and foreign investors, were not obstructing business activities, and Viet Nam had no plans to revise these regulations.

48. As to labour matters, some Members considered that Viet Nam applied a discriminatory labour system against foreign-invested companies because such companies were requested to hire employees through "employment promotion centres" and pay salaries of local workers in U.S. dollars. The representative of Viet Nam responded that the amended Labour Code, which had been in force since January 2003, allowed foreign-invested companies to hire local personnel directly without going through employment promotion centres. He added that all enterprises, whether domestic or foreign, State-owned or privately-owned, were required to comply with Viet Nam's minimum wage regulations. Wage payments to Vietnamese employees were effected in accordance with Decision No. 708/1999/QD-BLDTBXH of 15 June 1999.

49. A Member highlighted specific concerns in the mining sector, including overlapping regulatory responsibilities between central and provincial authorities, as well as Viet Nam's practice of granting investment licenses at the development stage, rather than at the exploration stage, which was the international norm. In response, the representative of Viet Nam noted that since the Government Decree No. 76/2000/ND-CP of 15 December 2000 (Article 52.4), investment licenses - available to foreign individuals and organizations, and joint ventures could be granted at the stage of exploration, as well as for development and processing activities. He added that a Law on Amendments and Supplements to Some Articles of the Mineral Law of 20 March 1996 had been adopted on 14 June 2005. In response to a request for information on the grounds for refusal of an investment licence at the exploration stage, he noted that the new Law did not include provisions concerning refusal to grant an investment licence at this stage. Under the new Investment Law, mining was a conditional investment sector and was, as such, subject to the same procedures for evaluation and issuance of investment certificates as other conditional investment sectors. Prior to issuing an investment licence, the competent investment licence body was required, under Article 46 of Decree No. 160/2005/ND-CP, to seek the written opinion of the mining licensing agency. This requirement aimed at ensuring close coordination between the competent investment licensing body

and the mining licensing agency and at accelerating the issuance of investment licenses. Criteria taken into consideration for the issuance of investment certificates included (i) compliance with the master plans for technical infrastructure, land use, construction, and utilization of minerals and other natural resources; (ii) compliance with land use requirements; (iii) the project implementation schedule; and (iv) environmental measures. These regulations applied uniformly to domestic and foreign investors. Decisions on approval or refusal of investment certificates could be appealed in accordance with Viet Nam's applicable laws (see the section on "Framework for making and enforcing policies").

50. A Member noted that Viet Nam's laws and regulations also encouraged increased Vietnamese participation in joint-venture companies through requirements for foreign investors to transfer equity in the enterprise, thereby limiting substantially a foreign investor's participation. The representative of Viet Nam responded that there no longer existed any requirements in the new Laws on Investment and Enterprises for existing/future joint-venture partners or wholly foreign-owned enterprises to sell compulsorily or otherwise transfer part of or their entire share of a venture to a domestic or third party. Regulations encouraging increased Vietnamese participation in joint-ventures 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.

51. Some Members raised the issue of participation in joint-ventures and the decision-making process, including whether personnel and financial decisions in joint-venture companies were required to be unanimous. These Members also noted the provisions of the Enterprise Law setting specific percentages of votes required to take certain decisions regarding the operation of an enterprise. The representative of Viet Nam noted that under the 2005 Laws on Investment and Enterprises, decisions by management boards of joint ventures did not require unanimity. Moreover, he recalled that Viet Nam had committed to ensure that the decision-making procedures of any enterprise, including the minimum percentage of votes required to make any decisions, could be prescribed in the enterprise's Charter, and that Viet Nam would give such provisions legal effect as part of Viet Nam's WTO commitments.

Enterprises that are State-owned or –controlled, or with special or exclusive privileges

52. The representative of Viet Nam said that Viet Nam was shifting from a system of central planning to a market-based economy. As of 31 December 2004, about 120,000 enterprises were operating in Viet Nam - of which 3,364 were State-owned, a number which had increased to approximately 200,000 enterprises (including 2,663 State-owned) by the end of 2005. Under Viet Nam's law, State-owned enterprises were enterprises, including equitized enterprises, in which the State owned more than 50 per cent of the shares. State-owned enterprises had accounted for 39.2 per cent of GDP in 2004 (38.4 per cent in 2005), the non-State sector (i.e., wholly Vietnamese privately-invested enterprises) for 45.6 per cent (45.7 per cent in 2005), and the foreign-invested sector for 15.2 per cent (15.9 per cent in 2005). Proprietorships and households also played an important role in small scale production in Viet Nam. He provided statistics on output, import and export values by type of enterprise in Table 3, and information on sectors in which wholly State-owned enterprises and enterprises with a majority of State-owned shares existed, as classified under Decision No. 155/2004/QD-TTg of 24 August 2004, in Table 4.

53. He noted that wholly Vietnamese privately-invested enterprises were now free to participate in the sectors listed in Decision No. 155/2004/QD-TTg, except for the production and supply of public goods and services related to national defence and security, but the State retained a controlling share in already existing State-owned enterprises because these sectors were vital economic and technological sectors with high risks, requiring large investments, or involving a long pay-back time, or to ensure that the needs of inhabitants of disadvantaged socio-economic areas were met. The State,

for example, would retain 100 per cent ownership in existing State-owned enterprises producing scientific films, documentaries and films for children, as Vietnamese private producers of these types of films faced difficulties recovering their costs and were not interested in, or unable to, produce these goods.

54. Foreign investors may participate in the sectors/activities listed in Decision No. 155/2004/QD-TTg in line with Viet Nam's accessions commitments. He added that Viet Nam's policy was to refrain from establishing new State-owned enterprises and to narrow the scope of such existing enterprises. The list of sectors where the State would retain 100 per cent or a majority of shares in existing State-owned enterprises was set out in Decision No. 155/2004/QD-TTg. A specific list of State-owned enterprises could not be provided at this time as ministries and local authorities were in the process of reviewing and classifying State-owned enterprises in accordance with that Decision (see the section on "Privatization and equitization").

55. 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.

56. In the late 1990s, the Government had begun an equitization programme for State-owned companies. Pursuant to this programme, State-owned enterprises were "equitized", i.e., they were converted into joint-stock or limited liability companies, in which the State may continue to hold any percentage of shares. As a result of this conversion, these equitized State-owned enterprises were subject to the Enterprise Law, the most recent version of which had been enacted in 2005, and thus subject to the same provisions on establishment, business registration, rights and obligations, closure and bankruptcy as private enterprises (see the section on "Privatization and equitization"). The representative of Viet Nam confirmed that all equitized enterprises had limited liability status; shareholders and capital contributors were responsible for the debts and other liabilities of the company within the limits of their respective contributions. The 2005 Enterprise Law additionally required all State-owned enterprises to be transformed into joint-stock companies or limited liability companies within four years after the entry into force of the Law on 1 July 2006. Thus, as of 1 July 2010, all enterprises, including all State-owned enterprises, would be subject to the Enterprise Law.

57. A Member requested information on Viet Nam's plans for equitization of State-owned enterprises, in particular, on how Viet Nam planned to participate as a partial owner of an equitized enterprise. This Member noted that a government could exercise control of an enterprise even if it held less than a majority of shares, such as through appointment of members of the Board of Directors and asked if Viet Nam maintained the ability to take certain decisions regarding the operation of the enterprise even if the State was a minority share-holder. In response, the representative of Viet Nam stated that, where the State retained shares in an equitized enterprise, the State would operate in the same manner as any private investor owning shares in the equitized enterprise. In particular, he noted that the State's rights as a shareholder would be governed by the Enterprise Law and the Law on State-owned Enterprises, as would those of any private shareholder, and that, accordingly, the State would not be able to appoint directors to the Board, nor would it be able to control or direct the decisions of the enterprise, without owning a majority of shares. Where the State was a minority shareholder, it might be able to exercise a blocking minority as any private shareholder, depending on the percentage of shares owned by others, but it would not, on its own, be able to effect decisions governing the operations of the enterprise.

58. In conjunction with the ongoing equitization programme, and in order to address State-owned enterprises that had not yet been equitized, the National Assembly had adopted a revised Law on State-owned Enterprises in December 2003 to improve the effectiveness of State-owned enterprises

and ensure that they would compete with private enterprises on an equal basis. Under the 2003 Law on State-owned enterprises, profits of State-owned enterprises were paid to the members' contributing capital; used to cover losses of preceding years; and transferred - up to 10 per cent - to the financial reserve fund of the company (provided this fund did not exceed 25 per cent of the chartered capital) and, in case of companies providing banking and insurance services, to the risk insurance fund. The rest was distributed in accordance with the ratio of invested State capital and the average capital raised by the company in that year. Profits distributed according to the capital raised could be given as bonuses to employees and used for re-investment. Profits distributed according to the capital invested by the State were re-invested. The new Law also included provisions on owners' obligations and modification of the ownership structure.

59. While 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, insolvent State-owned enterprises were at present treated as any other enterprises under the 1994 Law on Bankruptcy, last revised in 2004. Since the promulgation of the Bankruptcy Law, 17 State-owned enterprises had gone bankrupt.

60. State-owned shares were held by line ministries, including the Ministry of Industry, the Ministry of Construction, the Ministry of Transportation, the Ministry of Agriculture and Rural Development, the Ministry of Trade, the Ministry of Posts and Telecommunication, the Ministry of Fisheries, the Ministry of Culture and Information, and the General Department of Tourism, and People's Committees. However, pursuant to the new Law, State-owned enterprises were responsible for their own operation and survival, i.e., they had full autonomy in the conduct of their business activities and could make their own decisions on business operations. State-owned enterprises determined their own wage and allowance regimes, including directors' salaries, independently without any government interference in line with the Labour Code and minimum wage regulations. Ministers and Chairmen of provincial People's Committees could not interfere in the business operations of the enterprises. They were only responsible for managing the State equity in the enterprise and for supervising and evaluating the efficiency of State capital use and compliance with the law in accordance with Prime Minister's Decision No. 271/2003/QD-TTg of 31 December 2003. State-owned enterprises were responsible for fulfilling their tax obligations, conducting business, and utilizing the State invested capital efficiently. State-owned enterprises having failed to fulfil their tax obligations could be liable for an administrative penalty or prosecution for criminal offence, depending on the seriousness of the offence. Efficient use of State capital was assessed in the light of profits. In the case of inefficient use, the Director and Board of Management members could be deprived of bonus and pay raise and asked to compensate for the company's losses. Government Decree No. 199/2004/ND-CP of 3 August 2004 provided for State-owned enterprises to be liable for debts and other asset obligations within the extent of the State capital invested therein. The Government conducted periodic reviews and unscheduled assessments of State-owned enterprises' business efficiency. Results of such reviews could be published, posted in the company's offices, or presented at employees' and shareholders' meetings. In response to a question, he noted that Viet Nam's legislation did not address the question of the relationship between the National Competition Council and the supervision and evaluation of State-owned companies' efficiency.

61. General Directors and Directors of State-owned enterprises having a Board of Management were selected by the Board. Under Vietnamese law, only general corporations (i.e., enterprises with subsidiaries) and holding companies had a Board of Management; the Board was the direct representative of State ownership in State-owned enterprises. Foreigners could be hired as Directors. Directors of State-owned enterprises that did not have a Board of Management were selected by the Minister or Chairman of the provincial People's Committee having established the enterprise.

62. Directors of State-owned enterprises which did not have a Board of Management were entitled to make decisions on investment projects representing less than 30 per cent of the total

remaining asset value in the accounting book of the enterprise, or less than the value specified in the enterprise's Charter, and decisions on borrowing, lending, leasing and other economic contracts valued at less than the enterprise's chartered capital. State-owned enterprises' Boards of Management could make decisions on investment projects representing less than 50 per cent of the total remaining asset value in the accounting book of the enterprise, or less than the value specified in the enterprise's Charter, and decisions on borrowing, lending, leasing and other economic contracts of a value exceeding the enterprise's chartered capital. Other investment projects and economic contracts had to be approved by the State owner. The decision-making authority of such equitized State-owned enterprises was the Board of Management.

63. In response to a Member who enquired about the sanctions to be applied if the State influenced the decisions of the State-owned company in a manner not authorized under the law e.g., if a State-appointed board member or members took action for political or corrupt reasons rather than based on commercial considerations, the representative of Viet Nam said that representatives of State ownership had to ensure the business autonomy and shareholder responsibility of the enterprise. All corrupt activities in Viet Nam were subject to criminal law.

64. The Government did not intervene in asset evaluation. Under the 2003 Law on State-owned Enterprises, asset evaluation was provided by consultancy organizations and valuation centres subject to market mechanisms and via auction. Asset purchases and sales were decided and conducted by the enterprises themselves through competitive tenders. Decisions on capital mobilization were taken by the Board of Management or the representative of the owner of the State equity if the value of the proposed project was greater than the enterprise's chartered capital. Other projects were decided by the General Director or the Director of the enterprise in accordance with Decree No. 199/2004/ND-CP on Regulation of Management of State-Owned Enterprises. Capital investments by State-owned enterprises were conducted through competitive bidding in accordance with Decree No. 16/2005/ND-CP of 7 February 2005. In response to a question concerning the valuation of land-use rights for use in asset valuation, he said that the valuation of land-use rights was subject to the Land Law and Government's regulations on price bands - price bands depended on the type of land, region, period and land-use purposes. Procedures for valuation of land-use rights applied uniformly to State-owned and private enterprises.

65. Under Viet Nam's 2003 Law on State-Owned Enterprises, State-owned enterprises were subject to accounting, auditing, financial and statistical reporting obligations in accordance with the Law and upon request of the State owner (Article 16.5 of the Law). State-owned enterprises were required to comply with the same accounting standards as other enterprises. These standards had been developed in conformity with international accounting standards. State-owned companies were responsible for the reliability and legality of their financial operations. They were required to observe requirements on annual financial reporting, to make financial information public, and to provide information necessary for a reliable assessment of the efficiency of the company's operations (Articles 18.4 and 18.5). State-owned enterprises' financial statements were subject to audit in accordance with Viet Nam's laws on auditing (Article 89.1). State-owned enterprises were required to make public their financial information to the State management authorities mandated to receive financial reports (financial State agencies, taxation department, business registration agencies, statistics agencies) and to other parties concerned (owners and employees, capital contributors) within 120 days from the last day of their financial year. They paid profits to the State mainly via tax obligations. The rest was reinvested to increase the companies' State assets.

66. State-owned enterprises made their operational purchases as any other enterprise. They had the right to look for markets and customers and made their own decisions on the prices of their products and services, except for public utility products and services and other products and services for which prices were set by the State (see the section on "Pricing policy").

67. He further noted that the 2003 Law on State-Owned Enterprises had removed the concept of public interest State-owned enterprises provided for under the 1995 Law so as to permit enterprises of all forms of ownership to provide public goods and services through orders placed or tenders put up by the State. Public goods and services were purchased by the Government for final consumption of the Government and non-governmental entities. Government Decree No. 31/2005/ND-CP of 11 March 2005 on the Production and Distribution of Public Services set out three criteria for identifying public goods and services. Under this Decree, goods and services were considered public services if (i) they were socially and economically essential for the country or a particular community, or concerned national security and defence (i.e., electricity supply and distribution in rural areas; management and operation of small and medium irrigation works; production and preservation of plant varieties/seeds and animal breeds; protection of natural forests, etc.); (ii) their production and distribution was not viable under market conditions; and (iii) they had been procured for government entities or were produced under governmental planning with prices and charges set by the State. The list of public goods and services was attached to the Decree. Goods and services not mentioned in the list were not deemed public goods and services.

68. All enterprises irrespective of their ownership could produce and supply, through competitive bidding, public goods and services, with the exception of goods and services related to national security and defence which were carried out by order or task assignment. Prices of public goods and services were determined by bidding or, in the case of goods and services related to national security and defence, by the Government. He confirmed that public goods and services open to public bidding were treated as any commercial goods or services within the meaning of the WTO Agreement. Enterprises supplying public goods and services could import goods and services to produce such public goods and services. Investment in the production and supply of public services were subject to the Investment Law and thus to the same procedures as other investment projects. Detailed procedures for the application of bidding and ordering procedures for the procurement of public goods and services had been submitted to the Prime Minister for approval. In response to a question concerning power transmission and distribution, he noted that the national electric transmission system was still under the control of Electricity of Viet Nam. However, his Government planned to equitize the companies supplying power and a pilot equitization of the Khanh Hoa Electricity Company, the Vinh Son-Hinh River Hydro-Electric Plant, the Thac Ba Hydro-Electric Company, and the Pha Lai Therma-electricity Company had already been conducted.

69. A Member requested Viet Nam to clarify why several major State-owned enterprises involved in agricultural trade had not been included in Viet Nam's notifications on State-trading enterprises, 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). The representative of Viet Nam provided information on the trading activities of these enterprises in document WT/ACC/VNM/32, Annex 2. VINACAFE had exported 220,000 tons of coffee beans in 2004 − which represented 25.9 per cent of Viet Nam's total coffee beans exports − and VINATEA 20,000 tons of tea in 2005 − i.e., 23.7 per cent of Viet Nam's total tea exports. He added that nine member enterprises of VINACAFE and eight member enterprises of VINATEA had been equitized. As for VINAMILK, it had been entirely equitized. The State owned 50.1 per cent of VINAMILK's shares. VINAMILK's activities were based on commercial considerations and free from any government intervention. He confirmed that no regulation prohibited VINAMILK from selling imported products on the domestic market. He further noted that six salt companies of the Salt General Corporation had been equitized as of mid-2005. The State had retained a majority of shares in four companies and kept a minority stake in two enterprises. The percentage of shares owned by the State in these companies now ranged from 51-57 per cent. Salt production and business enterprises under the management of local authorities would also be equitized. He noted that these companies did not have any commercial operations underwritten by the State.

70. In response to a question on the rationale for State involvement in the distribution of salt, the representative of Viet Nam said that salt production was the main source of revenue for more than 100,000 poor farmers in coastal areas where the use of land for agriculture was almost impossible. State involvement in the distribution of salt aimed at ensuring income stability for these farmers and guaranteeing that inhabitants in disadvantaged socio-economic areas were adequately supplied. The General Corporation of Salt had ten member enterprises specialized in salt production and trade. Operating on the basis of market mechanisms, the General Corporation of Salt purchased salt from small salt farmers, produced different types of salt (purified salt, refined salt, iodized salt), and ensured public stockholding of salt. The annual salt output of the General Corporation of Salt, including the production and joint production of its member enterprises, represented about 15-20 per cent of the domestic salt production. The General Corporation of Salt purchased 30-40 per cent of the national output annually. Most of the salt volume purchased by the General Corporation of Salt from salt farmers was supplied as material to its 32 salt producing mills and to mountainous provinces to produce iodized salt for human consumption within the framework of the National Priority Programme. He noted that all enterprises were free to engage in the production and distribution of salt. There were no restrictions on private enterprises to invest in this sector. Numerous private enterprises were trading salt in Viet Nam and the distribution of salt to consumers within the country was mainly undertaken by private enterprises and small retailers.

71. A Member asked Viet Nam to provide information on enterprises with special or exclusive privileges. This Member expressed a general concern that such enterprises engaging in export 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 take to ensure that the operations and policies of such enterprises would not distort trade, and otherwise be consistent with the principles of non-discriminatory treatment prescribed by Article XVII of the GATT 1994. Information on products subject to non-tariff barriers 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.

72. The representative of Viet Nam provided information on State-trading enterprises with special or exclusive privileges in document WT/ACC/VNM/3/Add.1, Annex 6, and a "Notification on State Trading Enterprises" in document WT/ACC/VNM/14 of 28 June 2000, subsequently revised in documents WT/ACC/VNM/14/Add.1 of 31 October 2003, WT/ACC/VNM/14/Add.2 of 21 April 2006, and WT/ACC/VNM/14/Rev.1 of 6 October 2006. The entities identified by Viet Nam as State-trading enterprises with special or exclusive privileges, and the products traded by them, listed by HS numbers, are enumerated in Table 5. He noted that all such enterprises in Viet Nam were operating in accordance with commercial considerations. He confirmed that Viet Nam's State-trading enterprises held no regulatory functions in the industries in which they operated. Regulatory functions were under the authority of government agencies.

Table 5: State-Trading Enterprises in Viet Nam

No	Products	HS Code	Name of enterprise	Functions of enterprise
1.	Crude oil	2709	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 and 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 domestic consumption
3.	Aircraft, aircraft spare parts, aviation equipment, and aviation facilities	8802, 8803	Airlines Import Export Corporation (AIRIMEX)	Ensuring the supply of aircraft, equipment, facilities and materials used in aviation; Sole importer of aircraft and aviation materials, spare parts
4.	Video tapes and VCDs	ex8524	Viet Nam Films Import/Export and Distribution Company (FAFILM VIET NAM)	Sole importer and wholesale distributor
5.	Newspapers, journals, and periodicals	4902	Books and Newspapers Import Export Company (XUNHASABA)	Sole importer and wholesale distributor
6.	Cigarettes, cigars, and other manufactured tobacco	2402, 2403	Viet Nam National Tobacco Corporation (VINATABA)	Sole importer

Note: See Table 8(c) in Annex II for full listing of HS import tariff lines subject to State-trading.

73. A Member noted that several products including rice, fertilizer, pharmaceutical products, coal, gemstone, printing equipment, cinematographic and video materials, and spirits, had been taken out of the list of products subject to State-trading and asked Viet Nam to explain the process and reforms undertaken to eliminate these State-trading activities and how importation and exportation would now take place.

74. In response, the representative of Viet Nam said that price controls on rice exports and the system of designating authorized enterprises to export rice had been phased out. This product had therefore been removed from Viet Nam's State-trading list. As for fertilizer, the system of fertilizer import quotas and designated importers had been phased out pursuant to Decision No. 46/2001/QD-TTg of 4 April 2001, as well as the price controls imposed by the Government Pricing Committee. Any enterprise registered to trade in fertilizer could import and trade fertilizer freely. Fertilizer production and trading was regulated by Decree No. 113/2003/ND-CP of 7 October 2003. There was no restriction on the participation of private enterprises in fertilizer production and trade. He confirmed that 100 per cent privately-owned fertilizer companies could be established. However, in order to ensure that the needs of inhabitants in disadvantaged regions that private enterprises could not satisfy were met, the State retained a majority ownership in the Agricultural Materials Corporation, which fell under the responsibility of the Ministry of Agriculture and Rural Development, and in four or five other companies under the authority of provinces. All the other enterprises involved in the importation and distribution of fertilizer were private companies.

However, so far only State-owned enterprises were involved in the production of nitrogenous fertilizer because of the capital-intensive characteristics of this industry, although no restriction existed on the participation of private enterprises. He noted that some foreign investors had been granted investment licenses to produce and distribute NPK fertilizer in Viet Nam. As of December 2005, four 100 per cent foreign-invested companies had been established in this sector.

75. Noting that Viet Nam had reserved the right to preclude foreign companies from engaging in the import and/or export of certain products (Tables 8(a)-(c)), a Member enquired whether State-trading enterprises existed or were planned in relation to these products and whether the enterprises involved had been or would be notified as State-trading enterprises. The representative of Viet Nam replied that all the enterprises trading the products subject to State-trading had been notified. The reservation on trading rights aimed at reserving importation rights of Vietnamese and foreign-invested enterprises for a certain period. Viet Nam committed to ensure that the activities of State-trading enterprises would comply with WTO rules, including Article XVII of the GATT 1994 and the Understanding on the interpretation of this Article.

76. He added that Viet Nam had no specific rules governing the procurement activities of State-owned or other State-trading enterprises. All decisions of these enterprises to purchase or import were based on actual demand and made on commercial considerations via a bidding process.

77. Asked to describe what legal recourse a private or equitized firm had to appeal a State-trading enterprise operating on a non-commercial basis or engaged in anti-competitive behaviour, the representative of Viet Nam said that anti-competitive behaviour was subject to the provisions of the Competition Law, in particular its Article 15.3 (see section on "Competition policy").

78. The representative of Viet Nam confirmed that Viet Nam would ensure that all enterprises that were State-owned or State-controlled, including equitized enterprises in which the State had control, and enterprises with special or exclusive privileges, would make purchases, not for governmental use, and sales in international trade, based solely on commercial considerations, e.g., price, quality, marketability, and availability, and that the enterprises of other WTO Members would have an adequate opportunity in accordance with customary business practice to compete for participation in sales to and purchases from these enterprises on non-discriminatory terms and conditions. In addition, the Government of Viet Nam would not influence, directly or indirectly, commercial decisions on the part of enterprises that are State-owned, State-controlled, or that have special and exclusive privileges, including decisions on the quantity, value or country of origin of any goods purchased or sold, except in a manner consistent with the WTO Agreement and the rights accorded to non-governmental enterprise owners or shareholders. The Working Party took note of these commitments.

79. The representative of Viet Nam confirmed that, without prejudice to Viet Nam's rights with respect to government procurement, all laws, regulations and other measures relating to the purchase or sale of goods and services, by enterprises that are State-owned, State-controlled, or that have special or exclusive privileges, that are for commercial sale, production of goods or supply of services for commercial sale, or for non-governmental purposes, would not be considered to be laws, regulations and measures relating to government procurement. Thus, such purchases and sales would be subject to the provisions of Articles II, XVI, and XVII of the GATS and Article III of the GATT 1994. The Working Party took note of these commitments.

Privatization and equitization

80. The representative of Viet Nam said that 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. 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 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.

81. The representative of Viet Nam noted that Viet Nam had undertaken a programme of "equitization", i.e., transformation of 100 per cent State-owned enterprises (SOEs) into joint-stock or limited liability companies subject to the Enterprise Law, to help restructure, upgrade and enhance the efficiency of SOEs. The level of the State's equity in an equitized company was not set and could therefore vary. The equitization process foresaw diversity of ownership, including by the State and the employees of the equitized enterprise, and was implemented with consideration to the interests of the employees. Pursuant to Prime Minister's Decision No. 155/2004/QD-TTg of 24 August 2004, which had superseded Prime Minister's Directive No. 20/1998/CT-TTg of 21 April 1998, SOEs had been classified in three groups: (i) enterprises which would remain 100 per cent State-owned and would not be equitized, (ii) enterprises in which the State would retain a majority of shares (i.e., greater than 50 per cent but less than 100 per cent), and (iii) enterprises in which the State would dispose of all its shares or retain a minority stake.

82. Group 1 were 100 per cent SOEs which were considered essential to ensure national security and public order, implement the Government's poverty eradication policy and guarantee the provision of goods and services that would not be viable for private enterprises. For such enterprises, 100 per cent State ownership should be retained. Group 2 were enterprises in which the State would retain a majority of the shares, i.e., more than 50 per cent of the chartered capital, when equitizing, as their businesses were related to security or defence; their activities involved the supply of essential products or were considered vital to the economy (i.e., essential for the development of production and improvement of lives in rural, mountainous and ethnic minority areas; large scale activities contributing in a substantial way to the State budget or playing an important role in stabilizing the economy; or enterprises playing a leading role in high technology); or the Government believed the private sector was unwilling or unable to engage in such activities. Group 3 consisted of enterprises in which the State would not hold a majority share interest, i.e., it would hold less than 50 per cent of the shares in the equitized enterprise, having disposed of all or part of its shareholdings. Group 1 and Group 2 sectors, as provided in Decision No. 155/2004/QD-TTg of 24 August 2004, are listed in Table 4.

83. The representative of Viet Nam added that State-owned commercial banks were also subject to equitization pursuant to Government Decree No. 187/2004/ND-CP. Viet Nam's Prime Minister had decided to equitize two State-owned commercial banks, the Bank for Foreign Trade of Viet Nam (Vietcombank) and the Mekong Delta Housing Development Bank. The Vietcombank would be equitized in accordance with the Prime Minister's Decision No. 230/2005/QD-TTg of 21 September 2005 and the Mekong Delta Housing Development Bank pursuant to Decision No. 266/2005/QD-TTg of 27 October 2005. Preparatory work for the valuation process (verification of assets and outstanding debts, resolving of financial issues) had been completed. International consulting agencies had been recruited to assist in the valuation and equitization process of the banks. Up to 10 per cent of the shares would be sold in 2006 and up to 49 per cent during a second phase, from 2007 to 2010. The State would retain a majority stake. As for the Mekong Delta Housing Development Bank, the valuation process had been launched on 31 December 2005. The Bank would start issuing shares in the fourth quarter of 2006 and would be equitized along the same lines as the Vietcombank.

84. With respect to SOEs falling under the authority of the Prime Minister, i.e., SOEs established by Prime Minister's Decision and State-owned corporations established by decision of the Prime Minister or provincial People's Committees, equitization would be decided by the Prime Minister on the basis of proposals by the enterprises' Board of Directors. With respect to other SOEs, ministries and local authorities would submit their proposals as to which enterprises fell under Group 1 or Group 2 to the Prime Minister for approval. The list of sectors where the State would retain 100 per cent or a majority of shares in existing SOEs was set out in Decision No. 155/2004/QD-TTg.

85. Equitization procedures were stipulated in Circular No. 126/2004/TT-BTC of the Ministry of Finance of 24 December 2004 on the implementation of Decree No. 187/2004/ND-CP. The first step consisted in preparing the equitization plan. The body making the decision on equitization established a steering committee for equitization, composed of up to five members: the leader of the agency making the decision on equitization or an authorized person (e.g., representatives of ministries, People's Committees of provinces or cities); representatives of the relevant units of the agency proposing equitization; directors of the company to be equitized; and, in the case of a general corporation, a representative of the Ministry of Finance. An assistant group compiled factual information about the enterprise to be equitized (documents on establishment of the enterprise, assets, liabilities, uncompleted capital construction works, long-term investment capital in other enterprises, financial reports, tax reports, list of permanent employees, classification of employees by type of labour contracts, estimates of the equitization process), carried out a valuation of the enterprise (inventory, classification of assets), settled outstanding financial and tax issues, and designed the equitization plan.

86. The second step was the sale of the shares. The steering committee decided on the auction method (direct auction at the enterprise, auction at an intermediary financial organization, or auction at a Securities Trading Centre) and the number of shares subject to preferential sale to employees and domestic strategic investors (see paragraph below). Shares of equitized enterprises were sold by public auction before shares subject to preferential sale were sold to employees and domestic strategic investors. Preferential prices had to be contingent upon the average auction price. After the auction, the steering committee submitted a report on the results of the share sale to the body making the decision on equitization, which adjusted the equitization plan accordingly. The last step was the conversion of the enterprise into a shareholding company. The steering committee and assistant group held the first General Meeting of Shareholders to adopt the company's Charter, and elect the Members of the Board of Management, Control Board, and management apparatus. The Board of Management was responsible for the business registration of the company. A financial report was prepared, tax obligations and equitization expenses finalized, a report submitted to the body making the decision on equitization, and proceeds from equitization paid to the relevant bodies. Shares were then issued to the companies' shareholders. These steps had to be completed within nine months. After this period, the body making the decision on equitization was responsible for any extra expenses incurred.

87. Strategic domestic investors and employees could purchase shares of equitized enterprises at a discount price, subject to certain terms and conditions, in accordance with Decree No. 187/2004/ND-CP of 16 November 2004. Strategic domestic investors were defined as manufacturers and frequent suppliers of inputs to the enterprise; persons committed to purchase the enterprise's product over a long period; persons who had a long-term strategic interest in the enterprise's products; and persons who had a long-term strategic interest in the enterprise's business operation and possessed financial potential and management expertise (Article 26.2, Article 27.3 and Article 28.2). There was no limit on the percentage share that could be awarded to a single strategic domestic investor. Such percentage was decided by each enterprise. Employees were entitled to purchase up to 100 shares (of VND 10,000 each) for each year of employment in the State sector with a 40 per cent discount on the average auction price, and strategic domestic investors could purchase up to 20 per cent of the shares offered for sale at a 20 per cent discount price. All the remaining

shares, which should amount to minimum 20 per cent of the chartered capital (Article 27.4), were publicly auctioned to investors.

88. The representative of Viet Nam stated that consistent with Viet Nam's commitments under international treaties, foreign investors were allowed to participate in the equitization process by purchasing shares of SOEs in certain sectors. The representative of Viet Nam explained that participation of foreign investors did not depend on whether their enterprises produced for the local market or for exportation. Furthermore, Viet Nam did not prohibit the establishment of foreign-invested enterprises competing with SOEs undergoing equitization. For equitized Group 2 and Group 3 enterprises, however, the total value of shares sold to foreigners could not exceed 30 per cent of the company's registered capital pursuant to Government Decree No. 187/2004/ND-CP.

89. As of 1 July 2006, procedures for selling shares in equitized firms to foreign investors are subject to the 2005 Investment Law (Article 25) and its implementing regulations. Shares purchased by foreign investors would continue to be paid for in local currency. Foreign exchange would continue to be converted at the average inter-bank exchange rate announced by the State Bank of Viet Nam at the time of the sale. Asked whether foreign investors would be able to increase their holdings above 30 per cent after the initial distribution of shares, the representative of Viet Nam said that the 30 per cent cap remained effective after the initial distribution of shares. However, in the case of services sectors included in Viet Nam's Schedule of Specific Commitments, limitations on share-holding by foreign investors would be applied in accordance with the terms of Viet Nam's commitments for individual sectors. He confirmed that these changes would apply to SOEs in service sectors that had already been equitized.

90. Noting that foreign investors were not allowed to be "strategic investors", a Member requested Viet Nam to remove this differentiation and ensure equal treatment. In response, the representative of Viet Nam confirmed that any rules on strategic investors would be in accordance with Viet Nam's WTO obligations.

91. The representative of Viet Nam explained that equitized firms were subject to the Enterprise Law and were managed by a General Meeting of Shareholders, a Board of Management elected by the General Meeting of Shareholders, and a General Director appointed by the Board of Management. Decisions of the General Meeting of Shareholders were adopted by vote during meeting sessions or written opinions (Article 104 of the 2005 Enterprise Law). Shareholders holding 10 per cent or more of the ordinary shares during at least six months, whether as individuals or as a group, were entitled, *inter alia*, to nominate a representative to participate in the Board of Management; request convocation of the General Meeting of Shareholders; and receive copies and extracts of lists of shareholders entitled to participate in sessions of the General Meeting of Shareholders. He noted that employees or their representatives had been involved in the management of some large shareholding companies. In response to a question, he added that most equitized enterprises had experienced changes in their boards of management. However, no specific data was available.

92. In response to a Member's question, the representative of Viet Nam stated that shareholders of shareholding companies, including equitized companies, were free to transfer their shares to other investors, except strategic shareholders during the first three years of registration of the company. They could, in special cases, transfer their shares prior to this date upon approval of the Board of Management through public auction at the shareholding company or at an intermediate financial institution (Article 38.2(b) of Decree No. 187/2004/ND-CP). Shareholders possessing preferential voting shares were also subject to restrictions on transfer of their shares. In addition, during the first three years of registration of the company, the transfer of founding shareholders' common stocks to non shareholders was subject to approval of the General Meeting of Shareholders. In such cases, decisions of the General Meeting of Shareholders were taken without the votes of the shareholders wishing to transfer their shares. Transfers of State shares were subject to the same regulations.

Shares were sold through public auction at intermediate financial institutions or securities exchange. Offers and transfers of shares were regulated by the Enterprise Law. Asset valuation of equitized enterprises was conducted by valuation agencies subject to market mechanisms. He added that the Government of Viet Nam encouraged eligible equitized companies in which the State held a majority of shares to list in the securities exchange.

93. In the case of equitized enterprises without State capital, the State acted only as a regulator; it did not intervene in the affairs of the enterprise. When the State partly or wholly owned an enterprise, the State had the rights and obligations of a shareholder corresponding to its capital contribution. The State did not assign the management of shareholding companies. Such assignment was the responsibility of the General Meeting of Shareholders, Board of Management or Director/General Director, regardless of whether the State held controlling shares or not. If the State held more than 10 per cent of the company's shares, the State could, as a shareholder, nominate a representative to be elected to the Board of Management subject to approval of the General Meeting of Shareholders. Should the General Meeting of Shareholders disapprove the election of that representative to the Board of Management, the State would not have any representative on the Board of Management. State representatives elected to the Board of Management and assigned to a managerial function reported to those he/she represented, not to any other agency. Shareholding companies did not have to report to any administrative Ministry; they reported as any other company.

94. As of 31 December 2005, a total of 2,935 enterprises had been "equitized", among which 682 had State-owned capital exceeding VND 10 billion each. He provided information about the number of enterprises equitized since 1992 in Table 6. Among the equitized enterprises were big companies such as Viet Nam Dairy Products Company (VINAMILK with a capital of VND 2,500 billion, 1,500 billion of which was from the State), Song Hinh-Vinh Son Hydroelectric Plant (with a capital of VND 2,114 billion, of which VND 1,253 billion was from the State), and Hochiminh City Insurance Company (BAO MINH with a capital of VND 1,311 billion, of which 63 per cent was from the State). On average, the State held 46.5 per cent of the chartered capital of equitized enterprises, employees 38.1 per cent, and other shareholders 15.4 per cent. The State had retained a majority of shares in 736 companies (or 28 per cent of all equitized companies), had kept a minority stake in 1,341 companies (51 per cent) and had sold all the shares it had in the remaining 552 companies (21 per cent). Following the ownership transformation, most of these enterprises were operating more efficiently and 29 of them were listed on Viet Nam's stock exchange. Under the current 2005-2007 restructuring plan, about 50 additional State-owned enterprises would be subject to bankruptcy. From 2005 onward, 1,472 State-owned enterprises would be equitized, transferred, sold, closed or subject to bankruptcy; approximately 1,800 enterprises at the end of 2006 would remain 100 per cent State-owned, a number which would be reduced to 1,500 by the end of 2007. The number of 100 per cent State-owned enterprises would be further reduced in the following years to be restricted only to national security sectors and large corporations.

95. The representative of Viet Nam confirmed that Viet Nam would ensure the full transparency of its ongoing privatization and equitization programmes and that, to this end, from the date of accession, Viet Nam would provide WTO Members with annual reports on the status of its equitization programme and reform of equitized enterprises in which the State retained a controlling share as long as the privatization and equitization programme would be in existence. The Working Party took note of this commitment.

Pricing policies

96. 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 use measures directly affecting prices only (i) in case of dumping or abuse of monopoly position, (ii) to stabilize the socio-economic environment, or (iii) to protect the legitimate interests of producers, consumers and the State. These government-imposed prices, 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. Price controls on telecommunication services continued to apply to local subscription charges, charges for using local fix-line, universal service charges, and service charges imposed by providers with a dominant market share, regardless of the mode of supply. Service charges were approved by the Ministry of Posts and Telematics pursuant to Prime Minister's Decision No. 217/2003/QD-TTg of 27 October 2003.

97. 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. It had been abolished pursuant to the Ordinance on Price No. 40/2002/PL-UBTVQH10 of the Standing Committee of the National Assembly of 10 May 2002.

98. A Member enquired whether Viet Nam applied any minimum prices. This Member noted that minimum price measures, if applied, would have to be in conformity with Article III:4 of the GATT 1994 and other WTO provisions. In particular, any requirement that imported products be subject to mandatory minimum import prices would appear to be contrary to Article III:4 of the GATT 1994. This Member also asked Viet Nam to provide information on the allocation of tariff rate quotas on imported salt and interest rate subsidies granted to some trading enterprises. In response, the representative of Viet Nam said that Viet Nam did not apply any minimum prices to imported or exported products. Concerning cotton, sugar and salt, no legal requirement obliged traders to sell, purchase, import or export these products at minimum prices. However, Viet Nam's cotton and sugar processing plants could participate in a product-specific support programme under which they could purchase domestic raw cotton and sugar cane at a pre-committed price agreed mutually between the processors and farmers. This subsidization programme had been notified in Viet Nam's tables on domestic support in agriculture (see paragraph 368). He confirmed that these contractual prices applied only to domestic products. Purchasers of refined sugars were not required to purchase either domestic or imported refined sugar at a minimum price. Concerning the allocation of tariff-rate quotas on imported salt, he noted that industrial users of salt were not required to submit information about their actual or proposed purchase prices for domestic or imported salt with their application for tariff quota allocations. The decisive factor in determining the allocation was the demand for industrial salt to be used in the enterprise's production. As for the interest rate subsidies granted to some trading enterprises, he confirmed that selected trading enterprises received such subsidies to encourage purchases from domestic producers at times of price weakness, aimed at supporting the internal prices of pork, sugar, and rice. However, such enterprises were neither required nor encouraged to purchase imported pork, sugar, and rice at the same prices at which they were encouraged to purchase domestic like products.

99. In response to a Member who asked whether freight subsidies for an input were linked to the price of this input, the representative of Viet Nam noted that the level of freight subsidy for certain agricultural products and materials (mainly fertilizer) did not depend on their prices prior to transportation. The objective of freight subsidies was to offset the differential costs of transportation of agricultural inputs and materials from lowlands to mountainous and remote areas where the infrastructure was underdeveloped, thereby making transportation difficult and costly. Direct beneficiaries of freight subsidies were trading enterprises mandated to trade in the subsidized goods.

He confirmed that freight subsidies were not dependent on whether the input had been produced domestically or imported.

100. 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 a Prime Minister's Directive in 1999 requiring all businesses to declare publicly the selling prices of their goods. This measure had been introduced on a temporary basis during the initial period of application of the VAT to educate the public and to encourage enterprises not to take advantage of the introduction of the VAT to increase their prices inappropriately. This "guidance", which did not legally prevent enterprises from increasing prices, had automatically ceased to have effect after expiration of the period of public education. He confirmed that private sector companies were allowed to set prices - and include VAT payments into the price − according to the dictates of the market, without "guidance" or other such "encouragement" from the Government.

101. He added that Viet Nam had gradually phased out its system of dual pricing according to which Vietnamese and foreign enterprises and individuals 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/QD-CHK of 26 November 2003), telecommunication services, and port services, and a common electricity price had been applied for both Vietnamese and foreigners since 1 January 2005 (Decision No. 215/2004/QD-TTg of 29 December 2004).

102. Some Members welcomed the information on Viet Nam's elimination of dual prices. These Members reminded Viet Nam that in order to meet WTO requirements, price controls applied to trade should be, *inter alia*, transparent and applied without prejudicial effects on imports *vis-à-vis* domestic products, consistent with Article III of the GATT 1994.

103. The representative of Viet Nam confirmed that, from the date of accession, Viet Nam would apply price controls 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 had published the list of goods and services subject to State price control and any changes in its Official Gazette and would continue to do so after accession. He further confirmed that pricing policy in Viet Nam would be applied in compliance with the provisions of the WTO Agreement, including Article III:4 and XI:1 of the GATT 1994 and Article 4 of the Agreement on Agriculture. The Working Party took note of these commitments.

Competition policy

104. 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").

105. A Competition Law had been adopted on 3 December 2004. The Law had entered into force on 1 July 2005. The Law applied to all enterprises, whether State-owned, private, State-controlled, equitized or foreign-invested, and to trade associations (Article 2). It recognized enterprises' freedom to compete and protected the right to business competition. The Law prohibited anti-competitive acts and unfair competition. It also prohibited State management agencies from performing certain acts, such as forcing enterprises, organizations or individuals to buy or sell goods or provide services to designated enterprises (except for areas where the State held a monopoly or in emergency cases);

discriminating between enterprises; forcing enterprises or trade associations to align with one another with a view to precluding, restricting, or preventing other enterprises from competing on the market; and performing any other act preventing the lawful business activities of enterprises.

106. Anti-competitive acts prohibited under the Law included anti-competitive agreements, abuse of dominant and monopoly position, and economic concentration (Article 8). Anti-competitive agreements comprised agreements fixing, directly or indirectly, the price of goods and services; agreements on the distribution of outlets, sources of supply of goods, or provision of services; agreements restricting or controlling produced, purchased or sold quantities or volumes of goods or services; agreements restricting technical and technological development or investments; agreements imposing on other enterprises conditions to purchase or sell goods or services or forcing other enterprises to accept obligations which had no direct connection with the subject of such contracts; agreements preventing, restraining, or disallowing other enterprises to enter the market or develop business; agreements eliminating from the market enterprises other than the parties of the agreements; and agreements enabling one or all of the parties to the agreement to win bids to supply goods or provide services. The last three categories of anti-competitive agreements were prohibited per se. The others were proscribed if the parties to those agreements had a combined share exceeding 30 per cent of the relevant market, except as provided for in Article 10. Abuse of dominant position was defined in Article 13 of the Law, and abuse of monopoly position in Article 14. Economic concentration (merger, amalgamation, acquisition, joint-venture and other acts of economic concentration) was prohibited under Article 18 if the combined market shares of the enterprises participating in the economic concentration accounted for more than 50 per cent of the relevant market. There were three exceptions to this prohibition: (i) after implementation the enterprises were still small or medium-sized enterprises as prescribed by Law (Article 18); (ii) one or more of the participants was/were in danger of dissolution or bankruptcy; or (iii) the economic concentration contributed to socio-economic development, technical and technological development, or increased exports as specified in Article 19. Projects of economic concentration had to be notified before implementation if the combined market shares of the participants in the project accounted for 30-50 per cent of the relevant market, except if after implementation the enterprises were still of small or medium size. The procedures for notification were set out in Articles 21 to 38 of the Law.

107. Unfair competition acts were defined in Chapter III of the Law and included the provision of misleading information; infringement of business secrets; coercion in business; defamation of other enterprises; disruption of business activities of other enterprises; advertisement or promotion aimed at unfair competition; associative discrimination; illegal multi-level (pyramid scheme) sale; and other unfair competition acts according to the criteria determined in Clause 4, Article 3 of the Law and prescribed by the Government.

108. The Law specified the procedures for conducting investigations and hearings, the rights and obligations of the parties, and incurred penalties. Organizations and individuals could lodge a complaint against anti-competitive behaviour with the Competition Administration Agency (Article 58.1). The Competition Administration Agency was responsible for conducting preliminary investigations aimed at determining whether there was evidence of violation (Articles 59 and 86). In the event of such evidence, an official investigation was launched (Article 87). The Competition Administration Agency could also, if it detected signs of violations, launch an investigation upon its own initiative. Once finalized, the investigation report was transmitted to the Competition Council (Article 93), which set up a Tribunal responsible for handling the competition case. The Tribunal could hold an open hearing, return the file to the Competition Administration Agency for supplementary investigation, or suspend the handling of the case (Articles 99 and 100). Hearings were public. Decisions of the Tribunal were made by secret ballot on the basis of a majority of the votes (Article 104). Decisions took effect 30 days after the signing date if no complaint had been lodged against it within that period in accordance with Article 107 (Article 106). Decisions of the Tribunal could be appealed to the Competition Council and decisions of the Competition

Administration Agency to the Ministry of Trade (Article 107). Should the complainant disagree with the decision of the Competition Council or Ministry of Trade, he/she could initiate an administrative law suit before the competent provincial-level people's court against one part of, or the whole, decision (Article 115). Enforcement of the decision was monitored by the provincial-level civil judgment enforcement agencies of the province or city where the party against which the decision had been taken had its headquarters or residency.

109. In response to a specific question, he added that no provision of the law addressed whether State-owned or State-controlled firms retained competitive privileges under the law as compared to other enterprises. The Law could be consulted in English at the website of the Ministry of Trade (http://www.mot.gov.vn/en/Files/1727D5D2C1F.PDF).

FRAMEWORK FOR MAKING AND ENFORCING POLICIES

110. The representative of Viet Nam said that pursuant to the 1992 Constitution (as amended in 2001), the National Assembly was the highest representative organ of the people and the highest organ of State power in the unitary State of the Socialist Republic of Viet Nam. The National Assembly had the legislative powers. The National Assembly decided on domestic and foreign policy, socio-economic matters, national defence and security issues, the main principles governing the organization and activity of the State, social relations, and citizens' activities. The National Assembly supervised all State activities In addition, the National Assembly had the power to elect, discharge and remove from office the State President and Vice Presidents, the National Assembly's Chairperson and Vice-Chairpersons, as well as members of the National Assembly's Standing Committee, the Prime Minister, the Chief Justice of the Supreme People's Court, and the Head of the Supreme People's Procuracy; and to approve the Prime Minister's proposed appointments, removals from office and discharges of the Deputy Prime Minister, Ministers and other members of the Government.

111. The Standing Committee of the National Assembly was its standing organ. It was empowered to prepare for, convene and lead sessions of the National Assembly. The Standing Committee had the power, *inter alia*, to interpret the Constitution, laws and ordinances; to enact ordinances and resolutions; to supervise the implementation of the Constitution, laws and resolutions of the National Assembly, its ordinances and resolutions; and to suspend the implementation of legal documents of the Government, Prime Minister, Supreme People's Court, Supreme People's Procuracy if such documents contravened the Constitution, laws and resolutions of the National Assembly and to annul the implementation of resolutions of the People's Councils of provinces and cities under direct central government.

112. The State President was the Head of State. He/she represented the Socialist Republic of Viet Nam internally and externally. The State President was elected by the National Assembly from among its Members and was responsible before and reported to the National Assembly. The State President was empowered, *inter alia*, to promulgate laws and ordinances which had been adopted by the National Assembly, to appoint, remove from office or discharge the Deputy Prime Minister, Ministers and other members of the Government. The State President could negotiate and conclude international treaties in the name of the State of the Socialist Republic of Viet Nam with other heads of State − once signed by the State President, such treaties were then submitted to the National Assembly for ratification. The State President decided on the ratification of or accession to international treaties, except in cases where such treaties had to be submitted to the National Assembly for decision.

113. The Government was the executive organ of the National Assembly and the highest organ of State administration. The Government was responsible, *inter alia*, for the unified management of foreign policy; negotiated and concluded international treaties in the name of the State of the Socialist Republic of Viet Nam, except in cases where the State President decided to negotiate and sign

international treaties in the name of the State with the heads of other States; negotiated, signed, approved and acceded to international treaties in the name of the Government; administered the implementation of international treaties which the Socialist Republic of Viet Nam had concluded or acceded to; and protected the interests of the State, and the legitimate interests of Vietnamese organizations and citizens in foreign countries. People's Committees were elected by the People's Council. They were the People's Council's executive organ and were in charge of local State administration. People's Committees were responsible for implementing the Constitution, laws, legal documents issued by higher State organs and resolutions of the People's Council. People's Committees could, within their areas of duties and powers, issue decisions and directives and supervise their implementation.

114. In accordance with the Constitution, laws and resolutions of the National Assembly, ordinances and resolutions of the National Assembly's Standing Committee, and orders and decisions of the State President, the Prime Minister issued decisions and directives and ensured implementation of those documents. The Prime Minister could suspend or annul decisions, directives and circulars issued by Ministers and other members of the Government, decisions and directives of People's Committees and Chairmen of People's Committees of provinces and cities under direct central government that contravened the Constitution, laws, and other legal documents issued by higher State organs; and suspend the implementation of resolutions of People's Councils of provinces and cities under direct central government that contravened the Constitution, the law, and legal documents issued by higher State organs and, simultaneously, propose their annulment by the Standing Committee of the National Assembly.

115. The representative of Viet Nam confirmed that the National Assembly was the only organ empowered to adopt the Constitution and laws. Pursuant to the 1996 Law on the Promulgation of Legal Normative Documents (as amended in 2002), the system of legal documents consisted of (i) documents promulgated by the National Assembly including the Constitution, laws and resolutions; (ii) documents promulgated by the National Assembly's Standing Committee including ordinances and resolutions; (iii) orders and decisions of the State President; (iv) resolutions and decrees of the Government; (v) decisions and directives of the Prime Minister; (vi) decisions, directives and circulars of the ministers and the heads of the ministerial-level agencies; (vii) resolutions of the Justices' Council of the Supreme People's Court; decisions, directives and circulars of the Chief Justice of the Supreme People's Court and the Head of the Supreme People's Procuracy; (viii) joint resolutions and circulars between competent State agencies and between competent State agencies and socio-political organizations; (ix) resolutions of the People's Councils; and (x) decisions and directives of the People's Committees. The Constitution had the highest legal status and all other legal normative documents were subject to the Constitution. Legal normative documents issued by a lower State organ must be consistent with those issued by the higher State organs. Legal normative documents contrary to the Constitution and legal normative documents issued by higher State organs were repealed and/or suspended by the competent State organs. In case of conflict between different provisions of various legal normative documents at the same hierarchy rank, which were issued by the same State organ, the most recently promulgated provisions would prevail. In regard to a suggestion that Viet Nam should make its laws self-enforcing, he stressed that Viet Nam was making every effort to issue necessary regulations and other guidance necessary for enforcing laws immediately after promulgation.

116. 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. Regarding the collection of public opinions in the preparation of legal documents, the Law on Amendment and Supplement of Some Articles of the Law on Promulgation of Legal Normative Instruments stipulated that social organizations, economic organisations, State bodies and individuals had the right to contribute their opinions to the preparation

of legal instruments. During the process of preparation of legal instruments, the agency and/or organization concerned would facilitate other agencies, organizations and individuals to participate by providing their opinions, and organize the collection of opinions from those directly affected by the proposed legal instrument in an appropriate scope and form. Opinions which were contributed on a project or draft of a legal instrument would be studied in order to improve the project or draft document.

117. In response to a Member's question about legislation addressing the right to invest in particular sectors, the representative of Viet Nam confirmed that any amendment or deletion to the list of prohibited or conditional investment sectors, set out in Tables 1 and 2 of this Report (also annexed to Government Decree No. 59-2006-ND-CP of 12 June 2006), would comply with Viet Nam's WTO obligations, including those relating to transparency. In this respect, the Ministry of Planning and Investment or the line ministries, in coordination with the relevant agencies, would submit any proposed changes to the Government, or in the case of investment activities regulated by other laws (e.g. Law on Credit Institutions, Law on Insurance Business, etc.), to the competent authority, for consideration. He further confirmed that comments received during the drafting stages and changes to proposals would be made public, in accordance with the Law on the Promulgation of Legal Normative Documents. The Working Party took note of these commitments.

118. Questioned about the applicability of international treaties, he noted that on 14 June 2005 the National Assembly of Viet Nam had adopted Law No. 41/2005/QH on Conclusion, Accession and Implementation of Treaties (or Law on Treaties). The Law had entered into force on 1 January 2006. The Law provided for the conclusion, accession, reservation, deposit, custody, preparation of certified copies, publication, registration, implementation, interpretation, amendment, supplement, extension, termination, denunciation, withdrawal, and suspension of treaties concluded or acceded to in the name of the State or in the name of the Government of the Socialist Republic of Viet Nam. The State President and the Government decided on the negotiation and signing of treaties (Article 11). The National Assembly, the State President or the Government decided on the accession to multilateral treaties (Article 50). The National Assembly and the State President decided to ratify treaties and the Government to approve them (Articles 31, 32, 44 and 43). Article 69 of the Law provided for the publication of international treaties in the Official Gazette and the "Series of International Treaties". He confirmed that accession to the WTO would require ratification of Viet Nam's Protocol of Accession. The National Assembly and its Standing Committee were competent to oversee the implementation of international treaties in Viet Nam.

119. He added that according to the Law on Treaties, a treaty would have legal effect in Viet Nam in the way and for the duration stipulated in such treaty or as agreed between Viet Nam and the foreign contracting party (parties). Domestically, based on the needs, content and nature of a treaty, the National Assembly, the State President or the Government, in making the decision to accept to be bound by the treaty, would, at the same time, make decisions on direct application of such treaty, in whole or in part, with respect to agencies, organizations, and individuals, in cases where the provisions of the treaty were adequately detailed and clear for its implementation; or would make decisions or proposals for amendment, supplement, repeal or promulgation of legal normative documents for implementation of such treaty. In case a legal normative document contained, with respect to the same subject matter, provision(s) different from relevant provision(s) of a treaty to which the Socialist Republic of Viet Nam was a party, the provision(s) of the treaty were applied. In addition, the promulgation of legal normative documents would not create any obstacles to the implementation of treaties to which the Socialist Republic of Viet Nam was a party and which contained provisions on the same subject matters. The National Assembly would make the determination, upon ratification of the Protocol of Accession, as to whether such differences existed between the Protocol and a legal normative document in the context of ratification of Viet Nam's Protocol of Accession. If the National Assembly were to conclude that such differences existed, it would determine at that time the precise manner in which the relevant treaty commitment(s) would

prevail over the legal normative document, namely, through either direct application of the treaty (or portions thereof) or amendment of the domestic measure at issue. The Working Party took note of these commitments.

120. The operation and organization of the Vietnamese court system were stipulated in Law No. 33/2002/QH10 of 2 April 2002 on the Organization of People's Courts. According to this Law, the court system included the Supreme People's Court; the People's Courts of the provinces and centrally-run cities; the People's Courts of the rural districts, urban districts, provincial capitals and provincial cities; military courts; and other courts prescribed by law (in special circumstances, the National Assembly could decide to set up special tribunals). The Supreme People's Court had the following tasks and powers: (i) to guide courts to uniformly apply laws, sum up experiences in trials by courts; (ii) to supervise the trials by tribunals at different levels; to supervise the trials by special tribunals and other courts, except otherwise provided for upon the establishment of such courts; and (iii) to submit bills to the National Assembly and draft ordinances to the National Assembly Standing Committee as provided for by law. The courts should conduct public trials, except for special cases provided by laws. The legally effective judgments and decisions of courts had to be respected by all State bodies, political organizations, socio-political organizations, social organizations, socio-professional organizations, economic organizations, people's armed forces units and people.

121. The 2004 Civil Procedure Code stipulated the procedure to settle commercial and economic disputes. This Code provided for basic principles in procedure: proceedings and formalities for initiating a lawsuit to require court resolution of lawsuits or claims relating to civil disputes, marriage and family affairs, business, commerce and labour matters (to be referred to as civil lawsuits or civil matters). According to this Code, the time limit for initiating a lawsuit to resolve a civil case was two years from the date of infringement of the lawful rights and benefits of individuals or organizations, or infringement of the public interest or State interest; the time limit for requesting the Court to deal with a civil matter was one year from the date of occurrence of the right to make such a request. Judgments of first instance courts were legally effective if not appealed within the time-limit for appeal. Pursuant to the Civil Procedure Code and Ordinance on Civil Judgment Execution No. 13/2004/PL-UBTVQH11 of 14 January 2004, already effective judgments and decisions of courts had to be respected and implemented by individuals and organizations. The party in favour of which the judgment had been made was entitled to ask the judgment execution authority to issue a writ of judgment execution if the party against which the judgment had been made (the "judgment debtor") had not voluntarily paid the judgment. The judgment execution authority could take compulsory measures against judgment debtors consisting of, *inter alia*, account deductions, income deductions, and seizure of property. In addition, under the Criminal Code, a person not having implemented a civil court's verdict could be criminally prosecuted for three years of re-education or six months to three years of imprisonment.

122. Under the 2004 Civil Procedure Code, within 15 days from the date of announcement of a court's judgment or, in case of absence of the concerned parties at the hearing, within 15 days from the date when a copy of the judgment had been delivered to the parties or from the date of posting of the judgment, all parties were entitled to appeal against the first instance court's judgment or decision and ask the higher people's court to conduct the second instance trial. The judgment or decision of the court of appeal would become legally effective upon being announced. Noting that the international norm for filing an appeal was 30-45 days, a Member asked Viet Nam whether it was considering lengthening the 15 day period provided under Vietnamese legislation. In response, the representative of Viet Nam said that he considered 15 days appropriate to enable the parties concerned to protect their legal interests and to accelerate the procedure for civil dispute resolution. His Government had no plans to amend this regulation.

123. Asked how Viet Nam guaranteed that a private company in an economic dispute with a government entity or a State-owned enterprise or State-controlled enterprise would receive an

impartial hearing, the representative of Viet Nam replied that there were a number of mechanisms aimed at ensuring impartial hearing in economic cases. For example, Article 8 of the 2004 Civil Procedure Code provided for the principle of equality of rights and obligations in civil procedures of all agencies and organizations, regardless of their form of organization or ownership, and Article 12 of the Civil Procedure Code and Article 4 of the Ordinance on Judges and People's Jurors provided for the principle of judicial independence. Pursuant to Article 16 of the Civil Procedure Code, judges and People's jurors (lay assessors) were not allowed to adjudicate if they could be prejudiced in fulfilling their tasks and authority. Articles 46 and 47 explicitly laid down the cases where judges and People's jurors had to refuse to judge or had to be changed to ensure impartial hearing. In addition, parties were allowed to ask that judges or People's jurors be changed if it was proved that they might not be impartial (Article 58).

124. Viet Nam's current legislative provisions relating to the right of complaints were mainly stipulated in the Law on Complaints and Denunciations and its amendments (the latest amendment was the Law on Amending and Supplementing a Number of Articles of the Law on Complaints and Denunciations No. 58/2005/QH11 of 29 November 2005); and the Ordinance on Procedures for the Settlement of Administrative Cases and its amendments (the latest amendment was the Law on Amending and Supplementing a Number of Articles of the Ordinance on Procedures for the Settlement of Administrative Cases No. 29/2006/PL-UBTVQH of 5 April 2006). According to the Law on Complaints and Denunciations, individuals, agencies and organizations had the right to lodge a complaint against administrative decisions issued by, or administrative actions taken by, a State administrative agency or a competent person of the State administrative agency if they considered that such decisions or actions were illegal, or violated their legitimate rights and interests. The complaints were settled through administrative procedures or in the court should the complainants not agree with an administrative settlement of the case. The Administrative Court was a judicial tribunal in the system of People's Courts and was independent from the executive branch. He confirmed that all administrative decisions on WTO-related matters could be challenged in administrative courts.

125. 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. In response, the representative of Viet Nam said that the Law on Complaints and Denunciations and the Ordinance on Procedures for Settlement of Administrative Disputes gave effect to that Member's view. The Ordinance on Procedures for Settlement of Administrative Disputes allowed the parties involved in an administrative dispute to bring the dispute before the court if the settlement of the dispute through administrative proceedings had been unsatisfactory. The amendment of this Ordinance in April 2006 had extended the jurisdiction of the court to cover all WTO related matters, including complaints against administrative actions concerning domestic and international trade in goods, and such actions in the sector of State management of intellectual property and technology transfers. In addition, the Ordinance provided for detailed and more transparent regulations on the process and procedures for the settlement of administrative cases with a view to creating more favourable conditions for complainants.

126. Legally effective court judgments or decisions could be challenged according to re-opening (re-trial) and review procedures. The Chief Justice of the Supreme People's Court and the Head of the Supreme People's Procuracy were entitled to protest, in accordance with the review and re-opening procedures, against effective court judgments or decisions that had been rendered by courts of all levels according to the procedure laws. The Chief Judge of the provincial People's Court and the Head of the provincial People's Procuracy were entitled to protest, in accordance with the review and re-opening procedures, against effective judgments or decisions rendered by district people's courts according to the procedure laws. The trial panel was entitled to reject a protest, to remand, or to set aside the judgments or decisions of the case.

127. Procedures for the settlement of economic disputes by arbitration were provided in Ordinance No. 08/2003/PL-UBTVQH on Commercial Arbitration. If the parties to a commercial 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. Once established, arbitration centres operated according to their charter, arbitration rules and Vietnamese laws. Unless specified otherwise, the deadline for filing an arbitration case was two years from the date the dispute had arisen. The Ordinance expanded the concept of commercial activities to be consistent with international practice and stipulated that arbitration decisions would be final and binding, unless nullified by a court. Arbitration decisions could be nullified by a court if there was no agreement on arbitration; the agreement on arbitration was void under the Ordinance; the members of the arbitration tribunal and the arbitration proceedings were not consistent with the agreement of the parties; the dispute did not fall under the authority of the arbitration tribunal; the requesting party had proved that an arbitrator was violating his obligations; or the arbitration decision was contrary to the public interests of Viet Nam (Article 54 of the Ordinance). He noted that the definition of "public interest" was in conformity with international norms and the 1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards. Asked whether a court had already nullified an arbitration decision based on this principle, he said he had no information about such cases.

128. Arbitration decisions became effective upon announcement (Article 44.4). If the arbitration decision had not been voluntarily implemented within 30 days from its date of announcement, the interested party could file a request for enforcement in writing to a provincial judgment execution agency. He confirmed that the Ordinance on Commercial Arbitration guaranteed non-discriminatory treatment. Foreign arbitral awards were recognized and enforced in accordance with the Civil Procedure Code and other related legal normative documents for implementation in Viet Nam.

129. Arbitration proceedings were not open to the public. However, if the parties agreed, the arbitration tribunal could permit other persons to attend the hearings (Article 38). In response to a question concerning the publication of arbitration decisions, he said that the Ordinance did not provide for such publication as arbitration was non-governmental by nature. Dispute resolution through arbitration presented the advantage of confidentiality and the guarantee of non-disclosure without the parties' consent. His Government had therefore no plans to revise this regulation.

130. Asked about Viet Nam's participation in the Washington Convention on the Settlement of Investment Disputes, the representative of Viet Nam noted that his Government was considering becoming a party to the Convention.

131. 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.

132. The representative of Viet Nam replied that sub-central entities (Peoples' Councils and Peoples' Committees at all levels) were subject to central laws. They administered local affairs by issuing legal normative documents. According to the Law on Promulgation of Legal Normative Documents of Peoples' Council and Peoples' Committee, legal normative documents issued by sub-central entities implemented laws and regulations adopted or issued by central government agencies. The assignment of authorization to different levels of administration was determined by Viet Nam's central laws. As a result, policies and measures introduced by sub-central entities were consistent

with those adopted by the central government. To ensure the uniform application of laws throughout Viet Nam's customs territory and other territories under its control, Viet Nam had set up mechanisms to identify and invalidate inconsistent legal normative documents issued by sub-central entities. The People's Procuracies supervised judicial activities and exercised the right to initiate public prosecution within their jurisdictions. He confirmed that local authorities had no right to promulgate any kind of fees on imported goods.

133. A Member appreciated the information and assurances provided by Viet Nam concerning the application of national treatment, MFN, transparency, right of appeal, and the authority of sub-central entities in trade policies issues and invited Viet Nam to take appropriate commitments in these areas.

134. The representative of Viet Nam confirmed that the provisions of the WTO Agreement would be applied uniformly throughout the customs territory of Viet Nam, including in regions engaging in frontier traffic, special economic zones and other areas where special regimes for tariffs, taxes and regulations were established, and that the Government of Viet Nam would ensure that laws, regulations and other measures, including those of local governments at the sub-national level, conformed to Viet Nam's obligations under the WTO Agreement. He added that, when informed of a situation where WTO provisions were not being applied or were being applied in a non-uniform manner, national authorities would investigate such claims and, if the charges were found to be valid, would act to enforce WTO provisions without requiring the affected parties to petition through the courts. The Working Party took note of these commitments.

135. The representative of Viet Nam further confirmed that Viet Nam would revise its relevant laws and regulations so that its relevant domestic laws and regulations would be consistent with the requirements of the WTO Agreement on procedures for judicial review of administrative actions, including but not limited to Article X:3(b) of the GATT 1994. He further stated that the tribunals responsible for such reviews would be impartial and independent of the agency entrusted with administrative enforcement, and would not have any substantial interest in the outcome of the matter. The Working Party took note of these commitments.

POLICIES AFFECTING TRADE IN GOODS

Trading rights (the right to import and export)

136. Members sought a commitment from Viet Nam that from the date of accession, any natural or legal person, domestic or foreign, would have the right to be the importer or exporter of record of any product allowed to be imported into or exported from Viet Nam, and in the case of importation, would have the right to sell or otherwise provide those products to any legal or natural person, domestic or foreign, having the right to distribute them. A Member noted that currently the right to import required investment in Viet Nam. A Member also sought confirmation that trading rights would be administered in conformity with all relevant WTO provisions by the time of Viet Nam's accession. Several Members also sought a commitment from Viet Nam that Viet Nam would grant trading rights for all goods subject to State-trading by a specific date and would ensure that State-owned, State-controlled and enterprises with special or exclusive benefits observe commercial considerations and the principles of non-discrimination.

137. In response, the representative of Viet Nam observed that Vietnamese individuals and enterprises had been granted full trading rights, with the exception of certain products required to be imported through specific enterprises (set out in Table 8(c)). Individuals were required to register as traders pursuant to the Decree No. 88/2006/ND-CP of 29 August 2006 on Business Registration in order to engage in importation and exportation. He said that time was required to merge the import trading rights systems for foreign and domestic legal persons, promulgate the necessary regulations, and strengthen the management/administrative capacity of the government agencies involved. For

these reasons, his Government proposed to grant all foreign individuals and enterprises (including foreign-invested enterprises) full trading rights no later than 1 January 2007, except for some products subject to "State-trading" set out in Table 8(c), and requested that Members grant Viet Nam a transition period until 1 January 2009 for the right of foreign individuals and enterprises to import certain products set out in Table 8(a) and until 1 January 2011 for the right to export rice (Table 8(b)). The full trading rights accorded such individuals and enterprises would include the right to sell the imported product to any individual or enterprise having the right to distribute such product in Viet Nam.

138. He confirmed that, during the transition periods, the goods listed in Tables 8(a) and 8(b) could be imported and exported by any wholly Vietnamese-invested enterprise, while the products in Table 8(c) could be traded only by the designated enterprises. He further confirmed that Viet Nam would ensure that these enterprises complied with WTO rules.

139. He noted that the right to import required no minimum investment in Viet Nam other than registration (mainly for administrative purposes) of the individual or firm seeking to be the importer of record. He confirmed, in addition, that Viet Nam's commitments on trading rights would be applied to all WTO Members on an MFN basis. He further expressed his understanding that the granting of trading rights would not affect the rights of the Government of Viet Nam to adopt or enforce WTO-consistent requirements for customs and fiscal purposes; or to adopt or enforce regulations that were consistent with relevant provisions of the WTO Agreement and with Viet Nam's WTO commitments, such as those relating to import licensing, State-trading, technical barriers to trade or sanitary and phytosanitary measures. Decrees on the right to import and export guiding the implementation of the amended Commercial Law were being drafted. These Decrees would be applied in a transparent, uniform and non-discriminatory manner, in compliance with WTO rules and Viet Nam's commitments on trading rights. The Working Party took note of these commitments.

140. A Member requested additional information on the registration requirement for importers of record, in particular, on the nature and form of this registration. This Member also inquired as to what legal normative document(s) set out the details of this registration process and, in this respect, what relevance, if any, the recent Decree on International Sales and Purchases of Goods (Decree No. 12/2006-ND-CP) held for registration and the right to import/export.

141. Some Members stated that foreign-invested firms did not have the same rights to import, import for resale, or export as Vietnamese firms. Foreign-invested enterprises could not import goods of the same kind as the goods they produced under their investment licence unless they applied for a new investment licence. This 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 consistent with WTO requirements. 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.

142. In response, the representative of Viet Nam said that his Government had reviewed its legislation with a view to harmonizing investment/registration procedures for foreign-invested and domestic enterprises. New Laws on Enterprises and Investment had been adopted to this effect in November 2005. Under the new Laws, domestic investors wishing to import or export were required to hold a Business Registration Certificate and foreign investors an investment certificate. With respect to Vietnamese investors, procedures for business registration were set out in the

2005 Enterprise Law and Government Decree No. 88/2006/ND-CP of 29 August 2006 on Business Registration. Domestic investors, whether enterprises or individual business households, were free to register any business line, except those prohibited under Vietnamese law (see paragraph 33). Registration of some business lines was subject to specific conditions. His Government did not limit or otherwise intervene in the scope of business chosen by Vietnamese enterprises and, except in the prohibited sectors and some business lines that was subject to specific conditions, wholly Vietnamese-owned enterprises were entitled to determine their scope of business at their own discretion (see Tables 1 and 2 for lists of prohibited sectors and business lines subject to specific conditions). He noted that, although previously domestic investors could only import goods listed in their Business Registration Certificate, this restriction was no longer in force by virtue of Article 3 of Decree No. 12-2006-ND-CP on International Purchases and Sales of Goods.

143. With respect to foreign investors, procedures for issuing investment certificates were described in the 2005 Investment Law and Government Decree No. 108/2006/ND-CP of 22 September 2006 providing for implementation of this Law. Foreign investors already holding an investment certificate and wishing to carry out a new investment project could either apply for a new certificate or request that their certificate be amended. Investment certificates also served as business registration certificates. Foreign investors would not be limited to importing goods related to their business lines or specified in their investment certificate, nor would they be prohibited from importing goods on the basis that these goods were of the same kind as those produced under the investment licence. He confirmed that, in his view, procedures for importation of goods by foreign-invested companies were not more restrictive than those applicable to wholly domestic enterprises.

144. Having reviewed the new Commercial Law enacted by the National Assembly on 14 June 2005 and its implementing Decree, a Member noted that the draft Decree suggested that only existing foreign-invested enterprises with investors from countries with which Viet Nam had reciprocal MFN status would be permitted to import products for sale into the Vietnamese market. Such a provision would appear to be in contradiction with Article III of the GATT 1994. The Decree also seemed to impose conditions on existing foreign-invested enterprises such as minimum capital investment. This Member asked Viet Nam to commit, upon accession, not to apply any limitation on granting investment licenses for local manufacturing, importing and marketing of any product, except those for which limitations were indicated either in the schedule of specific commitments on trade in services or in the lists concerning trading rights or import limitations and prohibitions.

145. In response, the representative of Viet Nam said that pursuant to Article 2, paragraph 3 of the latest draft, the Minister of Trade decided, in the case of businesses from countries or territories with which Viet Nam had no international commitments on market access with respect to commercial activities, whether or not to permit the establishment of foreign-invested enterprises in accordance with the Prime Minister's instructions. He added that Article 5 of the draft Decree abolished minimum capital investment requirements.

146. The representative from Viet Nam confirmed that Viet Nam would ensure that its laws and regulations relating to the right to trade in goods and all fees, charges or taxes levied on such rights would be in conformity with its WTO obligations, including Articles VIII:1(a), XI:1 and III:2 and 4 of the GATT 1994 and its commitments in its Schedule on Specific Commitments in Services. In particular, he confirmed that, from the date of accession, all foreign firms and individuals (including foreign-invested firms) would be able to engage in importation and exportation of products other than as set out in Tables 8(a)-(c), as importers or exporters of record, subject only to the obligation to register such activity with the relevant Vietnamese authorities. There would be no requirement for foreign firms and individuals without physical presence in Viet Nam to invest in Viet Nam. In addition, without prejudice to Viet Nam's Schedule of Specific Commitments in Services, importers of record would be permitted to sell or otherwise provide the imported product to individuals and firms in Viet Nam that have the right to distribute such product in Viet Nam. The representative of

Viet Nam noted that compliance with its trading rights obligations would not, in any case, automatically grant importers the right to distribute goods in Viet Nam. He further observed that, under Vietnamese law, Viet Nam's Protocol of Accession would serve as the legal basis for the Government to issue a decree codifying the trading rights of individuals and firms without physical presence in Viet Nam; accordingly, he confirmed that this decree would be issued promptly upon Viet Nam's ratification of the Protocol of Accession, and in any event, before the 30th day following such ratification. These rights would also accrue with respect to importation and exportation of other products in accordance with the timetable in Tables 8(a) and 8(b). The Working Party took note of these commitments.

147. The representative of Viet Nam confirmed that, without prejudice to Viet Nam's Schedule of Specific Commitments in Services, any foreign firm or individual (including foreign-invested firms) registered to engage in import activities would be free to select a distributor or distributors of their choice provided that such distributor or distributors had the right to distribute the respective product(s) in the customs territory of Viet Nam. Viet Nam would not apply any restrictions on the choice of the distributor or distributors, including in relation to the type of enterprise or nationality of the distributor. The representative of Viet Nam noted that compliance with its trading rights obligations would not, in any case, automatically grant importers the right to distribute goods in Viet Nam. The Working Party took note of this commitment.

1. Import Regulation

Customs tariff

148. 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, 1998 and on 14 June 2005, and the tariff rates were accordingly decided by his Government within duty bands promulgated by the Standing Committee of the National Assembly (see paragraph 152 below). Viet Nam's tariff schedule had been modified several times since 1996 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.

149. As of 20 April 2005, Viet Nam's trade-weighted average tariff was 11 per cent and Viet Nam's simple average tariff was 17.8 per cent. The simple average tariff on major imported items was 21.4 per cent for agricultural products, 38.4 per cent for transportation equipment, 37.3 per cent for textiles, 13.5 per cent for minerals, 18.46 per cent for machinery and electrical equipment, and 8.05 per cent for metals. Tariffs ranged from zero to 60 per cent, with about 52 per cent of the tariff lines falling in the 0-5 per cent range. Over the period 2002-2004, import taxes had amounted to VND 17,826 billion, VAT on imports levied at the border had come to VND 12,266 billion and excise taxes on imports collected at the border had totalled VND 2,017 billion. 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 fulfil commitments *vis-à-vis* the IMF and the World Bank, Viet Nam had gradually removed import restrictive non-tariff measures after 2000 and replaced them with import duties and surcharges (see also the section on "Other duties and charges"). By the end of 2003, most import surcharges had been incorporated into import duties to ensure greater transparency. Thus, Viet Nam's customs tariff included some MFN tariff rates exceeding 60 per cent. The representative of Viet Nam provided a list of MFN tariff rates exceeding 60 per cent, including a description of the products, in document WT/ACC/VNM/28/Add.1.

150. 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.

151. 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.

152. Concerning the tariff rates, he noted that the Standing Committee of the National Assembly had established statutory MFN tariff ceilings 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. He provided a copy of Viet Nam's statutory MFN tariff ceilings in document WT/ACC/VNM/28/Add.1. Changes in tariff rates were decided in consultation with the business community and the ministries and agencies concerned. He confirmed that all legal documents, including decisions on tariff rate changes, were published in the Official Gazette prior to application in accordance with Article X:2 of the GATT 1994 and took effect 15 days after publication. The customs tariff introduced through Decision No. 110/2003/QD-BTC had been published in the Official Gazette and circulated widely prior to its entry into force. Tariff rates on iron, steel and oil products had been decreased recently to compensate for the sharp rise in the international price of these products. Tariffs on steel billets had been reduced from 10 to 5 per cent, tariffs on construction steel products from 40 to 10 per cent, and tariffs on oil and petroleum products had been brought down to zero. In 2004, imports of oil and petroleum products had amounted to US$3,547 million and imports of iron and steel products to US$2,572 million.

153. In response to a Member who enquired whether Viet Nam intended to align its statutory MFN tariff ceilings with the bound MFN rates of duty in its Schedule of Concessions and Commitments on Goods upon accession, the representative of Viet Nam said that Viet Nam did not intend to align its statutory tariff ceilings with the bound rates of duty and that the statutory ceiling rates set by the National Assembly's Standing Committee would continue to serve as the domestic legal basis for determining tariff rates. He confirmed that these rates would not conflict with Viet Nam's WTO obligations.

154. Some Members expressed a strong preference for the application of *ad valorem* duties rather than specific duties on imports because *ad valorem* duties were more transparent and predictable for traders. Members were also concerned that any conversion from the current *ad valorem* duty rate to a specific rate or compound rate not exceed Viet Nam's bound rate of duty. Members noted Viet Nam's statement that a conversion on some products might be necessary to address customs fraud. These Members stated the view that other means were available to address customs fraud that were more targeted and less likely to result in Viet Nam applying tariffs in excess of its bindings. While Members recognized that Viet Nam could have recourse to Article XXVIII procedures under the GATT 1994, they noted that Viet Nam would be required to engage in detailed and time consuming negotiations with Members and provide compensation to Members as required under Article XXVIII. Members asked Viet Nam to provide a list of those products and tariff lines that could be subject to a specific or combined tariff and assurances that if Viet Nam decided to convert a tariff from

ad valorem to a specific or combined rate of duty, it would ensure that the converted duty did not exceed the bound rate for that good.

155. The representative of Viet Nam again stressed that Viet Nam sought to reserve the right to apply specific and compound duty rates on certain items to address customs fraud. He confirmed that Viet Nam would provide a list of sensitive items and tariff lines that could be subject to conversion for the Working Party to review. The representative of Viet Nam further confirmed that if a duty rate was converted to a specific or combined duty, Viet Nam would ensure that these new duty rates would not exceed Viet Nam's tariff binding for the relevant good. Finally, he stated that Viet Nam recognized that recourse to Article XXVIII may include provisions for compensatory adjustment with respect to other products. Thus, his Government would endeavour to limit as much as possible any possible recourse to procedures under Article XXVIII of the GATT 1994. The Working Party took note of these commitments.

156. The representative of Viet Nam added that pursuant to the Law on Import-Export Duties of 1998, as amended, Viet Nam's trading partners were subject to tariff treatment as "special preferential", MFN (preferential), or "standard" rate (also referred to as "normal" or non-MFN rate). "Special preferential rates" applied to goods imported from countries having signed special preferential trade agreements with Viet Nam, i.e., free trade and customs union agreements and agreements to facilitate border trade, such as the Common Effective Preferential Tariffs implementing the ASEAN Free Trade Area. Such countries included Brunei, Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, and Thailand. MFN rates (or "preferential rates") were levied on goods imported from countries having signed agreements on most-favoured nation treatment with Viet Nam (see Annex 3 of document WT/ACC/VNM/36/Add.1), while standard rates applied to products imported from other countries. Under the Law, standard rates could not exceed 170 per cent of the MFN rates. Current standard rates were applied uniformly at 150 per cent of the MFN rate. He added that standard rates were rarely applied as Viet Nam had signed bilateral trade agreements with almost all of its trading partners. General provisions also allowed Viet Nam to impose additional import duties on goods originating in countries discriminating against goods originating in Viet Nam on the basis of tariffs or other measures. However, Viet Nam had never invoked these general provisions and 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 principles stipulated in the WTO Agreement. 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.

157. Viet Nam's commitments on bound tariffs are contained in the Schedule of Concessions and Commitments on Goods (document WT/ACC/VNM/48/Add.1) annexed to Viet Nam's Protocol of Accession to the WTO.

158. The representative of Viet Nam confirmed that from the date of accession, Viet Nam would apply tariffs on an MFN basis to all countries and separate customs territories with which it had a WTO relationship and would apply its authority to increase tariffs in conformity with WTO provisions and its WTO commitments. The Working Party took note of this commitment.

Other duties and charges

159. 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. After 1993, surcharges had been imposed on imported petroleum, iron and steel for construction purposes, DAP fertilizer and sheet steel.

160. 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 the WTO Agreement. 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.

161. 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. However, all import surcharges had been eliminated in December 2004. The last import surcharges on PVC and welded steel pipe had been eliminated by virtue of Decision No. 81/2004/QD-BTC of 15 October 2004 and Decision No. 102/2004/QD-BTC of 27 December 2004, respectively.

162. 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 had agreed to bind at zero other duties and charges in its Schedule of Concessions and Commitments on Goods pursuant to Article II:1(b) of the GATT 1994. The Working Party took note of these commitments.

Tariff rate quotas, tariff exemptions

- Tariff rate quotas

163. 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. Some Members noted that although TRQs could be effective measures to ensure stable market access, all relevant information necessary for applicants and users would have to be made public to ensure transparency. Thus, should tariff quota commitments 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; and 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. Accordingly, Viet Nam would be requested to adopt detailed commitments relating to the allocation of tariff quotas and other aspects of tariff rate quota administration.

164. The representative of Viet Nam replied that his Government had issued Decision No. 91/2003/QD-TTg on 9 May 2003, introducing tariff rate quotas on the importation of cotton, tobacco materials, salt, dairy products, eggs and maize. Viet Nam's TRQ system was regulated by Decision No. 91/2003/QD-TTg; Circular No. 10/2004/TT-BTM of 27 December 2004 of the Ministry of Trade guiding the implementation of Decision No. 91/2003/QD-TTg, as amended by Circular No. 04/2005/TT-BTM of 24 March 2005; and Decision No. 46/2001/QD-TTg of 3 March 2005,

subsequently replaced by Decree No. 12/2006/ND-CP of 23 January 2006. He provided information on the product coverage and allocation mechanism of tariff rate quotas, as laid down in Circular No. 09/2003/TT BTM of 15 December 2003, in Annex 4 of document WT/ACC/VNM/33. Imports of tobacco (HS 2401) were subject to a 30 per cent rate (15 per cent for tariff line 24013010) up to 29,000 metric tons, and to 100 per cent thereafter (80 per cent for tariff line 24013010). On average, 29,374 metric tons of tobacco products had been imported annually between 1999 and 2001. The TRQ on salt (HS 2501) amounted to 200,000 metric tons, with an in-quota rate ranging from 10 to 30 per cent and an out-of-quota rate of 50 or 60 per cent depending on the tariff lines. Some 146,146 metric tons had been imported annually on average between 1999 and 2001 and 130,000 metric tons in 2004. As for eggs, a 40 per cent rate was applied up to 30,000 dozens of imports, and an 80 per cent rate thereafter. Between 1999 and 2001, US$21,300 had been imported on annual average. He added that the TRQs on dairy products, cotton and maize had been eliminated on 1 April 2005 pursuant to Decision No. 46/2001/QD-TTg of 3 March 2005. 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, licenses or import quotas affecting the same products.

165. Some Members requested that Viet Nam consider eliminating the TRQs on salt a fortiori as no other non-agricultural product would be subject to a TRQ in Viet Nam upon accession. The representative of Viet Nam noted that salt production involved farmers and was therefore considered an agricultural activity in Viet Nam. Asked to explain further the rationale for the TRQ on salt, he noted that salt was the main source of income for hundreds of thousands of poor farmers living in coastal areas where the use of land for agriculture was almost impossible. The TRQ on salt aimed at securing employment and ensuring income stability for these farmers. In his view, a TRQ was the most efficient measure to satisfy this objective compared to other import restrictions such as non-automatic licensing. The annual volume of tariff rate quota for salt was determined by the Ministry of Trade, the Ministry of Agriculture and Rural Development, and the Ministry of Industry on the basis of production output, demand for salt for manufacturing and processing, manufacturing and processing capacity, and utilization of the tariff rate quota in the previous year. Pursuant to Decree No. 86/2003/ND-CP of 18 July 2003, enterprises using salt in their production could lodge an application for allocation of TRQs with the Ministry of Trade. Allocation was based on production capacity, type of materials used and import performance through the first-come first-served method. Enterprises importing salt under the TRQ system were required to report on their import performance under the TRQ to the Ministry of Trade by each quarter-end. This measure aimed at monitoring the use of TRQ volumes to allow the timely reallocation of unused licenses as the statistics provided by the General Department of Customs to the Ministry of Trade and Ministry of Agriculture and Rural Development were often outdated. He confirmed that the Ministry of Trade did not allocate tariff rate quotas on salt to manufacturers of salt for human consumption. Salt could be imported directly at the out-of-quota rate by enterprises that did not use salt in their production. In response to a question, he added that the General Corporation of Salt operated on the basis of market mechanisms; it did not have any role in determining the TRQ volume or allocating or administering the TRQ; and was not granted any preference or privilege. The General Corporation of Salt possessed some capacity to produce salt as materials for other industries and was therefore eligible to apply for salt quota allocations to use in its own production (see also paragraph 70).

166. Noting that tariff quota allocations were not available to manufacturers of salt for human consumption, a Member proposed that salt for human consumption be excluded from the proposed bound tariff quota for salt and be subject to a separate tariff-only commitment.

167. Concerning sugar, the representative of Viet Nam added that imports of sugar were subject to discretionary licensing by the Ministry of Trade pursuant to Prime Minister Decision No. 46/2001/QD-TTG of 4 April 2001. He noted that sugar cane was grown in disadvantaged areas with adverse natural conditions and that diversification from sugar cane to other crops was often very difficult. However, his Government would replace discretionary licensing by a tariff rate quota

mechanism as from the date of accession (Decision No. 19/2006/QD-BTM of 20 April 2006). In response to a request from a Member for more information about the allocation mechanism and administrative arrangements that Viet Nam intended to apply to a TRQ on sugar, he said that Viet Nam would apply and administer tariff rate quotas in conformity with WTO applicable rules and regulations, including the MFN and national treatment provisions of the GATT 1994.

168. A Member raised concerns over a proposal by Viet Nam to use auctioning as a method of allocating tariff quotas. In the view of this Member, auctioning of tariff quota would be inconsistent with a number of WTO provisions, including Articles II, X and XI of the GATT 1994 and Article 4 of the Agreement on Agriculture, as bindings for in-quota rates could be breached by additional imposts, auction prices would represent minimum prices payable by purchasers of imports, appropriate standards of transparency and predictability with respect to the terms of importation would not be met, and any starting prices would themselves represent minimum import prices. This Member also raised concerns over any non-automatic licensing associated with the allocation or other administration of tariff quotas that would have trade-restrictive or distortive effects on imports beyond those occasioned by the quantity-limited in-quota rate and the out-of-quota rate, contrary to the provisions of the Agreement on Import Licensing Procedures. Another Member noted that importers were to be designated by the Government under allocation method B. This Member was of the view that the allocation of tariff quotas by the State was inconsistent with the transparency and predictability required in tariff quota administration and that the party conceding the tariff could not become the party deciding how many, and to whom, tariff quotas would be allocated. This Member requested Viet Nam to find another administration method.

169. A Member raised additional concerns over certain requirements proposed by Viet Nam to relate amounts of tariff quota allocated to each importer's levels of domestic production and export, inconsistently with the WTO's prohibitions on such measures under Article XI of the GATT 1994, Article 4 of the Agreement on Agriculture and Article 2 of the Agreement on Trade-related Investment Measures; to allocate tariff quota contingent upon the approval of import plans by the Government, inconsistently with Article XI of the GATT 1994 and Article 4 of the Agreement on Agriculture; to allocate tariff quota on the conditions that the importer uses amounts imported only for its own production, inconsistently with Articles III and XI of the GATT 1994 and Article 4 of the Agreement on Agriculture, and that the importer refrains from internal resale of product imported under the quota, inconsistently with Article III of the GATT 1994; to deprive intending traders that do not have a particular kind of business registration of the right to be importers of record in relation to the amounts imported under the quota and of the right to become quota holders, inconsistently with Articles III and XI of the GATT 1994; to require that a quota holder must send quarterly reports on tariff quota usage to the Ministry of Trade (when such data would be readily available to the Government through official customs statistics), inconsistently with Article XI of the GATT 1994 and Article 4 of the Agreement on Agriculture; and to prohibit the sale, purchase and transfer of allocated quota quantities to other parties, inconsistently with Article XI of the GATT 1994 and Article 4 of the Agreement on Agriculture. This Member called upon Viet Nam to allocate tariff quotas consistently with the WTO from the date of accession. Viet Nam was also asked to clarify whether a TRQ could be filled by materials imported under a TRQ and subsequently exported under Viet Nam's duty drawback scheme.

170. In response, the representative of Viet Nam said that Viet Nam had narrowed considerably the coverage of products subject to TRQs and limited the application of TRQs to the minimum extent. The TRQs on salt, un-manufactured tobacco and eggs were administered pursuant to Circular No. 04/2006/TT-BTM of 6 April 2006 of the Ministry of Trade, guiding the implementation of Government Decree No. 12/2006/ND-CP of 23 January 2006. Circular No. 04/2006/TT-BTM provided for three methods of TRQ administration. Method A foresaw the allocation of quotas to end-users. Under method B, importers were to be designated by the Government. He noted that this method only applied to un-manufactured tobacco (HS 2401). As for method C, quotas were allocated

on the basis of past performance. He noted that existing legislation did not refer to auctioning as a method of TRQ allocation, and that the three methods of TRQ allocation that Viet Nam had proposed and agreed upon with Members and that were specified in Viet Nam's Schedule of Concessions and Commitments on Goods (WT/ACC/VNM/48/Add.1) did not include auctioning. He confirmed that the licensing mechanism used for the allocation of TRQs would comply with WTO rules, including the Agreement on Import Licensing Procedures. Quota allocations would be made in accordance with Viet Nam's Schedule of Concessions and Commitments on Goods (document WT/ACC/VNM/48/Add.1).

171. In the case of un-manufactured tobacco, under the current practice, imports were subject to State-trading: quotas for importation were allocated to State-trading entities or groups of producers by the Government. Under the new system that would be in place by the date of accession, a TRQ was established. Using method B, the Government would designate current domestic producers as importers, and TRQ allocations would be made in line with each domestic producer's share of the domestic production quota for tobacco products. These firms were free to import additional un-manufactured tobacco at the out-of-quota duty rate. Imported tobacco for the production of exports was subject to Viet Nam's duty drawback regime or could be imported duty free if the related exports occurred within two months.

172. The representative of Viet Nam added that the allocation of TRQs to enterprises having trading activities was in compliance with Viet Nam's current import management policies. He was of the opinion that this provision did not breach WTO rules as enterprises were free to register their own business lines and activities. In particular, designation of producers of tobacco products as the sole importers of un-manufactured tobacco supported Viet Nam's long term efforts to regulate tobacco consumption and prevent production of tobacco products outside the mandated production quota. As for the provision requiring enterprises to send a report on import performance of TRQs to the Ministry of Trade by each quarter-end, the requirement aimed at guaranteeing up-to-date and accurate information so as to enable the authority to adjust the TRQs when enterprises so needed. He was of the view that Viet Nam's provisions of TRQ allocation and administration were consistent with WTO rules and regulations. He also noted that Viet Nam had committed to eliminate all quantitative import restrictions upon accession and to limit the number of items subject to TRQs.

173. A Member also asked Viet Nam to clarify whether materials imported under a TRQ and subsequently exported under Viet Nam's duty drawback scheme would be counted against the TRQ. The representative of Viet Nam noted that traders could either apply for TRQs or import the goods directly. They could, in both cases, benefit from duty drawback (see also paragraph 281). He added that goods imported under the TRQ and subsequently exported did not count towards exhaustion of the TRQ.

174. The representative of Viet Nam confirmed that from the date of accession Viet Nam would apply, allocate and administer its tariff rate quotas in a non-discriminatory and transparent manner, in conformity with the WTO Agreement, including Articles I, II, III, VIII, X, XI and XIII of the GATT 1994, Article 4 of the Agreement on Agriculture, Article 2 of the Agreement on Trade-Related Investment Measures, and the Agreement on Import Licensing Procedures. The Working Party took note of this commitment.

- **Tariff exemptions**

175. The representative of Viet Nam said that pursuant to Law No. 45/2005/QH11 of June 2005, goods subject to tariff exemptions included the following: (i) goods in transit or being transported to other countries across Viet Nam's borders; (ii) goods transited at Viet Nam's border-gates as stipulated by the Government; (iii) humanitarian goods and non-refundable aid; (iv) temporary imports and re-exports, temporary exports and re-imports for exhibitions and promotions; (v) machines, equipment

and devices temporarily imported and re-exported or temporarily exported and re-imported for use within a specified period of time; (vi) moveable assets; (vii) exports and imports of organizations and individuals eligible to diplomatic immunity as stipulated by the Government in accordance with the provisions of international treaties to which Viet Nam was a signatory or a participant; (viii) goods imported for outward processing and re-exported or goods exported to foreign individuals or organizations for inward processing and re-imported in accordance with processing contracts; (ix) exports and imports of individuals entering or leaving Viet Nam within the tariff exemption limit for luggage stipulated by the Government; (x) goods imported to form fixed assets by investors having projects funded by Official Development Assistance (ODA); (xi) goods imported to facilitate oil and gas activities; (xii) imported goods used directly for scientific research activities and technology development; (xiii) raw materials, materials, components imported for production of projects in sectors where investment was especially encouraged or in regions with specially difficult socio-economic conditions (five year exemption from the commencement of production); (xiv) imports specifically for national defence and security, education and training; and (xv) gifts and sample goods of international organizations and individuals to Vietnamese organizations and individuals and vice versa. Under the new Law, importers claimed the tariff exemptions they were entitled to upon importation of the products. Importers' claims were processed by the local customs authorities upon importation. He confirmed that the import duty exemptions mentioned in this paragraph were not contingent upon export performance, export ratios or local content requirements.

176. In response to a specific question, he added that Viet Nam had not signed any agreement with Cambodia favouring border trade. According to Decision No. 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 customs duty. The excess value was subject to normal tariff treatment. Cargoes cleared through Customs by businesses were of a commercial nature and therefore subject to normal duty. The same principles applied to trade along the borders with China and Lao PDR.

177. The representative of Viet Nam confirmed that upon accession, Viet Nam would adopt and apply tariff reductions and exemptions so as to ensure MFN treatment for imported goods. He also confirmed that, without prejudice to Viet Nam's commitments on subsidies (see paragraphs 286 and 288), Viet Nam would not provide tariff reductions and exemptions contingent upon export performance, export ratios, or local content requirements. The Working Party took note of these commitments.

Fees and charges for services rendered

178. 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 customs fees for services rendered as (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 (re-certification of documents related to customs procedures, imported/exported goods, or import/export duties upon request of the importer or when the original documents had been lost). Customs clearance, customs warehouse, and administrative fees are enumerated in Table 9, and cargo transit and escort fees in Tables 22(a) and 22(b). The Inter-Ministerial Circular had superseded an earlier inter-ministerial circular issued in April 1993. A 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. The current fees had been set so as to ensure that they would cover the costs of the customs service rendered, including the costs of producing lead seals, sealing paper, customs services, utilities bills, conservation of goods, labour, maintenance and repair equipment, inputs and materials directly used in providing the services.

179. In response to questions about the purpose of the cargo and luggage transit fees and the cargo escort and sealing fees, he noted that the transit fees aimed at covering the costs of the customs services rendered for the transit of goods from a third country through the territory of Viet Nam. Sealing fees aimed at covering the costs of materials (paper seals, lead seals, and seal rings) and labour involved in the sealing process. As for escort fees, they corresponded to the costs involved to escort the goods, including management costs. These costs varied substantially depending on the distance and the volume to escort. He noted that fees and charges were being reviewed to ensure that the actual collectible fees did not exceed the costs involved. Fees found to be higher than the cost of services rendered would be adjusted downward to abide by the principle that no fee should exceed the cost of services rendered.

180. A Member noted that Viet Nam's customs processing fees were based on the quantity of imports, by weight and form of transportation, which did not appear to comply with the provisions of Article VIII of the GATT 1994 and asked Viet Nam to clarify these fees. In response, the representative of Viet Nam said that the fees did not aim at generating revenue for the State budget. The fees covered the cost and expenses incurred by customs authorities in rendering services related to the importation and exportation of cargoes and vehicles, such as inspection, supervision, document-related costs, office expenses, etc. Such costs varied according to the means of transportation (land versus sea transportation) and the volume or size of the imports (storage and conservation costs were higher for large volumes). The fees were therefore levied in proportion to the volumes imported or exported. This allowed small importers and exporters to be charged a lower fee. He noted that Viet Nam imposed ceiling rates for each customs clearance. He added that his Government was reviewing the customs processing fees and would adjust them to conform to WTO rules from the date of accession.

181. 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 the general policy of his Government was to try to reduce such fees to facilitate trade and investment activities in Viet Nam. Between 2003 and December 2004, maritime fees and charges had been reduced by 30 to 50 per cent pursuant to Decisions Nos. 61/2003/QD-BTC and 62/2003/QD-BTC of 25 April 2003. Taking into account the recommendations of some Members, his Government had conducted a comparative study across the region with a view to aligning Viet Nam's sea port fees with those levied in neighbouring countries. As a result, a new Decision had been adopted reducing weight fees by 45 per cent, marine insurance fees by 52 per cent, navigation fees by 12 to 30 per cent, and quay fees by 10 per cent as of 1 January 2005 (Decision No. 88/2004/QD-BTC of 19 November 2004, which had replaced Decisions Nos. 61 and 62). In addition, since 1 January 2006, marine insurance fees had been collected at 75 per cent of the 2005 applied rate. This Decision had reduced Viet Nam's sea port fees to a level comparable to those applied in Thailand.

182. A Member was concerned that Viet Nam maintained "minimum" fee regimes for importers of certain goods, such as customs clearance fees for automobiles and motorcycles, and special customs warehouse fees for IT products, which were higher than the ordinary fees. This Member noted that such fees seemed to be a revenue- or policy-driven measure, not fees related to the cost of customs processing. This Member asked Viet Nam to provide a justification for the higher fees applied for customs clearance of these products. The Working Party would need to examine these fees and charges to determine those that would have a negative impact on trade in possible violation of Article III or Article VIII of the GATT. The representative of Viet Nam replied that minimum fees

had been imposed pursuant to Inter-Ministerial Circular No. 71/2000/TTlT/BTC-TCHQ on the importation of certain goods to take into account the complexity of the State management activities involved. The fees had been set so as to cover the costs of management (costs of paper seals, lead seals, seal rings; costs directly linked to fee collection; remuneration of fee collectors; costs of escort of cargoes and luggage; costs of maintenance of properties, machines, and equipment used to collect fees; purchase of materials; and other expenditures directly linked to fee collection), as well as the costs of storage and conservation of the goods. Customs processing fees for automobiles and motorbikes had been set higher because of the necessity to check each single unit of automobile and motorbike parts.

183. The representative of Viet Nam confirmed that his Government was revising its current regime for customs clearance and warehouse fees to bring it into conformity with Article VIII of the GATT 1994. Customs clearance fees would be charged on both imports and exports at the same rates based on specific fees for specific services rendered and there were no exemptions based on the country of origin or destination. Fees for warehouse storage would be based on either the weight or the volume of goods placed in government warehouses. Revenues from these fees were retained by customs to cover customs warehousing and processing costs, supplemented as necessary by contributions from the State budget. The representative of Viet Nam indicated that his Government would issue a new Ministerial Decision on customs processing fees implementing, prior to accession, the new regime that would replace the fees described in Tables 9, 22(a), and 22(b).

184. The representative of Viet Nam confirmed that from the date of accession Viet Nam would apply all fees and charges for services rendered, applied on or in connection with importation or exportation, including those discussed in paragraphs 178 to 183 above, in conformity with relevant provisions of the WTO Agreement, in particular Articles VIII and X of the GATT 1994. He further confirmed that they would be limited to the approximate cost of services rendered. He added that the practice of higher special fees for some imports would be eliminated upon accession, and that fees that varied based on the value or volume of imports or applied for revenue purposes would be eliminated upon accession or revised to conform with the provisions of Article VIII. He further confirmed that information regarding the application and level of any such fees, revenues collected and their use, would be provided to WTO Members upon request. The Working Party took note of these commitments.

Application of internal taxes

185. 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, 20 May 1998, and 17 June 2003. 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. Lotteries had been added to the list in 2003.

186. 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.

187. 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. The criteria to benefit from excise tax reductions following natural disasters, war or other contingencies were laid down in Article 16 of Decree No. 149/2003/ND-CP of 4 December 2003. The amount of tax reduction was calculated on the basis of the damages incurred and could not exceed 30 per cent of the total taxable amount. However, in the event of serious damages preventing the affected enterprises from manufacturing, doing business, and paying taxes, a tax exemption could be granted. Tax breaks for enterprises investing in new technology and additional production capacity had been abolished.

188. 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 Circular No. 168/1999/TT-BTC of the Ministry of Finance, local car assembling enterprises had been 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.

189. 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. These Members sought a commitment from Viet Nam that it would equalize the excise tax rates on these products by the date of accession and that from this date Viet Nam would apply its taxation measures in full compliance with Article III of the GATT without affording protection to domestic production.

190. 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. Concerning beer, Viet Nam used its excise taxes to regulate consumption between high-value, luxurious products and cheaper varieties and to contain alcohol consumption, and therefore applied lower tax rates on low-cost items such as draft beer and medicinal and herbal wine, which were mostly consumed by low-income people. Both draft and draught beer were produced domestically and only a small quantity of draught beer was imported. He reiterated that the regulation providing excise tax reductions to small loss-making breweries had been eliminated pursuant to the amended Law on Excise Tax No. 08/2003/QH11 of 17 June 2003. As for motor vehicles, he noted that the manufacturing of automobiles was still an infant industry in Viet Nam. To support this sector, preferential excise tax rates had been granted to automobile manufacturing enterprises when investment licenses had been issued. However, as a compromise between the need to support this industry and the potential negative effects that could result from the imposition of lower excise tax rates, Viet Nam had agreed to phase-out the excise tax incentive granted to domestically-produced automobiles by the end of 2006. Asked to review this timeframe, he subsequently indicated that a new Law on Amendments of and Additions to some Articles of the Law on Excise Tax and the Law on Value Added Tax had been adopted in November 2005, and had

entered into force on 1 January 2006. The Law provided for uniform excise tax rates for tobacco, draft and draught beer, and motor vehicles. In his view, this Law conformed fully to the national treatment principle with respect to excise taxes.

191. Concerning the lower excise rates on herbal and medicinal wine, he noted that herbal and medicinal alcohol had a low alcohol content compared to other wines and was used for medication purposes, to treat or cure illness, rather than as an ordinary alcoholic beverage. This product was not in direct competition with other alcoholic products, and the amount of medicinal alcohol produced and consumed was insignificant. Nevertheless, a provision introducing a common excise tax rate of 20 per cent on herbal and medicinal wines, spirits under 20 per cent volume alcohol, and fruit-based wines had been introduced in a new Law on Amendments of and Additions to some Articles of the Law on Excise Tax and the Law on Value Added Tax adopted in November 2005. He provided an updated list of excise tax rates applicable as of 1 January 2006 in Table 10.

Table 10: Goods and Services Subject to Excise Tax (as of 1 January 2006)

No.	Goods, services	Tax rate (%)
I.	Goods	
1.	Cigarettes, Cigars:	
	a) Cigars	65
	b) Cigarettes	
	- From 2006 to 2007	55
	- From 2008	65
2.	Spirits:	
	a) Spirits from 40°	65
	b) Spirits from 20° to below 40°	30
	c) Spirits of under 20°, wines brewed from fruits, herbal and medicinal wines	20
3	Beer:	
	a) Bottled beer and canned beer	75
	b) Draught beer and draft beer	
	- From 2006 to 2007	30
	- From 2008	40
4.	Automobiles*:	
	a) Automobiles of 5 seats or less	50
	b) Automobiles of 6 to 15 seats	30
	c) Automobiles of 16 to under 24 seats	15
5.	Assorted petrol, naphtha, reformate component and other components to be mixed in petrol	10
6.	Air-conditioners with the capacity of 90,000 BTU or less	15
7.	Playing cards	40
8.	Votive paper	70
II.	Services:	
1.	Operating discotheques, massage lounges, karaoke parlors	30
2.	Operating casinos, offering jackpot games	25
3.	Recreation services with gambling	25
4.	Golf: selling memberships and tickets for playing golf	10
5.	Lottery	15

* Auto-parts are not subject to excise tax.

192. Noting that Viet Nam's domestic industries produced vodkas and whiskeys at 39 per cent alcohol content by volume, some Members were of the view that Viet Nam's excise treatment of spirits constituted a *de facto* discrimination of imported products. These Members urged Viet Nam to address this concern. Viet Nam was also invited to equalize the excise tax for all beer.

193. Regarding the value added tax, the representative of Viet Nam said that the 1999 Law on Value Added Tax, which had replaced the Law on Turnover Tax, stipulated four rates (0, 5, 10 and 20 per cent). However, amendments to the Law on Value Added Tax introduced on 1 January 2004 (Law of 17 June 2003) had repealed the VAT rate of 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. 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 the Minister of Finance's Circular No. 84/2003/TT-BTC of 28 August 2003 (see notice in document WT/ACC/VNM/28/Add.2). In response to Members' comments, he noted that the amendments to the Law on Value Added Tax which had entered into force on 1 January 2004 had made excise taxed goods subject to VAT.

194. A Member noted that the VAT exemption on unprocessed and semi-processed agricultural and aquatic products sold by individuals and organizations in Viet Nam was discriminatory as similar imported products were taxed at 5 per cent. This Member invited Viet Nam to integrate producers of unprocessed and raw agricultural products into its VAT system or, alternatively, to commit to exempt imports of such products from VAT from the date of accession. In response, the representative of Viet Nam said that the objective of this measure was not to protect domestic production against imports, but a measure to simplify the management of the VAT system. A large number of households involved in small-scale farming sold their products without invoices, which made tax collection and management difficult. Viet Nam's administrative capacity in this area was very limited. However, in the light of Members' comments, Viet Nam had reviewed its provisions on value-added tax and adopted a new Law on Amendments of and Additions to some Articles of the Law on Excise Tax and the Law on Value Added Tax in November 2005, which exempted all unprocessed and raw agricultural products, whether domestically-produced or imported, from value-added tax. He provided an updated list of products exempt from VAT in Table 11.

195. Noting that Viet Nam exempted from VAT machinery equipment imported for fixed asset purposes by foreign-invested 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.

196. 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, but rather to encourage foreign-invested enterprises to invest and set up production facilities in Viet Nam. The measure favoured foreign-invested enterprises over domestic enterprises. He noted that equipment and machinery produced in Viet Nam was subject to the same value added tax as imported products.

197. The issue of taxation of alcoholic beverages was of considerable interest to a large number of Members. Some Members noted that a specific tax per litre of pure alcohol would be the way to ensure non-discriminatory treatment, as required by Viet Nam's commitments on excise taxes. Moreover, an excise tax regime based on a specific tax per litre of pure alcohol would discourage smuggling and counterfeiting, increase overall excise tax revenue and be easier to administer than an *ad valorem* system. These same Members noted that Viet Nam would need to change its legislation to make its excise tax regime consistent with Viet Nam's WTO obligations. These Members recalled

extensive WTO jurisprudence on excise tax systems based on *ad valorem* rates and urged Viet Nam's National Assembly to take this jurisprudence into account when implementing these commitments. The representative of Viet Nam noted that in becoming a Member of the WTO, Viet Nam retained the sovereign right to implement transparent and non-discriminatory tax policies in furtherance of domestic policy objectives and in accordance with its obligations under the WTO Agreement.

198. The representative of Viet Nam confirmed that from the date of accession, Viet Nam would ensure that its laws, regulations and other measures relating to internal taxes and charges levied on imports, except for those relating to distilled spirits and beer, would be in full conformity with its WTO obligations, in particular Article III of the GATT 1994, and that Viet Nam would implement such laws, regulations and other measures in full conformity with those obligations. The representative of Viet Nam further confirmed that, within three years after the date of accession, Viet Nam would apply excise taxes and other internal taxes on distilled spirits and beer in accordance with the WTO Agreement, including Articles I and III of the GATT 1994. To this end, he further confirmed that, within three years after the date of accession, all distilled spirits with an alcohol content of 20 per cent or higher would be subject to either a single specific rate per litre of pure alcohol or a single *ad valorem* rate. The Working Party took note of these commitments.

199. Further, the representative of Viet Nam confirmed that, within three years after the date of accession, Viet Nam would apply a single *ad valorem* rate to all beer products without regard to the packaging of the product, i.e., draught, draft, bottle, or can. The Working Party took note of this commitment.

Quantitative import restrictions, including prohibitions, quotas and licensing systems

200. The representative of Viet Nam said that Viet Nam had been liberalizing its quantitative import restrictions, but stated that Viet Nam currently applied import prohibitions, import-restrictive licensing/quotas and line management measures. Members noted that quantitative restrictions were inconsistent with GATT Article XI and that Viet Nam should provide a single comprehensive and consolidated list of its current quantitative restrictions, including all bans, quotas and restrictive licensing requirements. Viet Nam should also provide a timetable for each measure currently in place, to either be eliminated, revised or replaced with a specific WTO-consistent alternative, or present an appropriate WTO justification for the retention of the measure. In response, the representative of Viet Nam provided the following information: a list of import prohibitions and their rationale (Table 12); a list of toxic chemicals prohibited from importation or subject to conditional approval (Tables 13(a) and 13(b)); and a list of products subject to line management measures (Table 14). He noted that the notion of "prohibited business sector" (see paragraph 33 and Table 1) implied a prohibition on both the domestic business activities and the importation of corresponding products. He added that, in his view, all WTO-inconsistent import restrictions, with the exception of the restrictions applied to sugar, had been eliminated (see paragraph 222 below). In response to a question, he noted that payment method restrictions established in 1998 had been abolished on 1 May 2001 by Decision No. 46/2001/QD-TTg of 4 April 2001.

201. The main agencies responsible for issuing detailed regulations and guidance concerning products subject to import prohibitions 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. In exceptional cases, importation of prohibited goods could be authorized by the Prime Minister for non-commercial purposes, in consultation with relevant ministries and agencies. However, where products were imported for security reasons (i.e., the importation of arms), procedures used in such cases could not be officially published.

202. Some Members questioned whether Viet Nam was using the least trade restrictive means to address health, environmental, safety and other concerns. In response, the representative of Viet Nam replied that due to administrative capacity constraints in Viet Nam, the health, environmental, and safety objectives sought through the imposition of import prohibition could not, in his view, be achieved through alternative measures.

203. The representative of Viet Nam noted that Viet Nam prohibited imports of second-hand clothing to protect public health as it had no enforceable internal mechanism and no processing and disinfection facilities for used clothing. 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. He added that some WTO Members with a higher level of development than Viet Nam maintained such an import prohibition on certain used items.

204. He also noted that cigarettes were currently prohibited from importation as part of an anti-smoking programme aiming at restricting the production and consumption of cigarettes. Although existing tobacco production facilities 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. 12/2000/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 increasing number of deaths due to tobacco-related diseases. The representative of Viet Nam confirmed, however, that 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. The representative of Viet Nam explained that Viet Nam intended to establish a production quota that would take into account imports, i.e., the quantity of cigarettes imported would be counted against the production quota. A State-trading enterprise would be the sole importer and wholesale distributor of cigarettes, as well as other manufactured tobacco products. Upon accession, Viet Nam would designate the Viet Nam National Tobacco Corporation (VINATABA) as the responsible State-trading enterprise. Currently, VINATABA was a State-owned enterprise producing domestic tobacco products and foreign brands under licence. It was already the major producer of tobacco products in Viet Nam, and the largest distributor.

205. A Member expressed concern about Viet Nam's designation of an enterprise engaged in the production and distribution of tobacco products as the enterprise responsible for importing and wholesaling imported tobacco products. In this Member's view, the interests of a producer of tobacco products could conflict with providing transparent and non-discriminatory access for imports in an amount that met demand for the product. Under WTO rules, VINATABA, having a monopoly for the importation of manufactured tobacco products, would be obligated to ensure non-discriminatory market access for these imports and could not favour the production and distribution of domestic product.

206. The representative of Viet Nam confirmed that from the date of accession, the import ban on cigarettes and other manufactured tobacco products would be eliminated and replaced with a production quota that included imports. The domestic production quota would be reduced by the quantity of cigarettes imported. A State-trading enterprise would provide access to Viet Nam's market for manufactured tobacco products, including cigarettes, in accordance with WTO provisions, and would operate in a transparent and non-discriminatory manner. The Working Party took note of these commitments.

207. The representative of Viet Nam said that importation, registration and circulation of motorcycles with engine capacity exceeding 175 cm^3 had been prohibited to ensure traffic safety.

Importation of motorcycles with engine capacity exceeding 175 cm³ had been allowed only for special purposes such as for the armed forces, security personnel, or for competitive sports. Responding to calls for removal of this ban upon accession, 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 noted that the prohibition had been applied on a non-discriminatory basis and that Viet Nam had no domestic production of such motorcycles.

208. The representative of Viet Nam subsequently confirmed that Viet Nam would establish a non-discriminatory and transparent system for the importation, distribution, and use of large motorcycles by individuals and firms that met appropriate criteria by 31 May 2007. He further confirmed that this commitment was made without prejudice to the distribution commitments set forth in Viet Nam's Schedule of Specific Commitments. Prospective purchasers and/or users of large motorcycles would need a large motorcycle operator's licence from the appropriate authority before purchasing or using a large motorcycle. To ensure the responsibility of large motorcycle operators, an applicant for an operator's licence would be required, *inter alia*, to reach a certain age and to demonstrate knowledge and skill in safely operating a large motorcycle. Distributors of large motorcycles would be permitted to sell such motorcycles only to purchasers presenting a valid large-motorcycle operator's licence from the appropriate regulatory authority. Any approvals required for the importation of large motorcycles (e.g., from the Ministry of Public Security or the Ministry of Trade) would be administered as automatic licenses in conformity with relevant WTO provisions, e.g., the GATT 1994 and the Agreement on Import Licensing Procedures, without restriction on the engine size, based on non-discriminatory published criteria, and without any overall quantitative restrictions. Distributors would be able to import large motorcycles for demonstration and showroom purposes, and for the operation of rider training programmes. The Working Party took note of these commitments.

209. A Member asked Viet Nam to provide data on domestic production and registration of cars and trucks in Viet Nam and to justify Viet Nam's current ban on imports of second-hand vehicles. In response, the representative of Viet Nam said that 51,500 cars had been registered annually between 2003 and 2005, including 18,980 trucks and 24,200 passenger cars. In 2003-2004, approximately 43,850 cars and trucks had been produced annually. The representative of Viet Nam added that he considered the import prohibition on second-hand motor-vehicles of less than five years to be the most feasible measure to ensure traffic safety that Viet Nam could implement under the current conditions, as there was no alternative enforceable internal mechanism. Asked to reconsider the ban, which in the view of Members was not the least trade restrictive measure to ensure traffic safety, the representative of Viet Nam subsequently confirmed that Viet Nam would eliminate the import prohibition on used motor-vehicles and replace it with increased import duties from the date of accession. Detailed information on the proposed system is provided in Table 15. Importation of used motor vehicles had effectively been allowed as from 1 May 2006. He further confirmed that Viet Nam was developing a system of quality standards for traffic, environment, and human health/safety applicable to means of transportation in compliance with WTO rules. Regulations in this regard would be issued promptly. Viet Nam would only apply technical measures to second-hand motor vehicles in compliance with the TBT Agreement. The Working Party took note of these commitments.

210. A Member noted that the additional import duty to be imposed on second-hand motor vehicles could only be used for products in a separate tariff line for used vehicles. This Member urged Viet Nam not to introduce additional duties that would not be consistent with WTO rules. In response, the representative of Viet Nam acknowledged that Viet Nam's nomenclature only provided for breakouts at the 8-digit level for used motor vehicles under heading 8703. Under Viet Nam's Tariff Schedule, all used automobiles for which there was no 8-digit breakout were subject to 150 per cent of the tariff rate imposed on new automobiles - under the current ban, used motor vehicles could only be imported in exceptional cases upon approval of the Prime Minister.

Viet Nam would replace the current ban with a tariff on used automobiles upon accession, as set out in Viet Nam's Schedule of Specific Commitments on Market Access for Goods.

211. Members also asked Viet Nam 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. The representative of Viet Nam stated that all cultural products identified as superstitious, depraved and reactionary cultural products were banned from production, exportation, importation, business and circulation in Viet Nam, whether they were for commercial purposes or not. This prohibition had been detailed in several documents, including the Law on Publishing, the Law on the Press, the Ordinance on Advertising, Decree No. 88/2002/ND-CP of 7 November 2002 on the management of the import and export of cultural products for non-profit purposes, and Circular No. 48/2006/TT-BVHTT of 28 April 2006 of the Ministry of Culture and Information guiding the implementation of Decree No. 12/2006/ND-CP. He provided the list of legal documents prohibiting the importation, production and circulation of cultural products in Annex I to document WT/ACC/VNM/44.

212. He noted that none of these specific legal documents stipulated the criteria for determining "superstitious, depraved and reactionary cultural products". However, "depraved" goods were defined as pornographic cultural products running counter to Viet Nam's traditional morals. "Reactionary" cultural products were those propagating or communicating hatred and violence; destroying the solidarity of the Vietnamese ethnic community; disclosing national, military, security, and other secrets provided for in Viet Nam's laws and regulations; or distorting historic truth, damaging the nation's reputation or national heroes, etc. "Superstitious" cultural products were cultural products, including pictures, the sounds or contents of which caused paranoia, went against nature, or enchanted people to commit crimes or go against the law. He suggested that depraved, reactionary, and superstitious cultural products could 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 with depraved, reactionary, superstitious or morally pernicious content. He provided a more detailed description of superstitious, depraved, and reactionary cultural goods in documents WT/ACC/VNM/38, page 3; WT/ACC/VNM/39, page 10; and WT/ACC/VNM/44, page 38.

213. Concerning toys, the Minister of Trade had issued a detailed list of goods subject to import prohibition in Decision No. 0088/2000/QD-BTM of 18 January 2000. The Decision specified the following children's toys as "having an adverse effect on moral education, children's health and social security" and, therefore, prohibited in Viet Nam: (i) gun-shaped toys; (ii) airguns or guns using compressed spring as propelling force for firing plastic bullets or other kinds of bullets; (iii) guns firing water or water vapour; (iv) guns flaring or making noise while shooting; (v) weapon-shaped toys other than gun-shaped toys (e.g., shaped like grenades, bombs, mines, explosives, swords, spears, bayonets, daggers, bows and crossbows); (vi) firecrackers of all kinds; (vii) certain types of virtual toys; (viii) toys in the form of cultural products (publications, cassettes, discs) and 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; (ix) computer software and electronic games with content inciting the users to violence or prostitution; (x) remote-controlled electrical toys that could interfere with the operation of other equipment/devices or be unsafe for children; and (xi) toys using the national flag, Viet Nam's map, Vietnamese leaders' pictures, and photographs inconsistent with regulations, or for bad intentions.

214. Asked to provide a specific list of HS categories for children's toys and superstitious, depraved or reactionary cultural products prohibited from importation, he said such products could

fall under HS numbers 9501 to 9505 for toys having an adverse effect on personal development, social order, security and safety, and under HS numbers 3706, 4901-4904, 4909-4911, 8524, and 9701-9706 for superstitious, depraved, or reactionary cultural products. However, as the HS nomenclature did not classify goods according to their content, it was not possible to provide a more specific list.

215. The representative of Viet Nam confirmed that the prohibition against superstitious, depraved, and reactionary cultural products applied to all organizations, individuals, domestic and foreign economic entities on a non-discriminatory basis. He further confirmed that this prohibition was based exclusively on the harmful content of the particular product and would not be applied in such a manner as to deny entry or access to distribution channels to products that did not fall within these prohibited categories. To this end, he noted that the Ministry of Culture and Information's management agencies (which included the Department of the Press, Department of Publishing, Department of Cinema, and Department of Performing Arts) conducted inspections in all economic sectors and assessed whether a cultural product was superstitious, reactionary or depraved on the basis of applicable laws, including the Commercial Law, the Law on the Press and the Law on Publication. He confirmed that cultural products would be permitted into Viet Nam, and would be allowed equal and non-discriminatory access to distribution channels, unless, following such inspection of the given product, the relevant management agency of the Ministry of Culture and Information determined that the product fell within one of the prohibited categories prescribed by the Vietnamese laws. The Working Party took note of these commitments.

216. In response to a request for clarification from a Member, the representative from Viet Nam confirmed that the Ministry of Culture's line management requirements for cultural goods did not apply to products that did not contain images, sounds, or text of a cultural nature, including blank computer disks, storage or memory devices, and application software. The representative of Viet Nam further confirmed that inspections of cultural products pursuant to the licensing requirement applied only to the first instance of importation of a given product, consistent with the requirements applied to domestic producers; if, upon inspection in the first instance of importation, the Ministry of Culture and Information approved the product for entry, any subsequent importation of the identical good from the same exporter would not be subject to inspection pursuant to the cultural licensing requirement, and could therefore be granted automatically an import licence and be imported directly into Viet Nam. The Working Party took note of these commitments.

217. Noting that encryption software and machines could be found in computers, Palm Pilots, phones, etc, a Member asked Viet Nam to provide a detailed list of "specialized encryption software and machines" prohibited from importation, excluding commercially traded electronic goods with encryption technology. The representative of Viet Nam confirmed that the import prohibition did not apply to general, commonly traded goods equipped with encryption technology and destined for mass consumption. Only specialized encryption machines and software subject to State secret could not be imported (Decision No. 46/QD-TTg of 4 April 2001). For security reasons, however, his Government could not provide a specific list of specialized encryption software and machines used in Viet Nam.

218. The representative of Viet Nam confirmed that from the date of accession, the restriction on imports of "specialized encryption machines and encryption software subject to State secret" set out in Table 12 would not apply to general, commercially traded goods equipped with encryption technology, which were destined for mass consumption, such as all products covered by the WTO Information Technology Agreement (ITA). He confirmed that Viet Nam would permit imports of ITA and other commercially traded goods in compliance with the WTO Agreement. The representative of Viet Nam further confirmed that Viet Nam would not impose unreasonable or burdensome requirements on imports in determining whether other goods with encryption technology were subject to the import restriction set out in Table 12. Once officials in Viet Nam had determined that a type of good equipped with encryption technology was not subject to this import restriction, that

determination would apply to future imports of such good. The Working Party took note of these commitments.

219. A Member was concerned by a ban imposed by Ho Chi Minh City on the sale and consumption of liquor with more than 30 per cent alcohol content within the city limits. Such a measure, in the Member's view, effectively prohibited imported spirits, which were generally above 40 per cent alcohol content, while allowing local production within the 20-30 per cent limit to be traded. This Member requested Viet Nam to repeal these provisions. In response, the representative of Viet Nam said that the measure adopted concerned the allocation of new liquor selling licenses within District 1. Given the high number of liquor sellers in this area, the Ho Chi Minh City People's Committee had, on 9 June 2005, adopted Decision No. 93/2005/QD-UBND, which temporarily suspended the allocation of new liquor selling licenses within District 1. This measure applied to all liquor with over 30 per cent alcohol content, whether domestic or imported. Sellers who had already been granted liquor selling licenses were allowed to continue selling liquors as usual, including these with over 30 percent alcohol content.

220. Noting that Table 13(a) seemed to include some chemicals that were not covered by the Chemical Weapons Convention, a Member asked Viet Nam to explain the basis for prohibiting these chemical products. Viet Nam was also invited to provide further information as to the basis for the conditional nature of the licensing of imported chemicals listed in Table 13(b). In response, the representative of Viet Nam said that Table 13(a) listed toxic chemicals that were explosive, flammable or corrosive and had adverse effects on human and animal health, assets, the environment and national security, as well as chemicals falling within the scope of the Chemical Weapons Convention. As for Table 13(b), it contained toxic chemicals that caused cancer or were dangerous for human health or the environment. Trade in these chemicals, including importation, was regulated by Decree No. 68/2005/ND-CP of 20 May 2005 on Chemical Safety and subject to certain conditions, such as the existence of adequate handling facilities. A Member noted that Decree No. 68/2005/ND-CP set out the framework for trade in, including importation of, the chemicals listed in Table 13(b) but cautioned that the Decree lacked details of the specific procedures and technical standards relevant to obtaining approval for importation. This Member encouraged Viet Nam to issue appropriate guiding circulars to further clarify the necessary procedures and technical standards for importation of these chemicals.

221. Concerned about Viet Nam's licensing system, some Members asked whether Viet Nam applied procedures which met the definition of automatic import licensing under the Agreement on Import Licensing Procedures; these Members further sought an explanation as to why government ministries needed to supervise the quality of imported products, as this should be an issue determined between buyers and sellers. Members requested Viet Nam to clarify, for each tariff line item, the WTO rationale of the measure applied and the precise conditions under which licenses would not be issued or would be restricted in volume or otherwise. A Member noted that Viet Nam was using discretionary licensing to restrict imports of dairy products, eggs, maize, tobacco, salt, cotton, and sugar. This Member invited Viet Nam to eliminate all such measures without an appropriate WTO justification by the date of accession.

222. In reply, the representative of Viet Nam provided information on import licensing procedures in document WT/ACC/VNM/3/Add.1, Annex 3, subsequently revised in document WT/ACC/VNM/40 of 14 September 2005, and a list of products subject to import licensing in Annex 2 to document WT/ACC/VNM/33. Although Viet Nam had initially envisaged phasing out quotas and restrictive licensing requirements on some non-agricultural products after accession, the representative of Viet Nam subsequently confirmed that Viet Nam would eliminate all quantitative import restrictions in the form of quotas or restrictive licenses upon accession and provided a timetable for phasing out such measures in Annex 2 to document WT/ACC/VNM/33. In his view, all WTO-inconsistent import restrictions, with the exception of the restriction applied to sugar, had

effectively been eliminated pursuant to Prime Minister's Decision No. 46/2001/QD-TTg of 4 April 2001, Prime Minister's Decision No. 91/2003/QD-TTg of 9 May 2003, and Prime Minister's Decision No. 187/2003/QD-TTg of 15 September 2003. The restriction on sugar would be replaced by a TRQ upon accession (see paragraph 167 above). Hence, as from the date of accession, all import licensing measures would be imposed in the form of TRQ licensing and automatic licensing (automatic licensing for large motorcycles − see paragraph 208 above; line management measures; and automatic licensing as required under international treaties to which Viet Nam was a party). He added that import licenses were delivered automatically and were valid for one year, a period which could be extended upon request. However, as import licenses were granted automatically, traders preferred, in practice, to apply for a new import licence rather than request extension.

223. Current line management measures were imposed to protect the environment, human health, labour safety, national security, food safety and hygiene. Import restrictive line management measures had been eliminated in early 2001. Line management measures applied to all organizations and individuals entitled to import goods, i.e., having duly completed their business registration. He provided in Table 14 a comprehensive list of all line management measures applied in Viet Nam in the period 2001-2005, including the products covered, the WTO justification for such measures, and the agency in charge of issuing the import licence, where applicable. He noted that not all line management measures involved licensing. In his view, existing line management measures were in compliance with international practice and WTO provisions. The fees associated with the issuance of line management licenses were consistent with the Ordinance on Fees and Charges and, in his opinion, modest and commensurate with the related administrative costs. For example, licensing fees for the importation and exportation of cultural products amounted to VND 50,000 per licence (about US$3) for commercial transactions and VND 2,000 per licence (about US$0.12) for non-commercial products, pursuant to Decision No. 203/2000/QD-BTC of 21 December 2000; licensing fees for imported plant protection medicine and materials were VND 200,000 per licence (about US$12), in accordance with Circular No. 110/2003/TT-BTC of 17 November 2003; and fees for granting quarantine certificates for animals and animal products imported, exported, or in transit were VND 50,000 (about US$3), pursuant to Decision No. 08/2005/QD-BTC of 20 January 2005. He added that a new line management mechanism for the post-2005 period had been established pursuant to Decree No. 12/2006/ND-CP of 23 January 2006. He confirmed that this new mechanism was designed with a view to ensuring that it did not impose quantitative restrictions on imports and that it complied with WTO rules, including Articles XX and XXI of the GATT 1994.

224. In response to a Member who requested Viet Nam to list the international environmental conventions Viet Nam was a party to, he said that Viet Nam was a signatory to the Convention on World Cultural Heritage and Natural Resources Conservation; the Convention on Wetland of International Importance, especially of Waterfowls Habitat (Ramsar); the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES); the Montreal Protocol on Substances that Deplete the Ozone Layer; the Framework Convention on Climate Change; the Convention on Biological Diversity (CBD); the Convention on Marine Law; the Basel Convention on controlling the transit and disposal of dangerous waste; the United Nations Convention to Combat Desertification (CCD); the Cartagena Protocol on Biosafety; and the Vienna Convention on the Ozone Layer Protection.

225. Some Members sought a commitment from Viet Nam that, upon accession to the WTO, it would maintain only those import restrictions that could 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.

226. 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 was to 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)). In application of this action plan, Viet Nam's Prime Minister had issued Decision No. 41/2005/QD-TTg on 2 March 2005. The Decision had come into effect on 1 September 2005 and sought to ensure compliance with WTO rules and regulations. The representative of Viet Nam confirmed that under Viet Nam's legislative system, "line management" was defined as administrative oversight by line government agencies of measures to be applied consistent with WTO rules, in particular those on SPS, TBT and import licensing procedures. He further confirmed that under Viet Nam's regulations, in particular Decree No. 12/2006/ND-CP (which had replaced Decision No. 46/2001/QD-TTg) and Decision No. 41/2005/QD-TTg, line management measures could not constitute quantitative import restrictions or be administered in such a way as to have any trade-restrictive or distortive effects, and thus were expected to be in compliance with the Agreement on Import Licensing Procedures.

227. The representative of Viet Nam confirmed that, from the date of accession, Viet Nam would eliminate and not introduce, re-introduce or apply quantitative restrictions on imports, or other non-tariff measures, such as quotas, bans, permits, prior authorization requirements, licensing requirements and other restrictions having equivalent effect, that could not be justified under the provisions of the WTO Agreement. He confirmed that, to this end, Viet Nam would eliminate no later than the date of accession the import prohibition on cigarettes and cigars and used motor-vehicles and all quantitative import restrictions in the form of quotas or restrictive licenses inconsistent with WTO provisions. Viet Nam would also convert the discretionary import licensing regime applied to sugar into a TRQ upon accession. He further confirmed that, from the date of accession, the authority of his Government to suspend imports and exports, or to apply licensing requirements that could be used to suspend, ban, or otherwise restrict the quantity of trade, including those listed in Tables 12, 13(a-b), and 14, would be applied in conformity with the requirements of the WTO Agreement. The Working Party took note of these commitments.

Customs valuation

228. 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 of 1998, which had come into effect in 1999. 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, subsequently revised in document WT/ACC/VNM/35. He acknowledged that several of the provisions of the Agreement had not yet been implemented in Viet Nam. However, Viet Nam's customs valuation system was being reformed to be brought into conformity with the Customs Valuation Agreement. The National Assembly had adopted a 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. In addition, customs officers and the business community needed training to use the new valuation procedures.

229. 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 Customs Valuation

Agreement. The proliferation of this practice to include differential valuation treatment for wines, spirits and ceramic tiles was highlighted. These 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, including the elimination of minimum customs values.

230. In reply, the representative of Viet Nam submitted an action plan for the implementation of the Customs Valuation Agreement in document WT/ACC/VNM/20, subsequently revised in documents WT/ACC/VNM/20/Rev.1 and Rev.2, and an update on the implementation of the Customs Valuation Agreement in document WT/ACC/VNM/34. 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 and the adoption of a new Law on Import and Export Duties on 14 June 2005 (Law No. 45/2005/QH11), which had replaced the 1998 Law on Import and Export Duties, and of a Law amending some Articles of the Customs Law (Law No. 42/2005/QH11 of 14 June 2005). 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, providing for the introduction of a customs valuation system based on the transaction value as required by the Customs Valuation Agreement. The new system had been applied on a pilot basis for certain target groups of countries from 1 January 2004 and had been expanded gradually. On 15 December 2005, Decree No. 155/2005/ND-CP and Circular No. 113/2005/TT-BTC had been issued in replacement of Decree No. 60/2002/ND-CP and Circular No. 118/2003/TT-BTC. The new Decree, which had entered into force on 1 January 2006, made the use of the transaction value applicable to all imports, in full conformity with the Customs Valuation Agreement. The Decree also provided for the full application of the computed value method and the deductive method. Other legal instruments adopted in December 2005 included Government Decree No. 154/2005/ND-CP of 15 December 2005 guiding the implementation of some Articles of the Customs Law relating to customs procedures, customs inspection and supervision, which had replaced Decree No. 102/2001/NC-CP, and Circular No. 114/2005/TT-BTC of 15 December 2005 of the Ministry of Finance on import-export post-clearance audit.

231. He further noted that minimum customs values had been eliminated in September 2004 pursuant to Circular No. 87/2004/TT-BTC of 31 August 2004 (which had been replaced by Circular No. 113/2005/TT-BTC in December 2005) and that Viet Nam had fully incorporated the provisions of the Customs Valuation Agreement and the Interpretative Notes in its regulations, in particular Circular No. 113/2005/TT-BTC and Decree No. 155/2005/ND-CP of 15 December 2005. Noting that the elimination of minimum values seemed to apply only to a list of countries and that minimum import prices still seemed to be used in practice, in particular for wines and spirits, a Member enquired how Viet Nam intended to ensure full compliance with the Customs Valuation Agreement upon accession, both in law and in practice. In response, the representative of Viet Nam noted that the list referred to had been abolished in 2004. The representative of Viet Nam stated that to assist its customs officials in assessing potential risk regarding the truth or accuracy of the declared customs value for imported goods, Viet Nam was establishing a valuation database. He added that the database would be used only as a risk assessment tool and that it would not be used to determine the customs value for imported goods, as a substitute value for imported goods, or as a mechanism to establish minimum values. In this regard, Viet Nam would amend Article 6 of Decree No. 155 before accession to clarify that the database would not be used to determine the customs value for imported goods. In addition, the representative of Viet Nam confirmed that the Ministry of Finance would soon issue guidelines on the use of the valuation data base that would be consistent with the "Guidelines on the Development and Use of a National Valuation Database As a Risk Assessment Tool" prepared by the Technical Committee on Customs Valuation and set forth in Annex D to Document VT0388E3. A copy of Viet Nam's valuation database guidelines would be provided to WTO Members for review.

232. In response to a specific question concerning the implementation of Article 6.2 of the Customs Valuation Agreement, according to which no Member could require or compel any person

not a resident in its own territory to produce for examination or to allow access to, any account or other record for the purpose of determining a computed value, the representative of Viet Nam noted that such a provision had not been included in Viet Nam's legislation, but that the Government would add such a provision prior to accession when it revised Decree No. 155/2005/ND-CP.

233. In response to a question, the representative of Viet Nam agreed that Viet Nam's legislation lacked provisions (required by Article I and the Interpretative Note to Article I:2) to provide for the "circumstances of sale" method of determining whether the relationship between the buyer and seller influenced the price. He stated that Viet Nam would amend Decree No. 155 and Circular 113 to establish this provision prior to accession.

234. In response to a question regarding the application of Generally Accepted Accounting Principles (GAAP) as set forth in the General Note of Annex 1 of the WTO Customs Valuation Agreement, the representative of Viet Nam stated that the Law on Accounting of 2003 (Article 7) and Viet Nam's Accounting Standards of 2002 (Standard No. 1) had provisions on basic accounting principles and principal accounting requirements which were in accordance with the General Note of Annex 1 of the WTO Customs Valuation Agreement. In addition, he explained that the provisions of Article 10 of the WTO Customs Valuation Agreement were addressed in Article 15.4 of Decree 155 which required Customs to keep secret, at the request of declarants, information provided by declarants related to customs valuation purposes, except otherwise provided for legitimate reasons in law, such as Article 7 of the Ordinance on Organization of Criminal Investigations (No. 23/2004/PL-UBTVQH11) of 20 August 2004, which required disclosure of information to authorities conducting criminal investigations.

235. 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 an importer could appeal a disputed customs decision of value in accordance with Article 17 of Decree No. 155/2005/ND-CP and Article 1 of the Law on Complaints and Denunciation. If dissatisfied or if the settlement period had expired, the importer could appeal further either to a higher administrative body or bring a case before the Administrative Court in accordance with Article 1.7 of Law No. 26/2004/QH11 amending the Law on Complaints and Denunciation and Article 1.1 of Ordinance No. 10/1998/PL-UBTVQH10 of 25 December 1998 amending the Ordinance on Procedures for Settlement of Administrative Disputes. 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 of the Customs Valuation Agreement, Viet Nam had amended the Law on Complaints and Denunciation in December 2005 and the Ordinance on Procedures for Settlement of Administrative Disputes on 5 April 2006. He confirmed that under the new legislation, the importer or other person liable for the payment of duty in customs valuation could appeal initial determinations without penalty, first to the customs agency, which made the initial determinations, then either to the higher level competent administrative agency or to the judicial authority, that notice of the decision on appeal should be given to the appellant and the reasons for such decision should be provided in writing (Articles 17, 38 and 45 of the Law on Complaints and Denunciations and the Ordinance on Procedures for Settlement of Administrative Disputes (as amended)), and that the appellant shall also be informed of any rights of further appeal. He further noted that Article 16 of Decree No. 155/2005/ND-CP had introduced a guarantee system for release of imported goods from customs pending the final determination of the customs value. Customs would accept the clearance of goods providing that the declarant provided sufficient guarantee in the form of a deposit, a surety bond or other appropriate instruments covering the ultimate payment of customs duties for which the goods may be liable, as stipulated in Article 13 of the Agreement on the implementation of Article VII of the GATT 1994. The representative of Viet Nam confirmed that guidance on this guarantee system would be issued upon accession.

236. He added that transparency requirements were provided for in Decree No. 155/2005/ND-CP of December 2005, in particular Articles 7 and 15. Pursuant to this Decree, customs authorities were required to inform the declarant in writing of the method of valuation used. Legal normative documents pertaining to Customs were published in the Official Gazette in accordance with Article 10 of the Law on Promulgation of Legal Normative Documents, as well as in the Customs Newspaper and other newspapers and on the customs website (see the "Transparency" section below). He confirmed that customs authorities consulted with relevant ministries and agencies, including the Chamber of Commerce and Industry, prior to implementing changes to customs procedures and rules of general application. The Chamber of Commerce was responsible for collecting comments from the business community and sending the results to customs authorities (Ministry of Finance). Enterprises were also invited to annual meetings with the Prime Minister and regular meetings with Customs. He added that a transparent post-clearance audit system had been established pursuant to Article 32 of the revised Customs Law No. 42/2005/QH11 of 14 June 2005. Under this Article, post-clearance audit was carried out in case of signs of tax or commercial fraud or violation of import-export regulations or in the event of suspicion of fraud or violation based on data analysis, customs controls, or information from agencies, organizations, individuals or foreign customs. Post-clearance audit aimed at re-examining the accuracy and reliability of documents presented for customs clearance or compliance of customs clearance with existing legislation. He further noted that importers were informed about Customs' classification decisions in writing pursuant to Circular No. 85/2003/TT-BTC of 29 August 2003 (Item IV, Section B).

237. A Member sought a commitment from Viet Nam to implement fully the provisions of Decision 3.1 of the Committee on Customs Valuation (Treatment of Interest Charges in the Customs Value of Imported Goods) and paragraph 2 of Decision 4.1 of the Committee on Customs (Valuation of Carrier Media Bearing Software for Data Processing Equipment). Paragraph 2 of Decision 4.1 provides for the determination of the customs value of imported carrier media bearing data or instructions only on the cost or value of the carrier medium.

238. The representative of Viet Nam confirmed that, from the date of accession, Viet Nam would fully apply the WTO provisions concerning customs valuation, including the Agreement on the Implementation of Article VII of the GATT 1994 and Annex I (Interpretative Notes). Viet Nam would ensure that any customs valuation method to be applied would be in accordance with these WTO rules. In this regard, he confirmed that minimum prices and any system of reference prices or fixed valuation schedule applied to imports in lieu of the transaction value to determine customs valuation had been eliminated and would not be reintroduced and that that all methods of valuation used were in strict conformity with those provided for in the WTO Customs Valuation Agreement. He added that Viet Nam was currently applying paragraph 2 of Decision 4.1, the Valuation of Carrier Media Bearing Software for Data Processing Equipment (G/VAL/5), as provided in Annex 1 to Circular 113. Viet Nam committed to implement Decision 3.1 as soon as possible, but in any event no later than two years from the date of accession and paragraph 2 of Decision 4.1 upon accession. He further confirmed that any modification to or amendment of the Decree 155 or Circular 113, including the Annex thereto, would be in compliance with the WTO Customs Valuation Agreement, including the Interpretative Notes. Viet Nam would inform the WTO Customs Valuation Committee of any changes to Decree 155 or Circular 113, including the Annex to Circular 113, or any other laws, regulations, decrees or circulars that were relevant to the WTO Customs Valuation Agreement, in accordance with Article 22 of the Agreement, including relevant changes in the administration of these provisions. The Working Party took note of these commitments.

Rules of origin

239. 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, which had since then been

replaced by Decision No. 1420/QD-BTM of 4 October 2004, Joint 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, and Decree No. 19/2006/ND-CP of 20 February 2006 guiding the implementation of the Commercial Law regarding the origin of goods in accordance with the Kyoto Convention and the WTO Agreement on Rules of Origin. 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 Common Effective Preferential Tariff (CEPT) implementing the ASEAN Free Trade Area.

240. Certificates of origin were required for goods (i) originating from countries to which Viet Nam extended duty preferences in accordance with Vietnamese laws or international treaties or agreements to which Viet Nam was a party; (ii) subject to import management regulations in accordance with Vietnamese laws or international treaties or agreements to which Viet Nam was a party; (iii) announced by the Government of Viet Nam or international organizations as likely to harm social security, public health or the environment; and (iv) imported from countries subject to trade remedy measures. Certificates of origin issued by manufacturers had to be certified by the competent agency or organization in the country of origin. When the origin of the goods could not be determined, customs authorities charged the ordinary (standard) duty rate, i.e., not the MFN rate.

241. In Viet Nam, certificates of origin were issued by the Chamber of Commerce and Industry of Viet Nam, the Ministry of Trade, or the Management Boards of industrial parks and export processing zones authorized by the Ministry of Trade. Pursuant to Decision No. 183/2000/QD-BTC of 14 November 2000, fees charged for the issuance of export certificates amounted to VND 10,000 per certificate, fees for the certificate of origin form A for footwear products exported to the European market to VND 40,000 per certificate, and fees for the re-issuance of certificates to VND 10,000 per certificate. These fees had been set so as to cover the cost of the services rendered (printing costs, remuneration of the service providers and fee collectors, related expenditures such as inspection, communications, etc). 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.

242. 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.

243. The representative of Viet Nam stated that, in his view, existing legal documents were consistent with the Agreement on Rules of Origin, although they did not elaborate fully all aspects governed by the Agreement. He confirmed that the requirements of Article 2(h) and paragraph 3(d) of Annex II of the Agreement on Rules of Origin had been incorporated in Decree No. 19/2006/ND-CP of 20 February 2006 implementing the 2005 Commercial Law. The Decree also provided for the principle of substantial transformation as a means of determining the origin of goods and included provisions on verification and audit. In response to a question, he said that administrative decisions on origin were subject to the same administrative and judicial review mechanisms as other administrative decisions.

244. The representative of Viet Nam confirmed that from the date of accession Viet Nam's laws and regulations on rules of origin for both MFN and preferential trade would be applied in conformity with the provisions of the WTO Agreement on Rules of Origin, including the provisions of Article 2(h) and Annex II, and that these provisions would be established in Viet Nam's legal framework. He further confirmed that, in line with the requirements of Article 2(h) and of Annex II, paragraph 3(d), both for non-preferential and preferential rules of origin, Viet Nam's customs authorities would provide an assessment of the origin of the import and outline the terms under which such an

assessment would be provided upon the request of an exporter, importer or any person with a justifiable cause. According to the provisions of the WTO Agreement on Rules of Origin specified above, any request for such an assessment would be accepted even before trade in the goods concerned had begun, and any such assessment would be binding for three years. The representative of Viet Nam further stated that, notwithstanding the measure or instrument of commercial policy to which they were linked, Viet Nam would not use the rules of origin as an instrument to pursue trade objectives directly or indirectly. The Working Party took note of these commitments.

Other customs formalities

245. 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.

246. In reply, the representative of Viet Nam said that customs procedures had been reformed to facilitate trade and investment and to ensure compliance with Viet Nam's international obligations. The provisions of the Customs Law were generally consistent with the set of rules and procedures recommended by the Revised Kyoto Convention of 1999 on harmonization and simplification of customs procedures. Viet Nam was a party to the 1974 Kyoto Convention and was taking steps to join the revised Convention. Further amendments to the Customs Law had been adopted on 14 June 2005 to ensure full compliance with that Convention (Law No. 42/2005/QH11). The amendments, which had come into effect on 1 January 2006, made customs procedures more transparent; provided for standardized customs procedures expected to be compliant with the Revised Kyoto Convention; simplified and harmonized customs procedures to reduce the number of documents required; and introduced a system of electronic customs declaration and clearance, and a risk management and post-clearance audit system. The system of electronic customs declaration and clearance had been launched officially on 19 August 2005 pursuant to the Minister of Finance's Decision No. 50/2005/QD-BTC of 19 July 2005. The system was being implemented in several major cities. In response to a question, he noted that the system allowed Electronic Data Interchange (EDI) transfer of entry data between customs brokers and the Customs service, but not yet EDI transfer of data between overseas suppliers and the Customs service. He stated further that, in his view, Viet Nam had qualified for 81 of the 148 norms and standards provided for by the Kyoto Convention, including norms on clearance, customs procedures, customs tariff and taxes, and customs inspections.

247. He added 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 Organization and bilateral donors to strengthen and enforce anti-smuggling measures. Viet Nam's customs legislation provided for suspension of customs clearance in case of IPR violation. He added that new intellectual property legislation had been passed in 2005, which, in his assessment, strengthened intellectual property control over exported and imported goods in compliance with the TRIPS Agreement (see section on "Trade-Related Aspects on Intellectual Property Rights"). 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. They were discussed with interested parties during the drafting process and published in the Official Gazette

once finalized. They entered into force 15 days after their publication. All customs procedures, regulations and policies related to importation and exportation were disclosed officially through mass media (customs news, customs journal, website of the General Department of Customs - www.customs.gov.vn). In addition, grievance settlement teams that could be contacted via a hotline system had been set up in every provincial and city customs departments to discourage bribery practices.

Pre-shipment inspection

248. Some Members noted that Viet Nam did not apply pre-shipment inspection requirements. Some Members asked to Viet Nam to ensure, in case it contracted the services of pre-shipment inspection firms, that the operations of such firms be consistent with the relevant WTO provisions, in particular GATT Article VIII, the Agreement on Pre-shipment Inspection and the Agreement on the Implementation of Article VII of the GATT 1994. A Member requested a commitment that Viet Nam not apply PSI measures until WTO-consistent legislation had been implemented.

249. In reply, the representative of Viet Nam said that Viet Nam's Customs Law did not include any provision regarding pre-shipment inspection. Results of non-compulsory inspections could not be used by the customs authorities. While he had initially indicated that pre-shipment inspection might be introduced on a trial basis on particular consignments, he subsequently confirmed that Viet Nam was not operating any PSI system and was not preparing any legislation covering this subject matter.

250. The representative of Viet Nam confirmed that if pre-shipment inspection requirements were introduced, they would be temporary and in conformity with the requirements of the Agreement on Pre-shipment Inspection and other relevant WTO agreements. Viet Nam would take full responsibility to ensure that pre-shipment enterprises operating on its behalf comply with the provisions of WTO Agreements including the Agreements on Technical Barriers to Trade, Sanitary and Phytosanitary Measures, Import Licensing Procedures, the Implementation of Article VII, Rules of Origin, the Implementation of Article VI (Antidumping), Subsidies and Countervailing Measures, Safeguards, and Agriculture. The establishment of charges and fees would be consistent with Article VIII of the GATT 1994 and Viet Nam would ensure that the due process and transparency requirements of the WTO Agreements, in particular Article X of the GATT 1994, would be applied. 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

251. The representative of Viet Nam said that Viet Nam at the outset had had no provisions on anti-dumping, 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, allowed the imposition of additional duties 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 duties 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.

252. The representative of Viet Nam acknowledged that Viet Nam needed to establish a proper legal and institutional framework to enforce provisions on anti-dumping and countervailing measures. New Ordinances on Anti-Dumping, Countervailing, and Safeguard Measures had been drafted to this effect. The Standing Committee of the National Assembly had approved the Ordinance on Safeguard Action on

25 May 2002, Ordinance No. 20-2004-PL-UBTVQH11 "Against Dumping of Imported Goods into Viet Nam" on 29 April 2004, and Ordinance No. 22-2004-PL-UBTVQH11 "On Measures against Subsidized Products Imported into Viet Nam" on 20 August 2004. Implementing regulations for these Ordinances were being drafted. The regulations would be ready prior to Viet Nam's accession to the WTO. A Decree on the implementation of the Ordinance on Measures against Subsidized Products Imported into Viet Nam had already been adopted (Decree No. 90/2005/ND-CP of 11 July 2005). The Decree had been promulgated with a view to ensuring conformity with the Agreement on Subsidies and Countervailing Measures. The Decree included detailed provisions on confidentiality, provision of information, organization of consultations, obligation to publish elements or decisions relevant to investigations, procedures for investigations, application of countervailing duties, etc. Anti-dumping, countervailing and safeguard decisions were made public via newspapers, official communication channels, the Ministry of Trade's website, etc. He added that the Ministry of Trade would issue an Official Bulletin on anti-dumping, countervailing and safeguard measures in which decisions would be published. He further noted that pursuant to Article 27 of the Ordinance on Anti-dumping and Article 29 of the Ordinance on Measures against Subsidized Products Imported into Viet Nam, the provisions of international agreements to which Viet Nam was a party would prevail over Vietnamese anti-dumping and countervailing legislation in the event of a conflict. In his view, Viet Nam's new legislation on anti-dumping and countervailing measures complied fully with the WTO Agreement on Subsidies and Countervailing Measures and the Anti-Dumping Agreement. In response to a question, he noted that no trade remedy cases had been initiated in Viet Nam so far.

253. The representative of Viet Nam confirmed that his Government would ensure that any legislation in place at the time of accession providing for the application of measures taken for safeguard, anti-dumping or countervailing duty purposes would be in conformity with the provisions of the WTO Agreements on Safeguards, on Anti-Dumping and on Subsidies and Countervailing Measures. The representative of Viet Nam further confirmed that Viet Nam would not apply measures for safeguard, anti-dumping or countervailing duty purposes after accession until legislation in conformity with the provisions of these WTO Agreements had been notified and implemented. In the future elaboration of any legislation concerning anti-dumping, countervailing duty and safeguard measures, Viet Nam would ensure their full conformity with the relevant WTO provisions, including the Agreement on the Implementation of Article VI, the Agreement on Subsidies and Countervailing Measures and the Agreement on Safeguards. The Working Party took note of these commitments.

254. Several Members noted that Viet Nam was continuing the process of transition towards a full market economy. Those Members noted that under those circumstances, in the case of imports of Vietnamese origin into a WTO Member, special difficulties could exist in determining cost and price comparability in the context of anti-dumping investigations and countervailing duty investigations. Those Members stated that in such cases, the importing WTO Member might find it necessary to take into account the possibility that a strict comparison with domestic costs and prices in Viet Nam might not always be appropriate.

255. The representative of Viet Nam confirmed that, upon accession, the following would apply − Article VI of the GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Anti-Dumping Agreement") and the SCM Agreement shall apply in proceedings involving exports from Viet Nam into a WTO Member consistent with the following:

(a) In determining price comparability under Article VI of the GATT 1994 and the Anti-Dumping Agreement, the importing WTO Member shall use either Vietnamese prices or costs for the industry under investigation or a methodology that is not based on a strict comparison with domestic prices or costs in Viet Nam based on the following rules:

(i) If the producers under investigation can clearly show that market economy conditions prevail in the industry producing the like product with regard to the manufacture, production and sale of that product, the importing WTO Member shall use Vietnamese prices or costs for the industry under investigation in determining price comparability;

(ii) The importing WTO Member may use a methodology that is not based on a strict comparison with domestic prices or costs in Viet Nam if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of that product.

(b) In proceedings under Parts II, III and V of the SCM Agreement, when addressing subsidies, the relevant provisions of the SCM Agreement shall apply; however, if there are special difficulties in that application, the importing WTO Member may then use alternative methodologies for identifying and measuring the subsidy benefit which take into account the possibility that prevailing terms and conditions in Viet Nam may not be available as appropriate benchmarks.

(c) The importing WTO Member shall notify methodologies used in accordance with subparagraph (a) to the Committee on Anti-Dumping Practices and shall notify methodologies used in accordance with subparagraph (b) to the Committee on Subsidies and Countervailing Measures.

(d) Once Viet Nam has established, under the national law of the importing WTO Member, that it is a market economy, the provisions of subparagraph (a) shall be terminated provided that the importing Member's national law contains market economy criteria as of the date of accession. In any event, the provisions of subparagraph (a)(ii) shall expire on 31 December 2018. In addition, should Viet Nam establish, pursuant to the national law of the importing WTO Member, that market economy conditions prevail in a particular industry or sector, the non-market economy provisions of subparagraph (a) shall no longer apply to that industry or sector.

The Working Party took note of these commitments.

2. Export Regulation

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

256. The representative of Viet Nam said that Viet Nam levied export duties on some 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. Export duties were imposed in accordance with the Law on Import, Export Duties, and Decision No. 45/2002/QD-BTC of 10 April 2002. Viet Nam's export duties were applied on an MFN basis. Rates of export duty ranged from one per cent on certain precious stones to 45 per cent on scrap metal. Goods subject to export duties are listed in Table 16.

257. Some Members were concerned that the high export duties imposed on ferrous and non-ferrous scrap (35 and 45 per cent) could distort trade flows, put pressure on prices, and would restrict exports of these products. These Members noted that this measure provided a considerable benefit to users in Viet Nam in relation to users outside Viet Nam. A Member asked Viet Nam to provide a plan for scheduling the reduction of all its export duties and eliminate export duties on ferrous and non-ferrous metal scrap by the date of accession. In response, the representative of Viet Nam said that the domestic

source of ferrous scrap was becoming exhausted and that Viet Nam relied on imports of this product. The measure aimed at ensuring supply for domestic production and limiting the costs of enterprises needing ferrous scrap. In his view, this measure did not distort international trade as Viet Nam's resources were not the main source of ferrous scrap in the world and only a small quantity of Vietnamese ferrous scrap was exported. He did not consider the imposition of export duties inconsistent with WTO rules.

258. In addition, surcharges of 10 per cent were applied to exports of unprocessed rubber latex and raw cashew nuts. Surcharges applied to exports of coffee had been phased out in 1995. The rates of surcharge were linked to fluctuations in commodity prices, and the revenue had been channelled into the Price Stabilization Fund, later replaced by the Export Promotion Fund pursuant to 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. In response to questions, he said that surcharges 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.

259. Some Members asked Viet Nam to negotiate bilaterally to reduce its export duties on ferrous and non-ferrous scrap metal in the context of accession to the WTO. In their view, the results of such negotiations would form part of the balance of commitments and concessions in Viet Nam's terms of accession. These Members emphasized that if Viet Nam subsequently increased these export duties above the commitment level, it would disturb the balance of concessions established in the bilateral and multilateral negotiations for WTO accession, and these Members would have the right to take appropriate action to rebalance the concessions. Some other Members stated that this was without prejudice to their views in respect of the status and legality of export taxes in the framework of WTO Agreements.

260. The representative of Viet Nam confirmed that Viet Nam would apply export duties, export fees and charges, as well as internal regulations and taxes applied on or in connection with exportation in conformity with the GATT 1994. With regard to export duties on ferrous and non-ferrous scrap metals, he confirmed that Viet Nam would reduce export duties in accordance with Table 17, and that Table 17 included all export duties that Viet Nam applied to ferrous and non-ferrous scrap metal. The Working Party took note of these commitments.

Export restrictions

261. 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.

262. 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 18. Certain exports were subject to line management approval. The Ministry of Aqua-culture licensed exports of certain aquatic species (see Table 19). 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.

263. 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.

264. 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.

265. 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.

266. 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). However, rice export quotas had been eliminated and Viet Nam was not applying any export restriction on rice at present. Instead, a flexible control mechanism had been developed. Under this mechanism, at the beginning of each year, the Government would announce an indicative export volume to all enterprises, based on annual production and consumption forecasts, and reserve volumes. The indicated export volume applied to the economy as a whole; there was no indicative export volume of rice allocated to individual enterprises and no obligations were imposed on enterprises. All traders having legally registered their business were free to sign rice export contracts at their own discretion, but the contracts had to be notified to the Viet Nam Food Association. No enterprise exporting rice was granted any exclusive rights or privileges, but Viet Nam would like to reserve rice exports for State-trading until 2011 for food security purposes (see Table 8(b)). The Viet Nam Food Association was a non-governmental socio-professional association operating on the principles of voluntary participation, self administration, self finance and self responsibility before the laws. The Association's activities had been agreed unanimously by its members in accordance with Vietnamese laws. The association

proposed to the Government, on behalf of its members, policies related to food production and trade, and protected the legitimate interests of its members. The association was responsible for informing enterprises about accumulated contracted export volumes. He added that his Government reserved its right to intervene in the rice market in a WTO-consistent manner in the event of a domestic shortage of rice.

267. In response to a question concerning the suspension of export contracts for unprocessed minerals, the representative of Viet Nam said that following serious mining accidents due to the illegal exploitation of solid minerals and the non-application of safety measures, the Prime Minister had issued Instruction No. 10/2005/CT-TTg of 5 April 2005 suspending the signing of new contracts to export raw solid minerals until the issuance of new safety regulations that would supersede Circular No. 02/2001/TT-BCN of 27 April 2001 on the conditions to export minerals. The suspension was only temporary. Enterprises having signed legal mineral export contracts were allowed to continue exporting normally.

268. Asked to justify the provisions of Article 5.4 of the Law on Changing and Amending Several Clauses of the Mineral Law (Law No. 46/2005/QH11) according to which the State could limit the exportation of raw minerals and concentrates and to list all minerals affected by this Article, the representative of Viet Nam said that, under the Mineral Law, minerals which would meet the quality requirements and conditions stipulated in the Ministry of Industry Circular No. 04 of 2 August 2005 in the period 2005-2010 would be allowed for exportation. These conditions aimed at preventing the illegal exploitation, and subsequent exportation, of minerals.

269. The representative of Viet Nam confirmed that, upon accession, any remaining export restrictions and management measures would be applied in a manner fully consistent with WTO provisions. The Working Party took note of this commitment.

3. Internal Policies Affecting Foreign Trade in Goods

Industrial policy, including subsidies

270. 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 poor 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.

271. The representative of Viet Nam submitted a notification on industrial subsidies, including export subsidies, 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. He also submitted a new notification, covering the period 2003-2004, in document WT/ACC/VNM/42/Rev.1.

272. According to the notification for 2003-2004, Viet Nam provided preferential import tariff rates contingent upon localization ratios with respect to products and parts of two-wheel motorbikes; preferential import tariff rates contingent upon localization ratios with respect to products and parts of mechanical-electric-electronic industries; support for the implementation of projects manufacturing priority industrial products; investment incentives contingent upon export performance for domestic businesses; other investment incentives for domestic businesses; investment incentives contingent

upon export performance for foreign-invested enterprises; other investment incentives for foreign-invested enterprises; preferential investment credit for development contingent upon export criteria; preferential development credit for investment contingent upon localization ratios; other preferential investment credit for development; support for development of the textile and garment sector; export promotion; trade promotion; support for mechanical products; support for the shipbuilding industry; assistance for commercial development in mountainous, island and ethnic minority areas; assistance to enterprises facing difficulties due to objective reasons; and incentives for investment projects in science and technology. Two other programmes for labour-intensive domestic enterprises and enterprises employing a large number of female employees had not been notified in the revised notification as the incentives provided under these programmes were not industry- or enterprise-specific. Subsidies granted under the programme for labour-intensive domestic enterprises included exemption or reduction of land rental and land use tax, and extended corporate income tax exemptions and reductions. The programme aimed primarily at creating employment and improving people's incomes and conditions of living. The incentives provided under this programme were linked entirely to the number of employees. As for domestic and foreign-invested enterprises employing a large number of female employees, they were entitled to corporate income tax reductions. The enterprises could also deduct expenses related to the employment of female workers from the taxable income.

273. He noted that most of the subsidy programmes were based on reduction of or exemptions from taxes (corporate income tax, land rental tax, land use tax, personal income tax, etc), 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. He provided, in Tables 20(a), (b) and (c), information on investment incentives granted during the period 1996-2003 according to the type of enterprise, the number of investment projects and the investment areas having benefited from investment incentives between 2001 and 2003. Tax incentives were listed in the investment licenses, i.e., the Government guaranteed the provision of incentives. There was no standard duration for an investment licence. Both domestic and foreign-invested enterprises, including joint-ventures and 100 per cent foreign-owned enterprises, were eligible for incentives on an equal basis, as described in Programmes IV, V, VI and VII of document WT/ACC/VNM/42/Rev.1. He confirmed that all direct subsidies available to State-owned enterprises were also available to private companies. He further noted that Viet Nam's 2005 Investment Law, which had come into force on 1 July 2006, had eliminated the practice of granting prohibited subsidies to encourage investment; granted investment incentives on equal terms to both foreign and domestic investors; and, provided that, if the provisions of an international treaty to which Viet Nam was a signatory were different than the provisions of the Investment Law, the provisions of the international treaty would prevail.

274. Questioned about the difference between the land use tax and land rental, he explained that the land use tax was a tax collected annually by the Government for the use of land allocated by the Government to entities or individuals on a long-term basis for the purpose of agricultural production, residence, construction or business. The land rental was an annual collectible on the use of land allocated on the basis of land rental contracts. The criteria for land rental and land use tax exemptions and reductions were stated in Viet Nam's Notification on Industrial Subsidies (document WT/ACC/VNM/42/Rev.1).

275. In response to questions about the programme of preferential import tariff rates contingent upon localization ratios for domestic and foreign-invested enterprises producing or assembling mechanical, electric, or electronic products and/or parts of these products, he noted that this 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. He stated that Decision No. 43/2006/QD-BTC dated 29 August 2006 abolished programmes of preferential import tariff rates contingent upon localization ratios with respect to products and parts of

mechanical/electric/electronic industries as from 1 October 2006. He also confirmed that the programme of preferential import tariff rates contingent upon localization ratios with respect to two-wheel motorcycles and parts had been terminated as of 1 January 2003.

276. Asked to provide information about export subsidy programmes in Viet Nam, he said that 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 VND 193 billion in 2004. 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.

277. The representative of Viet Nam stated that the Export Promotion Fund had also been providing 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 early 2001. Payments under this Fund were determined on the basis of exported value (0.1-0.2 per cent), but the support could not exceed 50 to 70 per cent of the actual expenditures of enterprises on such activities. He stated that Decision No. 279/2005/QD-TTg established a new trade promotion programme for 2006-2010 and confirmed that this new programme would be applied in conformity with WTO rules.

278. 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 - had been providing: (i) preferential investment credit for development contingent upon export criteria; (ii) preferential development credit for investment contingent upon localization ratios; and (iii) other preferential investment credit for development. He provided statistics on lending through the Development Assistance Fund for the years 2003 and 2004 in Annex 1 to document WT/ACC/VNM/39. The representative of Viet Nam further confirmed that, as stated in document WT/ACC/VNM/42/Rev.1, Viet Nam would remove the prohibited elements of the first two programmes by eliminating the export requirements or localization requirements, as relevant, by the date of accession.

279. He added that, among the investment incentives provided to foreign-invested enterprises, 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 was "specially encouraged" according to Decree No. 24/2000/ND-CP. In addition, 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 of up to nine years, could be granted to foreign-invested enterprises depending on their export ratio or area of investment. The incentives applicable and their duration were specified in the investment licence. Foreign-invested enterprises were also allowed to purchase goods that were not produced by them in the domestic market and were to be processed for export or exported without processing (except products listed as prohibited to trade for exportation, or conditionally exported goods).

280. Investment incentives for domestic firms producing goods for export included an exemption 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.

281. He added that Viet Nam operated a duty drawback regime to refund duties paid on imported products used in the manufacturing of goods for export. A Member noted that the volumes of products entering Viet Nam's territory under a duty drawback arrangement should not be considered as part of, or linked to, any tariff rate quota and asked Viet Nam to clarify the link between the duty drawback regime and its TRQ arrangements. The representative of Viet Nam replied that traders could apply for tariff rate quotas or import directly the goods to be used in the manufacture of products for export, in both cases benefiting from duty drawback. He further confirmed that from the date of accession, Viet Nam would apply import duty exemptions and drawback practices in full conformity with the Agreement on Subsidies and Countervailing Measures, in particular, Annexes I and II thereto, consistent with the commitments undertaken in paragraphs 286 and 288. The Working Party took note of this commitment.

282. In response to a question about the support programme for shipbuilding, he added that incentives under this programme were not in any way contingent upon exportation. Thus, incentives were provided for both exported vessels and vessels registered domestically. In 2003, four vessels had been exported and 12 had been registered domestically. In 2004, all vessels (21) had been registered domestically.

283. Some Members 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). A Member expressed support for Viet Nam's inclusion under Annex VII of the Agreement on Subsidies and Countervailing Measures, owing to Viet Nam's low per capita GDP (less than US$1,000). Another Member, however, noted that 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 expiry of the phase-out period for export subsidies by developing countries, Viet Nam should phase out its export subsidy schemes upon accession.

284. Members noted that Article 32 of the 2005 Investment Law, by stipulating that investments in export processing zones would be entitled to incentives, meant that all incentives listed under Section 2 of the Law could be granted for export activities and therefore considered prohibited subsidies under Article 3 of the WTO Agreement on Subsidies and Countervailing Measures. These Members asked Viet Nam to explain how it reconciled this provision with the expectation that all prohibited subsidies be eliminated upon accession. A Member noted that aspects of the Price Stabilization Fund, which had been maintained in the Export Promotion Fund, i.e., surcharges assessed based on difference between national and world market prices, appeared to be a price band, and that the use of these funds for export promotion could be an export subsidy.

285. The representative of Viet Nam noted that the investment incentives referred to in Article 32 of the 2005 Investment Law were spelled out in the implementing Decree and would be offered only in accordance with Viet Nam's commitments on subsidies (i.e., incentives will not be contingent upon export performance or local content). In particular, enterprises in export processing zones would not be required to export their production and would only be entitled to incentives in the form, *inter alia*, of facilitation of procedures with respect to investment and rental of land and premises; and facilitation in the supply and training of labour and supply of water, power and other utilities. As for the surcharges applied under the Export Promotion Fund, he confirmed that Viet Nam would bind its other duties and charges at zero upon accession in its Schedule of Concessions and Commitments on Goods.

286. Some Members asserted that Decision No. 55/2001/QD-TTg provided prohibited subsidies to Viet Nam's textile and garment industries. In response, the representative of Viet Nam stated that no disbursement or subsidy benefit pursuant to Decision No. 55/2001/QD-TTg had been provided since 31 May 2006, and that Decision No. 55/2001/QD-TTg had been repealed on 30 May 2006. He also confirmed that Viet Nam would eliminate all prohibited subsidies (i.e., subsidies contingent upon export performance or the use of domestic over imported goods) to the textile and garment industries, including but not limited to investment incentives contingent upon export performance for domestic businesses, investment incentives contingent upon export performance for foreign-invested enterprises, export promotion subsidies contingent upon export performance and trade promotion subsidies contingent upon export performance, as of the date of accession. The Working Party took note of these commitments.

287. Several Members noted that Viet Nam provided investment incentives contingent upon export performance for domestic businesses and investment incentives contingent upon export performance for foreign-invested enterprises to other industries in addition to the textile and garment industries. These two programmes provided subsidies contingent upon export performance in the form of preferential corporate income tax treatment; import duty exemptions for machinery and equipment; and, land rental, land use payment and land use tax exemptions or reductions. Article 3 of the WTO Agreement on Subsidies and Countervailing Measures prohibited the use of such subsidies. Members accordingly asked Viet Nam to indicate how it intended to eliminate these subsidies.

288. The representative of Viet Nam confirmed that, as of the date of Viet Nam's accession to the WTO, no prohibited subsidies would be provided to new beneficiaries pursuant to the programme that provided investment incentives contingent upon export performance for domestic businesses and the programme that provided investment incentives contingent upon export performance for foreign-invested enterprises. He further confirmed that over a five-year period beginning on the date of accession, benefits to current beneficiaries under these two programmes would be phased-out. The representative of Viet Nam further confirmed that the programme that provided investment incentives contingent upon export performance for domestic businesses and the programme that provided investment incentives contingent upon export performance for foreign-invested enterprises would be eliminated completely no later than five years from the date of Viet Nam's accession to the WTO. The representative of Viet Nam also confirmed that all other prohibited subsidies would be eliminated as of the date of accession and that any other remaining subsidy programmes would be brought into conformity with the WTO Agreement on Subsidies and Countervailing Measures. Viet Nam would provide notice of measures eliminating these programmes and any other prohibited subsidies to the WTO. He also confirmed that, by the date of accession, a subsidy notification, in accordance with Article 25 of the Agreement, would be provided to the Committee on Subsidies and Countervailing Measures. The Working Party took note of these commitments.

Technical barriers to trade, standards and certification

289. The representative of Viet Nam said that a State administration body - the Directorate for Standards and Quality (STAMEQ), which consisted of standardization, metrology, quality management, and conformity assessments organizations and which reported 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 standardization fora. STAMEQ had been designated as Viet Nam's central contact point for standards, technical regulations and conformity assessment issues, and Viet Nam's TBT Notification Authority and Enquiry Point pursuant to Decision No. 356/2003/QD-BKHCN of 25 March 2003 of the Ministry of Science and Technology. He confirmed that the enquiry point would be fully operational as from the date of accession. He provided initial information on technical barriers to trade in document WT/ACC/VNM/3/Add.1, Annex 5.

290. 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. Asked to clarify the respective roles of STAMEQ and the Ministry of Science and Technology, he said that unlike the Ministry of Science and Technology, STAMEQ did not have the power to issue legal documents. STAMEQ developed TBT policies and submitted them to the Ministry or the Government for approval. In addition to its policy-making role, STAMEQ had a technical role (testing, certification, inspection). Responding to concerns about the ability of STAMEQ to function independently and impartially as an accreditation body, the representative of Viet Nam said that the accreditation and certification services of STAMEQ were entirely separate from a financial, professional, and legal point of view. STAMEQ's role was to ensure conformity with Vietnamese laws and international standards and recommendations. He added that his Government was considering establishing a National Accreditation Council as an effort towards reorganizing STAMEQ. The Decision establishing the National Accreditation Council would be provided to the Working Party once promulgated.

291. 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 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, including Decision No. 444/2005/QD-TTg of 26 May 2005 approving the scheme of implementation of the TBT Agreement, 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. However, a framework law on Standards and Technical Regulations had been adopted in June 2006, which covered all standard-related issues previously contained in the various legal documents, including the Ordinances on Measurement, Goods Quality, Food Safety and Hygiene, Plant Protection, Veterinary, and Consumer Protection. This framework Law focused on issues such as the development and application of standards, conformity assessment procedures, as well as technical regulations.

292. The main ministries involved in standards, technical regulations and conformity assessment procedures were the Ministries of Science and Technology; Industry; Fisheries; Health; Trade; Agriculture and Rural Development; Post and Telematics; Resources and Environment; Transport; and Construction. 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.

293. 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. As of December 2004, over 5,800 national standards (Viet Nam standards) existed in Viet Nam, of which nearly 1,450 standards were foreign regional and international standards adopted and translated for application in Viet Nam. The other 4,350 standards, in his view, were in part based on foreign regional and international standards. Sectors with a low level of harmonization included

shipbuilding, aviation, garments, cosmetics, wooden articles and glassware, and sectors with geographical, cultural and custom specificities (e.g. food products, garments, and toys may be dependent on cultural and custom specificities). Because of changes in fashion and consumers' needs, harmonization of garment standards focused on materials and auxiliary parts of garments.

294. Draft standards were prepared by technical committees (90 technical committees and 42 sub-committees had been established to date). These committees and sub-committees had been established by STAMEQ and were organized and expected to operate in accordance with the guidelines of the International Standardization Organization (ISO). To facilitate the collection of comments, STAMEQ posted at the beginning of each year an annual work programme on the Internet (http://www.vsc.org.vn). This programme was revised in the second part of the year, generally during the third quarter, and re-posted. The programme included information about the title of the proposed standards and technical regulations, the name of the technical committee in charge, and the form of adoption. Interested parties could request copies of draft standards for consideration and comment. He added that a schedule of development would be considered and added to the programme.

295. Concerning technical regulations, the Law on the Promulgation of Legal Documents stipulated that for 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. Pursuant to the Law on Standards and Technical Regulations, ministries, ministerial level bodies and provincial-level People's Committees that issued technical regulations, developed them in cooperation with the relevant State management agencies, scientific and technological organizations, enterprises, consumers, experts and other relevant agencies. Reviews of existing regulations were carried out on an annual basis by each government agency involved. Draft technical regulations were - subject to their nature and content - submitted to the relevant bodies, organizations and individuals for comment. Notices of proposed technical regulations were, for that purpose, published in the Appendix of the Official Gazette by decision of the competent State bodies (Article 5.4 of Government Decree No. 104/2004/ND-CP of 23 March 2004 on the Official Gazette of Viet Nam and Circular No. 04/2005/TT-VPCP of 21 March 2005 guiding the implementation of the Decree). Representatives of stakeholders could participate in the drafting process by taking part in the drafting committees or by submitting comments on proposed technical regulations when these were published in the media. He said further that his Government was considering publishing draft laws and regulations, including technical regulations, in the electronic Official Gazette. He added that the issue of ensuring quality and integrity in the development of legal documents was provided for in the Law on the Enactment of Legal Normative Documents. In response to a question, he noted that the Law on Standards and Technical Regulations provided for a period of six months between adoption and implementation of a technical regulation − except in very special cases such as national security − which he considered to be in line with TBT rules. He added that a network of TBT notification bodies and enquiry points had been established in the concerned ministries and local authorities by Prime Minister's Decision No. 114/2005/QD-TTg of 26 May 2005. The network would support the central TBT notification body to fulfil the obligation of notifying proposed technical regulations to WTO Members through the Secretariat.

296. All standards were voluntary unless specifically indicated in the relevant regulation. Among the 5,800 national standards listed in the Viet Nam Standards Catalogue in 2004, 231 were mandatory. Mandatory requirements aimed at protecting the environment or human, animal or plant life or health, or at preventing deceptive practices or national security. Requested to provide a list of the mandatory requirements /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 conformity with Viet Nam's standards was mostly carried out on a voluntary basis. Conformity assurance procedures were laid down in Decree No. 179/2004/ND-CP of 21 October 2004 guiding the implementation of the 1999 Ordinance on Goods Quality.

297. 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-BKHCNMT of 12 December 2000, introducing a procedure for supplier's declaration of conformity. The procedure was based on ISO/IEC Guide 22 and applied to products with a lower level of risk to product users than those subject to the safety certification procedure. Products covered included electrical goods, foodstuffs, consumer chemicals, cosmetics, construction materials, children's toys, etc. A revised list of products covered had been promulgated on 7 March 2006 (Decision No. 50/2006/QD-TTg). 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.

298. The representative of Viet Nam stated that 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 Prime Minister's Decision No. 50/2006/QD TTg of 10 March 2006. 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 (i.e., when conformity with relevant standards and/or technical regulations had been demonstrated several times for the same goods). 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-BKHCNMT 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 good. Complaints against decisions by the authorities responsible for conformity assessment or quality inspection procedures were resolved in accordance with Viet Nam's Ordinance on Claim and Denouncement. In response to a Member who enquired why line government agencies had to be involved in the inspection for quality/conformity testing of imported goods, he said that government agencies had set up and operated testing facilities to support enterprises, in particular small and medium-sized enterprises, many of which did not have testing facilities and were not able to test the quality and conformity of import products. He noted that these testing facilities were financially independent.

299. 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/BKHCNMT-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 of imported goods was legally responsible 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 Inter-Circular No. 37 upon arrival of the goods at the port of entry. In order to facilitate customs clearance and save importers the costs of storing their goods at the port of entry during quality inspection, the Circular provided for the possibility to clear goods at the port of entry before quality testing/certification, provided the other requirements, such as tax payment, had been fulfilled. The goods owner was then required to present, within one working day following customs clearance, the declared goods in their original state together with the cleared customs documents and other documents pursuant to the regulations of the inspecting body for post-customs clearance quality inspection. Post-customs clearance quality inspection could take place at places other than the port of entry (in the warehouse, in the store of the importer, etc.). 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. The most recent list of imported and exported goods subject to State quality inspection had been issued in Prime Minister's Decision No. 50/2006/QD-TTg of 10 March 2006. The list specified the goods subject to State quality inspection under the competence of specialized inspecting bodies of the Ministries of Science and Technology; Health; Agriculture and Rural Development; Industry; Transportation; Fisheries; Construction; and Labour, Invalids and Social Affairs. He noted that goods processed for re-exportation by Vietnamese enterprises - i.e., Vietnamese-owned enterprises and foreign-invested enterprises in Viet Nam - for foreign traders outside Viet Nam were not subject to State quality inspection.

300. 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 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 harmonization 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).

301. 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 organizations. In most cases, test results and certifications undertaken by foreign organizations 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. Viet Nam's unilateral acceptance of foreign laboratories or certifying organizations was based on the criteria of the ASEAN and APEC mutual recognition agreements and guidelines. Testing results of foreign laboratories accredited by foreign accreditation bodies were automatically accepted in Viet Nam if both Viet Nam and the foreign country were signatories of APLAC and ILAC MRAs. He confirmed that the CE mark could be recognized as a standards conformity stamp

provided Viet Nam and the exporting country had signed a mutual recognition agreement on conformity assessment results.

302. 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. A Member was of the view that mandatory certification was not the right approach. 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 technical regulations, standards, and conformity assessment procedures would be in full compliance with the Agreement from the date of accession. The Ministry of Science and Technology developed, revised and implemented Viet Nam's action plan in cooperation with other ministries, including the Ministry of Trade. In recent years his Government had been promoting a programme to review legal documents to harmonize legal documents with WTO rules, including in the area of technical regulations and conformity assessment. The Ministry of Science and Technology acted as the focal point for the revision of technical regulations. The Ministry of Justice had a central oversight responsibility to appraise draft legal documents. 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 Application of Standards.

303. The representative of Viet Nam confirmed that Viet Nam would comply with all the obligations under the TBT Agreement from the date of accession without recourse to any transitional period. Further, for the purpose of greater transparency and predictability, he confirmed that Viet Nam would issue measures that specifically set out Articles 2.1, 2.2, 5.1, 5.2, 5.4 and Annex 1.1 of the TBT Agreement. The Working Party took note of these commitments.

Sanitary and phytosanitary measures

304. 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; subsequently, the plan had been revised five 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 limited capability of staff to conduct pest risk analysis and the absence of a phytosanitary database. The representative of Viet Nam stated that his Government was facing difficulties in performing its own independent risk assessment and was seeking international assistance to address these issues. He continued that Viet Nam applied international standards in accordance with the SPS Agreement in the areas where Viet Nam could not conduct its own independent risk assessment.

305. Government authorities responsible for food safety, plant and animal health included the Departments of Plant Protection and Animal Health under the Ministry of Agriculture and Rural Development; the National Fisheries Quality Assurance and Veterinary Directorate under the Ministry of Fishery; Viet Nam Food Administration under the Ministry of Health; the Department of Science and Technology under the Ministry of Industry; and the Directorate for Standards, Measurement and Quality under the Ministry of Science and Technology. Viet Nam's enquiry point and notification authority had been officially established at the Ministry of Agriculture and Rural Development pursuant to Prime Minister‘s Decision No. 99/2005/QD-TTg of 9 May 2005. Under this Decision, concerned ministries were required, within their respective scope of responsibilities, to coordinate with the Ministry of Agriculture and Rural Development and Viet Nam's SPS Office to carry out the obligation of notification and enquiry in accordance with the provisions of the SPS Agreement. The Ministry of Agriculture and Rural Development and relevant ministries were developing regulations on the coordination and operation of Viet Nam's National SPS Office and establishing SPS notification and enquiry networks between Viet Nam's National SPS Office at the Ministry of

Agriculture and Rural Development and focal points at relevant ministries. Viet Nam's National SPS Office would be fully operational upon accession.

306. Phytosanitary measures were regulated by the Ordinance on Plant Protection and Quarantine on 15 February 1993, amended on 25 July 2001; the Regulation on plant quarantine, plant protection and pesticide management 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's phytosanitary legislation was based on the International Plant Protection Convention, as amended in 1997, and the disciplines of the Asia Pacific Plant Protection Commission (APPPC). Plant pest surveillance and monitoring provisions had already been developed in the form of national standards including requirements for the establishment of pest free areas, guidelines for surveillance, and determination of pest status in an area. The Decree on Plant Quarantine would lay down the regulations to implement the Ordinance on Plant Quarantine. The procedures for Pest Risk Analysis (PRA) had been developed in line with standards adopted by the IPPC, namely ISPM No. 2 and ISPM No. 11, and with the PRA procedures employed by several other WTO Members.

307. The principal legal framework for sanitary measures 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 added that a revised Veterinary Ordinance had been adopted on 29 April 2004. The Ordinance had entered into force on 1 October 2004 and the Decree guiding the implementation of the Ordinance had been promulgated on 15 March 2004 (Decree No. 33/2005/ND-CP). Provisions on inspection and quarantine of imported and exported animals and products of animal origin were provided for in Articles 29 to 37 of the Decree. He confirmed that the owners of goods, or their representatives, would be notified as to the disposition of the good in the event that the good was subject to inspection and quarantine measures. He added that Decisions Nos. 45/2005/QD-BNN, 46/2005/QD-BNN, 47/2005/QD-BNN, 48/2005/QD-BNN, and Decree No. 129/2005/ND-CP on Administrative Infringement in Veterinary Services provided a detailed legislative framework for veterinary hygiene and food safety inspection procedures, registration and inspection procedures for veterinary drugs and vaccines. Fees charged for veterinary services, including the cost for additional quarantine, testing and/or destruction of animals, were regulated by Decision No. 08/2005/QD-BTC of 20 January 2005. He confirmed that such fees would not exceed the cost of the service rendered consistent with the provisions of the GATT 1994 and the WTO SPS Agreement. He added that Viet Nam was revising its food safety inspection procedures for production and commercialization of fishery products and developing approval and veterinary hygiene and food safety inspection procedures for aquatic animals and products thereof (see paragraph 374) and that regulations on treatment of infected animals and animal products were expected to be issued in 2006.

308. As for food safety, a new Ordinance on Food Hygiene and Safety had been promulgated in November 2003, along with Decree No. 163/2004/ND-CP in September 2004 guiding the implementation of the Ordinance. The Ordinance addressed various issues including hygiene and food safety in the production, importation, and exportation of food and foodstuff. The Ministry of Health was responsible for State control of food safety.

309. Viet Nam was a Member of Codex, FAO and OIE and had become a contracting member of the International Plant Protection Convention (IPPC) in February 2005. Viet Nam sought to base its national regulations and standards on those provided by Codex, IPPC, OIE and FAO/WHO. In his view, Viet Nam's SPS standards and inspection measures were consistent with regulations of international organizations such as CODEX, OIE, and IPPC. As of November 2004, 50 per cent of Viet Nam's national standards (TCVN) relating to food and foodstuffs, in his view, conformed to ISO, CODEX, international or regional standards. He added that Viet Nam was planning to adjust its

remaining standards to international and regional standards, with due regard to the conditions prevailing in Viet Nam. He noted, in this respect, that the new framework Law on Standards and Technical Regulations, which had been adopted in June 2006, provided detailed guidelines for adopting standards, guidelines or recommendations, including those in the SPS area. The Law provided 60 days from the date of notification for public comment, which period would be shortened solely in urgent cases of harm to health, safety, environment, or national security. The representative of Viet Nam confirmed that, if the period of time for comment were so shortened, WTO Members would be notified immediately, as called for under Annex B, paragraph 6 of the WTO SPS Agreement.

310. He further noted that Viet Nam was participating actively in the regional standard harmonization arrangements such as ASEAN, APEC and ASEM and was developing standards to be harmonized with international standards. In response to questions about the ASEAN harmonization framework, he said that ASEAN members were developing a harmonization framework for phytosanitary procedures comprising ten agricultural products at the outset and applicable to ASEAN members only. Work on a phytosanitary certification management system had been completed. So far, ASEAN countries had concentrated mainly on exchanging legal normative documents, results of scientific studies relating to the phytosanitary area, and developed a pest list on some major crops for conducting risk assessment. He confirmed that, in his assessment, the ASEAN harmonization framework was in line with the rules of the WTO SPS Agreement. Some Members noted, and Viet Nam acknowledged it, that only the Codex Alimentarius Commission, the International Animal Health Organization (OIE) and the International Plant Protection Convention (IPPC) have been recognized by the Agreement on the Application of Sanitary and Phytosanitary Measures as international standard setting bodies.

311. Viet Nam applied line management measures to imports of some animal and plant products (see Table 14). These measures, which took the form of testing certificates, aimed at protecting animal health and plant life. He confirmed that, in his view, Viet Nam's line management measures complied with the WTO SPS Agreement − Viet Nam's import requirements for animals and animal products, in particular, had been drafted to be based on the International Animal Health Code − and that the possible harmful character of a product would be assessed on the basis of scientific evidence. Unsuitable import requirements, if any, would be revised to meet OIE standards. A Joint Circular guiding the examination and supervision of exports and imports of animals, plants, and fishery products subject to inspection had been adopted on 14 March 2004 (Circular No. 17/2003/TTLT-BTC-BNN&PTNT-BTS) to simplify the examination and supervision procedures applied to imports. Animals and animal products subject to quarantine were stipulated in Decision No. 45/2005/QD-BNN. Aquatic animal health inspection and quarantine procedures for import, export and in-country movements were also being revised to bring them in line with the Veterinary Ordinance and OIE regulations and standards. He added that Viet Nam was making efforts to enhance the capacity of staff and equipment to develop reasonable procedures for inspection, supervision and approval at border gates. Information about Viet Nam's veterinary hygiene and food safety inspection procedures and inspection procedures for veterinary drugs and vaccines was available on www.mard.gov.vn/DAH or www.cucthuy.gov.vn.

312. 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, in his view, Viet Nam's requirements for imported meat were based on the Recommendations of the OIE, the regulations of CODEX, agreements between Viet Nam and exporting countries, and domestic regulations that were consistent with the SPS Agreement. Poultry meat importers were required to obtain a sanitary certificate issued by the National Veterinary Authority of the exporting country, certifying that (i) the meat originated from healthy poultry, which comes from a country, customs territory, or zone free of highly pathogenic notifiable avian influenza (HPNAI); (ii) the poultry had been examined ante-mortem and post-mortem and found free from clinical signs of animal infectious

disease; and (iii) met all veterinary hygiene standards and were free from harmful micro-organisms. He confirmed that the ante-mortem and post-mortem examinations were also applicable in Viet Nam and that, in his assessment, meat requirements were generally based on OIE standards. In the remaining cases, Viet Nam's standards were not stricter than internationally established standards. 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 by the competent Vietnamese authority, a Phytosanitary Certificate of the exporting country, and be free from plant quarantine pests. As for technical requirements for the certification of food products, Viet Nam sought to apply 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, Circular No. 34/1999/TT-BTM of 15 December 1999 guiding the implementation of the Decision, and Circular No. 15/2000/TT-BYT of 30 June 2000.

313. A Member expressed concerns about Viet Nam's poultry import requirements, which imposed burdensome obligations on foreign suppliers, and asked Viet Nam to bring its import requirements for poultry into conformity with the provisions on national treatment, harmonization, regionalization and burdensome entry requirements of the SPS Agreement. In response, the representative of Viet Nam said that veterinary hygiene requirements for poultry imports and procedures for veterinary drug and vaccine inspection were stipulated in Articles 38 to 41 and 52 to 62 of Decree No. 33/2005/ND-CP and published in English on the website of the Veterinary Agency (www.mard.gov.vn/dah or www.cucthuy.gov.vn). Under this Decree, animals intended for slaughter or preliminary processing were required to satisfy veterinary hygiene standards and to have been quarantined and certified by the competent professional State veterinary agency. Slaughter or preliminary processing had to take place at premises for slaughter and processing. Products of animal origin were inspected by the competent authority prior to, during, and after slaughter or preliminary processing. He noted that these requirements applied to both domestic and imported poultry. He added that Viet Nam was reviewing, amending and supplementing its poultry import measures to ensure conformity with the SPS Agreement.

314. Asked to clarify why the Ordinance on Food Hygiene and Safety restricted the entry of products to no more than two-thirds of their expiration date, the representative of Viet Nam noted that this measure applied only to raw food materials and food additives to be used in the production of food products and not to final food products. This measure had not affected bulk commodities, final processed products or consumer-ready products. The measure had been put in place to avoid the importation of raw food materials and food additives close to expiration and thereby limit the risk that expired material and food additives be used in the production of food products as had been revealed by some on-site inspections. Asked to provide a list, by HS codes, of the products covered by this limitation, he added that no such list was available. In response to a Member who questioned the rationale of requiring that all pre-packaged food contain shelf-life requirements in addition to expiration date information, he added that under Article 35 of the Ordinance on Food Hygiene and Safety, food labels had to indicate either the manufacture date, the expiration date or the shelf-life, not all three. In addition, paragraph 2, Article 11(a) of Prime Minister's Decision No. 178/1999/QD-TTg of 30 August 1999 required that some products such as food, cosmetics and pharmaceutical products be labelled with the expiration date.

315. Viet Nam was in the process of implementing technical regulations on shelf life for raw food materials and food additives. The implementing regulation for these products shall be implemented upon Viet Nam's accession to the WTO. For all other food products, Viet Nam will accept voluntary manufacturer-determined best-if-used-by dates. The Working Party took note of this commitment.

316. A Member noted that it considered the restriction on the entry of some food products to no more than two-thirds of their expiration date to be arbitrary, non-transparent, and not consistent with relevant international standards. The representative of Viet Nam confirmed that any entry restrictions based on shelf-life measures applied to raw food materials and food additives would be based on scientific principles including, for example, relevant international standards. The Working Party took note of this commitment.

317. Asked to describe the process in place to enable the recognition of measures, the representative of Viet Nam said that Viet Nam required other countries to identify the relevant SPS measures in detail to allow the Vietnamese authorities to evaluate them in accordance with the Decision on Equivalence of the SPS Committee. On-site investigations were conducted in the countries if necessary to check the implementation of the measures. Viet Nam had signed a number of bilateral agreements on food hygiene and safety, and sanitary and phytosanitary measures with other countries. As of November 2005, Viet Nam had agreements and Memoranda of Understanding on plant protection and quarantine co-operation with 11 countries and agreements and Memoranda of Understanding on animal health and quarantine with 13 countries. SPS agreements and Memoranda of understanding had also been signed with Canada, China, the Republic of Korea, and Thailand, as well as a Mutual Recognition Agreement on fishery with the EC. Viet Nam expected to sign an agreement on mutual recognition regarding processed food with ASEAN countries and bilateral agreements on food safety with Lao PDR and Cambodia in 2007. He added that Viet Nam intended to develop more concrete equivalent recognition procedures for SPS measures. His Government was seeking technical assistance to address this issue.

318. Due to lack of technical capacity and knowledge of risk assessment techniques, Viet Nam also faced difficulties in conducting risk assessments. Viet Nam was, however, gradually enhancing risk assessment techniques and procedures in cooperation with international organizations and WTO Members. A work plan on risk assessment had been developed to train staff in risk assessment; equip computers of the animal quarantine and inspection divisions, the veterinary centres, and the quarantine stations at major border gates; purchase risk assessment software; set up a database for risk assessment; and establish a risk assessment unit in the Animal Health Department. In the implementation of this programme, Viet Nam had set up a national pest analysis group composed of 14 staff from the Plant Protection Department, developed a Vietnamese standard on pest risk analysis in line with international standard No. 2, and collected guideline documents and pest risk analysis reports from different WTO Members and websites as reference and information input for pest risk analysis in Viet Nam. A programme had been launched to set up a database on plant health control for pest risk analysis purposes, which listed the pests for each plant in accordance with international standards. In addition, Viet Nam had started conducting pest risk assessment on a number of imported plants, had established a network of specialists in plant protection to support plant risk analysis, and collaborated with institutes and universities to conduct surveys and collect information about plant pests. However, further technical assistance was needed to train staff, provide equipment, set up databases, and establish guidelines for risk assessment procedures. Nonetheless, the representative of Viet Nam stated that Viet Nam would comply with the SPS Agreement upon accession.

319. Some Members requested Viet Nam 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 invited to develop a process for approving scientifically justified measures stricter than international norms. A Member noted that WTO provisions did not require WTO Members to conduct their own risk assessment; when technically viable, they could use those conducted by other Members or international organizations.

320. The representative of Viet Nam replied that Viet Nam's SPS standards were based on CODEX, IPPC and OIE standards, but had a generally lower level of protection in order to adapt to the production conditions in Viet Nam. Should CODEX, IPPC and OIE 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. In the event of non-existent or insufficient international standards, Viet Nam would undertake its own risk assessment to meet its appropriate level of protection or consult the regulations of WTO Members, in particular those having trade relations with Viet Nam, and seek technical assistance to develop appropriate measures in accordance with paragraphs 1 and 7 of Article 5 of the SPS Agreement.

321. He confirmed that, in his assessment, Viet Nam took into account regional conditions in its application of SPS measures, as required by Article 6 of the SPS Agreement, and applied SPS measures in a non-discriminatory manner.

322. A Member expressed reservations about Viet Nam's current legislation on veterinary drugs, in particular the requirement that new drugs put forward for circulation in Viet Nam be re-trialled in Viet Nam, which generated additional costs and duplicated the trials already performed by the producer, and that the quality of a drug be reviewed in case of complaints and denunciations, which could lead to abuse for non-health and safety reasons. In response, the representative of Viet Nam said that under Article 48 of the Veterinary Ordinance, only veterinary drugs produced in foreign countries, imported for the first time into Viet Nam, and not included in the list of veterinary drugs permitted for circulation in Viet Nam, had to be registered for importation. Viet Nam was developing procedures on drug registration for circulation in Viet Nam, which would specify the types of drugs subject to re-trial. The procedures on veterinary drug registration have been promulgated by Decision No. 10/2006/QD-BNN of 10 February 2006. Concerning the requirement for quality review in case of complaints and denunciations, he noted that the assessment would be based on inspection or testing results by the veterinary drug control agencies upon request of the government management body.

323. A Member requested Viet Nam to establish a law or guidance requiring the publication of proposed SPS measures and a reasonable timeframe for comments from Members. This Member was concerned that the solicitation of comments might not be an open and transparent process. This Member noted, in particular, that in many cases the degree of specificity predetermined in which journal the measure was announced, the drafting Ministry decided who should review a particular regulation, and the regulation was published essentially to announce its adoption. This Member sought assurances that these practices would be amended, that draft SPS measures would be announced publicly, that 60 days would be provided for public comment, that there would be a final review process to incorporate comments, and that the proposed date of adoption and future date of enforcement would be clearly announced.

324. In response, the representative of Viet Nam said that comments on draft regulations were solicited from all parties at an early stage of the process. Pursuant to Article 3 of the new Law on the Enactment of Legal Normative Documents, as revised in 2002, all draft legal normative documents were open for comment. Accordingly, when drafting legal documents and regulations related to TBT and SPS measures, drafting agencies were required to seek comments from all relevant bodies, organizations and individuals. He added that Decision No. 1117/QD-BNN-TCCB of 18 April 2006 of the Ministry of Agriculture and Rural Development on the organization and operation of Viet Nam's SPS National Office provided for a suitable timeframe for public comment on draft SPS standards and regulations of no less than 60 days, in conformity with the SPS Agreement. He confirmed that draft SPS measures and proposed actions related to SPS were posted on the enquiry point's website. The website could be accessed by both the public and private sector. He further noted that all legal documents, including those related to SPS issues, were published in the Official Gazette and entered into force a minimum 15 days thereafter in accordance with the amended Law on the Enactment of Legal Documents. At present, SPS-related legal documents were accessible at two websites

(http://www.mard.gov.vn/dah or www.cucthuy.gov.vn and www.ppd.gov.vn). The functions and tasks of concerned ministries in implementing SPS notification obligations were stipulated in Article 4 of Prime Minister's Decision No. 99/2005/QD-TTg.

325. A Member also noted that Viet Nam's legislation did not seem to include provisions as to how an OIE-reportable disease or IPPC-monitored pest would be reported to international standards bodies, border authorities, trade partners or the supplying country. This Member invited Viet Nam to establish clear communication channels. In response, the representative of Viet Nam said that the possible presence of a reportable disease would be posted on the website of the Department of Animal Health (www.mard.gov.vn/dah or www.cucthuy.gov.vn) and sent to the OIE in accordance with OIE's regulations and to the IPPC or an associated regional body in accordance with IPPC regulations. Such information would also be sent to other stakeholders as agreed in bilateral agreements or upon request.

326. Some Members noted that Viet Nam appeared to be taking appropriate account of international standards, guidelines and recommendations in establishing its SPS regime, and welcomed a commitment from Viet Nam to implement the SPS Agreement from the date of accession without recourse to any transition period. A Member called on Viet Nam to ensure that the enquiry point would provide prompt responses to specific enquiries and that an open and flexible system of inter-agency consultation would be put in place; to establish a transparent process for the development of SPS measures, including the publication of draft measures and proposed actions in an official journal for a reasonable time period to allow comments and their timely notification to the WTO Secretariat; and to set up a transparent science-based process for the assessment of risks.

327. While the representative of Viet Nam had initially indicated that his Government lacked human resources and technical equipment and facilities to implement fully its obligations under the SPS Agreement and would need a transition period, the representative of Viet Nam subsequently confirmed that Viet Nam would comply with the requirements of the SPS Agreement upon accession without recourse to any transitional arrangements. He noted, however, the importance to Viet Nam of receiving technical assistance in the area of SPS, as provided in Article 9 of the SPS Agreement. In particular, he hoped that concrete technical assistance would be delivered to train staff and help build up notification procedures and an SPS official journal, and that technical equipment and expertise (in particular for disease risk analysis, assessment, inspection, control, and approval procedures) would be provided to develop Viet Nam's laboratories, information systems and control procedures.

328. The representative of Viet Nam confirmed that Viet Nam would apply the Agreement on the Application of Sanitary and Phytosanitary Measures from the date of accession without recourse to any transition period. He further confirmed that SPS measures, applied under the purview of line management, would be subject to all relevant disciplines of the SPS Agreement. The Working Party took note of these commitments.

Trade-related investment measures (TRIMs)

329. Noting that Viet Nam appeared to apply local content requirements and an 80 per cent export ratio requirement to certain industrial products in accordance with Decision No. 718/BKH-QD, 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 Agreement) and specifying a timetable for their elimination. 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. A Member noted that while Decision No. 718/2001/QD-BKH had removed some products from the list of goods subject to the 80 per cent ratio requirement, in practice Viet Nam still appeared to apply export requirements to these products. This Member also noted that in some cases, foreign-

invested enterprises appeared to have been requested to maintain the same export sales ratio for products not included in the list (such as pork). 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. Furthermore, a Member asked Viet Nam to abolish the regulations restricting the maximum level of motorcycle production for foreign-invested enterprises. Several Members noted that most TRIMs 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. 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. Viet Nam was also asked to commit, from the date of accession, not to relate tariff quota allocations to the levels of production or export of particular enterprises that processed the tariff quota product concerned because, under paragraph 2(a) of the Annex to the TRIMs Agreement, such measures were inconsistent with Article XI of the GATT 1994.

330. 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; foreign-invested enterprises were free to choose their own markets for products other than those listed in Decision No. 718/BKH-QD. Viet Nam had no intention to reintroduce self-balancing requirements.

331. 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 of 31 October 2003. 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 had been eliminated in 2003. Decision No. 43/2006/QD-BTC of 29 August 2006 also abolished policies of preferential import tariff rates contingent upon localization ratios with respect to products and parts of mechanical/electric/electronic industries as from 1 October 2006. In addition, the export ratio requirement had been eliminated by Decree No. 27/2003/ND-CP of 19 March 2003, and the 2005 Investment Law and its Implementing Decree no longer conditioned the granting of investment licenses or the receipt of investment incentives in the manner described in the TRIMs Agreement.

332. The representative of Viet Nam confirmed that, without prejudice to Viet Nam's commitments in paragraphs 286 and 288 of this Report, Viet Nam would comply fully with the TRIMs Agreement upon its accession to the WTO. The Working Party took note of this commitment.

Free zones, special economic areas

333. The representative of Viet Nam said that Viet Nam had established 124 industrial and export processing zones as of the end of July 2005 (see Table 21). Industrial zones were established by Government Decision or Decision of the Prime Minister. The establishment and operation of enterprises in export processing zones were governed by Government Decree No. 108/2006/ND-CP of 22 September 2006 guiding the implementation of the 2005 Investment Law.

334. By the end of 2004, export processing zones and industrial zones had attracted 3,612 investment projects, of which 1,773 were foreign investment projects and 1,839 domestic investment projects amounting to US$15.06 billion and VND 109,000 billion respectively. Ninety-

two per cent of these projects were from private investment sources and 8 per cent from State-owned enterprises. Enterprises located in the zones included enterprises producing electric and electronic components, footwear, handbags, textiles and clothing, animal feeds, metal components, medicines, and food and beverages. Data on output and exports of enterprises located in industrial and export processing zones were not available. He added that Viet Nam was trying to limit the establishment of new zones to zones for regional development and hunger and poverty eradication in socio-economic disadvantaged areas.

335. The representative of Viet Nam confirmed that establishment in such zones was not contingent upon export performance or the use of domestic inputs. Government agencies responsible for regulating the operations of industrial and export processing zones included the Ministry of Planning and Investment, the Ministry of Industry, the Ministry of Construction, the Ministry of Science and Technology, the Ministry of Trade and the Ministry of Home Affairs, in accordance with their functions, competences, and mandates. In addition, the Ministry of Trade and Ministry of Labour, War Invalids and Social Affairs had authorized the management boards of industrial and export processing zones to implement certain administrative functions under their management. The provincial People's Committee had authorized provincial management boards of industrial zones, high-tech zones and economic zones to grant, amend, and withdraw foreign investment licenses for projects valued at less than US$40 million. The Ministry of Planning and Investment would be primarily responsible for ensuring the WTO compliance of the operations of industrial and export processing zones.

336. Most incentives previously granted to enterprises located in industrial and export processing zones took the form of exemptions and reductions of corporate income tax (see programmes V, VI and VIII in document WT/ACC/VNM/42/Rev.1). Incentives were awarded to domestic and foreign investors without discrimination. The 2005 Investment Law no longer provided for corporate income tax incentives contingent upon export performance. Enterprises in export processing zones were exempt from import and export duties for goods imported from or exported to foreign countries. They were allowed to sell their products in the domestic market upon approval by the Ministry of Trade. However, all such products entered the domestic market of Viet Nam under the same tariff treatment and customs procedures applicable to imported goods. 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 those materials/parts used in exported products. He confirmed that, in his assessment, regulations on import duty exemption were consistent with Annexes II and III of the Agreement on Subsidies and Countervailing Measures.

337. Some Members stated that Viet Nam was using prohibited subsidies as incentives for firms to locate in its export processing zones, as the benefits were tied to a specific level of exportation from the zone. These Members requested Viet Nam to abolish all prohibited subsidies upon accession. Viet Nam was also asked to ensure that its legislation made the sales inside the rest of Viet Nam subject to the exempted taxes and tariffs. A 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.

338. In reply, the representative of Viet Nam said that incentives for investments in export processing zones were stipulated in Articles 32 and 37 of the 2005 Investment Law. He confirmed that under the Decree guiding the implementation of the Law, all incentives for investments in export processing zones would be WTO-consistent, i.e., incentives would not be contingent upon export performance or local content. Specifically, enterprises in export processing zones would not be required to export their products and would be entitled only to incentives in the form, *inter alia*, of

facilitation of procedures with respect to investment and rental of land and premises; and facilitation in the supply and training of labour, and supply of water, power and other utilities. He added 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:I of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures in document WT/ACC/VNM/13/Add.2. He confirmed that, upon accession, and without prejudice to Viet Nam's commitments in paragraphs 286 and 288 of this Report, preferential treatment for investments in export processing zones would be granted only in a manner consistent with the Agreement on Subsidies and Countervailing Measures.

339. 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, industrial zones, high-tech parks, and any other zones with similar incentives and objectives. In this regard, the representative of Viet Nam confirmed that, prior to accession, the Laws on foreign investment and domestic investment and related regulations would be amended to eliminate any provisions that conditioned establishment in the zones, or the qualification for or receipt of tax or any other incentives, on export, export performance or the use of locally produced goods. The representative of Viet Nam confirmed that, without prejudice to Viet Nam's commitments in paragraphs 286 and 288 of this Report, all industrial and export processing zone subsidies that fell within the meaning of Article 3 of the WTO Agreement on Subsidies and Countervailing Measures would be eliminated on or before the date of accession, and that such subsidies would not be reintroduced. Moreover, no new subsidies inconsistent with Article 3.1(a) or (b) would be introduced after accession. In addition, from the date of accession, goods produced in export processing zones or industrial or other zones with similar benefits and objectives under tax and tariff provisions that exempted 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

340. The representative of Viet Nam said that government purchases accounted for 14 per cent of Viet Nam's GDP. 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.

341. 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 organizations 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.

342. 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.

343. 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.

344. 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 VND 2 billion, 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.

345. The representative of Viet Nam added that a new Law on Procurement had been adopted in November 2005. The Law provided for greater transparency in the procurement process. It 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 was required to publish the terms and conditions of the tender in the newsletter. The Law also aimed at decentralizing procurement decision-making to the ministries, agencies and local authorities. It also identified bad practices and fraudulent behaviour, stipulated penalties for violations, and included provisions concerning right of appeal and the settlement of disputes.

346. A Member encouraged Viet Nam to continue in its ongoing efforts to make its procurement systems more transparent and open to competition and to become an observer to the Committee on Government Procurement upon accession as a first step towards joining the Government Procurement Agreement. Noting that membership in the Government Procurement Agreement would bring Viet Nam benefits both in terms of access to the procurement markets of other Agreement members on a national treatment basis and in terms of transparency, another Member invited Viet Nam to negotiate membership in the Government Procurement Agreement as part of its WTO accession and

to table an entity offer at the time of accession. Viet Nam was also encouraged to identify its challenges and needs for technical assistance in implementing the Agreement.

347. 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. The Ministry of Planning and Investment had recently set up a website providing information on bidding procedures and opportunities. However, wishing to focus its limited resources on the implementation of the multilateral agreements, Viet Nam would consider joining the Government Procurement Agreement after WTO Accession.

Trade in civil aircraft

348. A Member stated that joining the Agreement on Trade in Civil Aircraft, including the duty free treatment of imported aircraft and parts, would facilitate the maintenance of good air services and support in Viet Nam and help enhance Viet Nam's services infrastructure and foster development and growth. This Member requested Viet Nam to join the Agreement upon accession to the WTO.

349. 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 joining the Agreement on Civil Aircraft after accession.

Transit

350. Noting that permission from the Ministry of Trade was required for goods to transit through the territory of Viet Nam, some Members questioned whether Viet Nam's regulations restricted the freedom of transit as provided for under GATT Article V:2. Viet Nam was invited to provide further justifications for its transit procedures and the conditions for granting transit permits, and to explain how Viet Nam would bring its transit regime into conformity with the WTO Agreement.

351. In response, the representative of Viet Nam said that provisions on transit had been reviewed with a view to ensuring freedom of transit as laid down in Article V of the GATT. Transit of goods was now regulated by Article 242 of the 2005 Commercial Law. The 2005 Commercial Law had eliminated the requirement of prior permission. Pursuant to Article 242 of this Law, all goods owned by foreign organizations or individuals were allowed to transit through the territory of Viet Nam, except arms and ammunitions; and explosive and other highly dangerous commodities. These excepted goods required permission from the Prime Minister to transit through the territory of Viet Nam, and commodities subject to business prohibition or import and export prohibition required permission from the Minister of Trade. Foreign organizations and individuals were required to hire 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. Customs clearance of goods in transit was required at the port of entry and at the port of exit. Documents to be submitted at the customs house included: (i) for goods transported in their original condition, a list of the goods in transit, to be submitted by the customs declarant or his/her representative; and (ii) for goods that had to be warehoused or transhipped onto another type of transport means, a customs declaration and a list of the goods in transit. For arms and ammunitions, explosives and other highly dangerous commodities, and prohibited goods, a transit permit was also required. Customs authorities allowed or denied transit on the basis of the list of restricted transiting goods, the customs declaration and the transit permit, if required. Physical inspection of goods in transit was carried out only if signs of a violation of law were detected. 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, unless otherwise permitted by the Ministry of Trade, and any discrepancy

between the amount of goods entering and leaving Viet Nam required certification by Customs. Domestic legislation did not stipulate any time-limit for Customs to process transit shipments, but normal transit shipments were processed within four hours on average. 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.

352. Some Members noted that goods in transit were subject to a transit fee of 1 per cent of the value of the goods. These members questioned whether the 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.

353. The representative of Viet Nam replied that 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 22(a) and 22(b). Transiting goods were escorted when they could not be sealed. In response to a question concerning the percentage of goods escorted, he said that no such statistics were available.

354. He added that no fee was charged for approval of a request to warehouse goods in transit. Goods warehoused at customs bond warehouses or bonded warehouses were charged a warehousing fee in accordance with Inter-Ministerial Circular of the Ministry of Trade and General Department of Customs No. 71/2000/TTLT/BTC-TCHQ of 19 July 2000. Transiting goods warehoused outside customs warehouses or bonded warehouses were subject to the fees and charges of the enterprises providing the warehouse services at the rates specified by those enterprises.

355. 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

356. 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. A Member noted in particular that Viet Nam was using discretionary licensing to restrict imports of dairy products, eggs, maize, tobacco, salt, cotton, and sugar, and invited Viet Nam to eliminate all such measures without an appropriate WTO justification by the date of accession. In addition, import restrictions on rice 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. As for the ban on 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 (see also the section on "Quantitative import restrictions"). 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. 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 a tariff-only regime rather than resort to 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 Members considered SSGs a transitional

measure linked to the Uruguay Round commitments of some Members, and thus a provision not available to acceding governments. Viet Nam was asked to enter a commitment not to seek recourse to SSGs.

357. 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. He noted that all import restrictions in the form of discretionary licensing, with the exception of the restriction applied to sugar, had been eliminated pursuant to Prime Minister's Decision No. 46/2001/QD-TTg of 4 April 2001, Prime Minister's Decision No. 91/2003/QD-TTg of 9 May 2003, and Prime Minister's Decision No. 187/2003/QD-TTg of 15 September 2003. Imported sugar was subject to discretionary licensing with a tariff of 30 per cent on raw sugar and 40 per cent on refined sugar, but Viet Nam committed to replace discretionary licensing by a TRQ mechanism as from the date of accession (see paragraph 167). 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. He added that Viet Nam imposed line management measures in the form of automatic import licensing on certain products. Viet Nam did not apply any quotas nor any other form of quantitative restrictions on imported rice. As for the import prohibition on cigarettes and cigars, it would be removed upon accession. 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. He added that all import surcharges had been eliminated in December 2004. Therefore, surcharges based on the price differential between domestic and international prices were no longer collected.

358. The simple average tariff on imports of agricultural products was 17.7 per cent in 1996 (document WT/ACC/VNM/3) and 27.1 per cent in 2004, an increase due to the adjustments of Viet Nam's tariff schedule to the ASEAN harmonized system nomenclature, the conversion of non-tariff barriers into tariffs, and the incorporation of ODCs in tariff rates.

359. The representative of Viet Nam confirmed that, from the date of accession, Viet Nam would apply border protection for agricultural products in a manner consistent with WTO Agreements, in particular with Article 4 of the Agreement on Agriculture.

(b) Exports

360. The representative of Viet Nam said that Viet Nam imposed export restrictions or controls on the products listed in Table 18 (see the section on "Export restrictions" for a discussion of these measures). He noted that rice export quotas had been eliminated pursuant to Prime Minister's Decision No. 46/2001/QD-TTg of 4 April 2001 and that Viet Nam was not applying any export restriction on rice at present. Since 1998, the right to export rice, previously limited to State-owned enterprises, had been extended to all Vietnamese enterprises regardless of form of ownership. However, the right of foreign-invested enterprises was still restricted. Viet Nam proposed to grant foreign-invested enterprises full rights to export rice as of 1 January 2011 (see the sections on "Trading rights" and "Export restrictions").

361. 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.

362. 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 Price Stabilization Fund had been established in 1993 pursuant to Decision No. 151/TTg and had aimed at regulating and stabilizing domestic prices. The Fund's resources had arisen from imports and exports, price differences between external and domestic prices, and windfall profits of producers operating under advantageous conditions. In October 1999, the Price Stabilization Fund had been replaced by the Export Promotion Fund. The purpose of the Export Promotion Fund, which was managed by the Ministry of Finance, 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. The Fund was financed by surcharges on imports and exports and resources granted from the State budget annually. However, as most of the surcharges had been eliminated, this funding source had decreased gradually.

363. 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.

364. 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. These Members asked Viet Nam to provide details of the steps it would take to eliminate export subsidies. A Member requested information on export bonuses paid for a range of products including rice, coffee, canned vegetables, canned fruit and pork in 2001.

365. 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, pages 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. However, his Government had recently taken measures to bring support measures closer to WTO rules. Support had been shifted to trade promotion activities and the export bonus regime had been amended in 2003-2004. Export bonuses were now based on the annual turnover increase rather than on the export turnover. He considered the level of Viet Nam's export subsidies negligible and with no significant distorting effects on international trade.

366. The representative of Viet Nam agreed that, upon accession, Viet Nam would bind its agricultural export subsidies at zero in its Schedule of Concessions and Commitments on Goods, and not maintain or apply any export subsidies for agricultural products, without prejudice to Viet Nam's rights and obligations arising from existing WTO rules. The Working Party took note of this commitment.

(c) Internal policies

367. 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.

368. He provided information on domestic support and export subsidies in agriculture for the period 1999-2001 in document WT/ACC/SPEC/VNM/3 of 5 November 2002, last revised in August 2006 (WT/ACC/SPEC/VNM/3/Rev.7). In calculating the Total Aggregate Measurement of Support, Viet Nam applied a *de minimis* level of 10 per cent. He noted that most of Viet Nam's support measures were considered "Green Box" policies. Viet Nam's commitments on domestic support in agriculture are contained in Viet Nam's Schedule of Concessions and Commitments on Goods annexed to Viet Nam's Protocol of Accession to the WTO.

369. 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.

370. 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.

371. 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 fertilizer, 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 VND 700 billion project to plant an additional 40,000 hectares of arabica in North Viet Nam. About VND 400 billion 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.

372. In response to a specific question, the representative of Viet Nam confirmed that Viet Nam had adopted a rice production adjustment policy, which consisted mainly in investments for the irrigation of high productivity rice cultivated areas, and support for irrigation and provision of extension services to farmers in low-productivity rice cultivated areas to encourage shifting to aquatic and fruit production.

373. The representative of Viet Nam confirmed that Viet Nam would apply subsidies on agricultural products in a manner consistent with WTO rules, in particular the Agreement on Agriculture, and Viet Nam's domestic support tables circulated in document WT/ACC/SPEC/VNM/3/Rev.7 and contained in Viet Nam's Schedule of Concessions and Commitments on Goods.

Fisheries

374. The representative of Viet Nam said that his Government was implementing a comprehensive programme to develop aqua-culture industries. The industries 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, with a view to conforming to regulations on hygiene, food safety and veterinary requirements issued by Codex and the Code of Conduct for Responsible Fisheries.

375. As of 31 December 2003, 1,468 fisheries enterprises operated in Viet Nam, with an average capital of approximately VND 0.5 billion. Fisheries industries, including related-services sectors, employed about 5.4 million people. In 2004, this sector had contributed to VND 27,474 billion to Viet Nam's GDP. Fisheries production had increased on average by 9 per cent annually between 2000 and 2004. Foreign direct investment in this sector had amounted to US$7.8 million in 2004 (five projects) and the exporting turnover to US$2.4 billion. Exports had grown by 13 per cent on average between 2000 and 2004 and imports by 84 per cent. The importing turnover had increased from US$30.65 million in 2000 to US$64.17 million in 2002. Imports of feeds and chemicals for aquaculture also had risen in this period.

376. Import licenses for specialized 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 specialized 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 − in accordance with the 2004 Veterinary Ordinance, Decree No. 33/2005/ND-CP and the Quarantine Directive No. 2596/CLTY-TY for NAFIQAVED. Imported fish and fish products were required to have been quarantined and certified by the competent authorities of the exporting country. This measure aimed at ensuring that the products were free from diseases listed on the OIE Diseases of Concern and met the requirements of the OIE Aquatic Animal Health Code. Upon entry into Viet Nam, Vietnamese quarantine authorities checked both the documentation and the animals. Infected animals were either returned to the exporting country or destroyed. He added that, in his view, Viet Nam's export quarantine requirements conformed to the OIE regulations and requirements

of the importing country, and Viet Nam's quarantine certification on export and import of aqua-products conformed to the requirements of the Quarantine Certification Form of the OIE and the Aquatic Animal Health Code. 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.

TRADE-RELATED INTELLECTUAL PROPERTY RIGHTS (TRIPS)

1. General

(a) Intellectual property protection

377. The representative of Viet Nam said that since the early stages of Viet Nam's accession process the main legal instruments for the protection of intellectual property in Viet Nam had been 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; Government Decree No. 76/CP of 29 November 1996 on Guiding the Implementation of the Provisions on Copyright in the Civil Code; Circular No. 23-TC/TCT of 9 May 1997 of the Ministry of Finance on Industrial Property Fees; and Circular No. 166/1998/TT-TC of 19 December 1998 of the Ministry of Finance on Copyright Registration Fees.

378. The representative of Viet Nam explained that in 2005, Viet Nam had promulgated amendments to the Civil Code, which reaffirmed the basic civil principles of intellectual property rights (Part VI of the Code), as well as an Intellectual Property Law governing all aspects of intellectual property rights. The Civil Code (Law No. 33/2005/QH11 of 14 June 2005 replacing the 1995 Civil Code - thereafter referred to as the 2005 Civil Code) had entered into force on 1 January 2006. As for the Intellectual Property Law (Law No. 50/2005/QH11 of 29 November 2005 - thereafter referred to as the 2005 Intellectual Property Law), it became effective on 1 July 2006. These two texts formed a complete and uniform system of regulations on intellectual property, which would replace previous legislation. He noted that the new system was, to a large extent, based on the previous one. In case of conflict between the 2005 Intellectual Property Law and the provisions on intellectual property of the 2005 Civil Code, the former would apply (Article 5.2 of the 2005 Intellectual Property Law). Various decisions and decrees on copyright, industrial property, plant varieties and enforcement of intellectual property rights guiding the implementation of the 2005 Intellectual Property Law had been adopted in September 2006: Decree No. 100/2006/ND-CP of 21 September 2006 guiding the implementation of a number of articles of the Civil Law and Intellectual Property Law concerning copyright and related rights; Decree No. 103/2006/ND-CP of 22 September 2006 providing detailed provisions and guidelines for implementing certain articles of the 2005 Intellectual Property Law concerning industrial property; Decree No. 104/2006/ND-CP of 22 September 2006 providing detailed provisions and guidelines for implementing certain articles of the 2005 Intellectual Property Law concerning rights to plant varieties; Decree No. 105/2006/ND-CP of 22 September 2006 providing detailed provisions and guidelines for implementing certain articles of the 2005 Intellectual Property Law regarding the protection of intellectual property rights and State management of intellectual property; Decree No. 106/2006/ND-CP of 22 September 2006 on handling administrative violations in the industrial property field; Decision No. 69/2006/QD-BNN of 13 September 2006 of the Minister of Agriculture and Rural Development on data confidentiality of testing data of agro-chemical products; and Decision No. 30/2006/QD-BYT of 30 September 2006 of the Minister of Health on promulgation of regulations on data protection applied to Drug Registration Dossiers. In addition, the Ministry of Culture and Information, the Ministry of Science and Technology and the Ministry of Agriculture and Rural Development would promulgate circulars

guiding the implementation of procedures on registration of copyright and related rights, industrial property rights, and plant varieties; on industrial property representatives; and on transfer of industrial property.

(b) Responsible agencies for policy formulation and implementation

379. 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; Agriculture and Rural Development; 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 agencies, the Economic Police, the Culture and Information Inspectorates, the Science and Technology Inspectorates, and the People's Committees at provincial and district levels.

380. Concerning the tasks of the administrative enforcement agencies, he said that, pursuant to Article 200 of the 2005 Intellectual Property Law, inspectorates, market control agencies, customs offices, police agencies and People's Committees were responsible for handling infringements of intellectual property rights within their own jurisdiction and for imposing administrative remedies or, in appropriate cases, preventive measures and measures to ensure the imposition of administrative sanctions. Customs authorities were also in charge of the application of border control measures on intellectual property-related imports and exports. The jurisdiction and competences of the above-mentioned agencies had been detailed in Government Decree No. 106/2006/ND-CP of 22 September 2006 on handling administrative violations in the industrial property field.

(c) Participation in international intellectual property agreements

381. 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 become an official party to the Berne Convention on 26 October 2004, to the Geneva Convention on 6 July 2005, to the Brussels Convention on 12 January 2006, and to the Protocol relating to the Madrid Agreement concerning the international registration of marks on 11 July 2006. Viet Nam had concluded bilateral agreements on the protection of intellectual property with the United States and Switzerland. He expected Viet Nam to join the Rome Convention and the International Union for the Protection of New Varieties of Plants (UPOV) Convention in late 2006. He confirmed that Viet Nam's Law on Conclusion, Accession and Implementation of International Treaties of 2005 provided for the direct application, in whole or in part, of international treaties to which Viet Nam was a party (see paragraph 119) as decided by the National Assembly. In case of differences between Vietnamese laws on intellectual property rights and international treaties to which Viet Nam was a party, the provisions of the latter would apply, as prescribed in Article 5.3 of the 2005 Intellectual Property Law.

382. 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 (WCT) or the WIPO Performance and Phonograms Treaty (WPPT). However, the substantive provisions of the WCT and WPPT had been incorporated in the 2005 Intellectual Property Law.

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

383. 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. Viet Nam also

provided Most Favoured Nation treatment to nationals of other countries consistent with other international agreements to which Viet Nam was a party.

384. 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.

385. In reply, the representative of Viet Nam said that the 2005 Intellectual Property Law did not require foreign natural or legal persons to establish or enforce copyright nor to carry out any procedure other than the establishment of industrial property rights through intellectual property agents. The requirement to use Vietnamese industrial property agents under Article 89.2 of the 2005 Intellectual Property Law 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 was 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

386. The representative of Viet Nam said that current regulations specified ten types of fees related to administrative procedures for the establishment, maintenance and protection of industrial property rights. Most fees were in the US$1-60 range; fees related to the establishment of rights in respect of inventions amounted to US$100, and the annual maintenance fees ranged from US$16 to US$234. 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.

387. A Member stated that if Viet Nam charged a fee in addition to 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.

388. 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.

389. The representative of Viet Nam replied that differential fees and charges had been annulled by the Circular of the Ministry of Finance No. 132/2004/TT-BTC on industrial property fees and charges promulgated on 30 December 2004, replacing Circular No. 23 TC/TCT of 9 May 1997.

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

(a) Copyright protection

390. The representative of Viet Nam said that according to Article 14 of the 2005 Intellectual Property Law, literary, artistic, and scientific works protected included literary and scientific works, textbooks, teaching materials, and other works in the form of letters or other writing characters; lectures, presentations and other speeches; press works; musical works; dramatic works; cinematographic works and works created by similar methods (hereinafter referred to as cinematographic works); fine art works and applied art works; photographic works; architectural works; graphics, sketches, maps, drawings relevant to topography and scientific works; folk artistic and literary works; and computer programmes and compilations of data. "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 contrary to the social morality, public order or harmful to national defence and security.

391. 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 concrete material form irrespective of whether or not it was a registered work (Article 739 of the 2005 Civil Code and Article 6.1 of the 2005 Intellectual Property Law). Works existing prior to the entry into force of the 2005 Civil Code were protected in accordance with Article 220 of the 2005 Intellectual Property Law and paragraph 2 of the National Assembly Resolution on the implementation of the 2005 Civil Code if their term of protection had not expired and if they were not in violation of Civil Code provisions. He confirmed that such works were protected in the same way as works created after the entry into force of the Civil Code. With regard to unregistered copyrights/related rights, authorship will be presumed where on a copy of the original work the author's name appears in the usual manner. With regard to a registered copyright, unless the declaration in the application for copyright registration 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. In response to a question concerning the application of the national treatment principle, he noted that the 2005 Intellectual Property Law guaranteed the implementation of Article 3 of the TRIPS Agreement and Article 3 of the Berne Convention. Pursuant to Article 13 of the Law, nationals from any Member of the Berne Convention or the WTO would be eligible for copyright protection in Viet Nam.

392. A Member noted that Article 7 of the Ordinance on Copyright Protection of 1 July 1994 contained broad provisions for denial of copyright and asked Viet Nam whether it intended to amend its law 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.

393. 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 1995 Civil Code (Chapter 1, Part Six), and subsequently in the 2005 Civil Code and 2005 Intellectual Property Law. These texts had brought copyright legislation into line with the TRIPS Agreement and the Berne Convention and did not require registration for protection of copyrights.

394. The voluntary registration process was now governed by Articles 49 to 55 of the 2005 Intellectual Property Law. 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 15 days from the date of receipt of the application (Article 52 of the 2005 Intellectual Property Law).

395. Pursuant to Article 13.2 of the 2005 Intellectual Property Law, the works of foreign individuals or foreign organizations which were protected in Viet Nam included (i) works published in Viet Nam for the first time and not published in any foreign country, or works published in Viet Nam within 30 days from the date of their first publication in other nations; and (ii) works eligible for protection in Viet Nam in accordance with international treaties to which Viet Nam was a party.

396. Right holders had the exclusive right of reproduction, broadcasting/performance, distribution, and creation of derivative works (Article 738.3 of the 2005 Civil Code and Articles 20, 29.3, 30, and 31 of the 2005 Intellectual Property Law). Limitations to author's rights were laid down in Articles 25 and 32 of the 2005 Intellectual Property Law. A Member noted that the terms "cultural gatherings" and "promotional campaigns" used in Article 25.1(e) could be interpreted so as to allow for commercial gain other than through the sale of tickets, which would appear to conflict with the Berne Convention and the TRIPS Agreement. In response, the representative of Viet Nam said that this provision only referred to cultural performances without a commercial purpose. A Member noted that the parameters in Article 25 and Article 32 for use without permission or compensation appeared to be broader than allowed under the Berne Convention and the TRIPS Agreement and requested Viet Nam to clarify the scope of these provisions. A Member also asked Viet Nam to confirm that its legislation did not allow libraries and archives to make and distribute unlimited copies of works in digital form nor limited importation to a single copy for personal use. The representative of Viet Nam confirmed that, in response to Members' concerns, Viet Nam had narrowed the scope of the limitations and exceptions to copyright in Articles 25 and 32 of the 2005 Intellectual Property Law, with a view to conforming to the TRIPS Agreement and the Berne Convention, in Decree No. 100/2006/ND-CP of 21 September 2006 guiding the implementation of the 2005 Intellectual Property Law relating to copyright and related rights.

397. A Member noted that Articles 26 and 33 of the 2005 Intellectual Property Law provided that broadcasting organizations may use "published works" and "related rights" without the authorization of the right holder, but must pay royalties or remuneration. The Member asked how Viet Nam would ensure that the remuneration was equitable as required under the Berne Convention. The representative of Viet Nam stated that Berne Article 11*bis* would be implemented directly and thus the equitable remuneration standard would be applied. Furthermore, he confirmed that collecting societies existed to carry out activities on behalf of the right holder, including the collecting of remuneration, but only as authorized by the right holder.

398. Pursuant to Articles 26.1 and 33.1 of the 2005 Intellectual Property Law, organizations and individuals using published works or sound/video recordings for sponsored broadcasting programmes, or programmes with advertisements or involving money collection in any form did not have to obtain permission from the right holder, but were required to pay royalties in accordance with Government's regulations. Organizations and individuals using works or sound/video recordings in accordance with the provisions of Articles 26.1 and 33.1 should not influence the normal exploitation of the works nor prejudice the rights of the authors, copyright owners, performers, sound/video recording producers or broadcasting organizations. He noted that Article 26.1 did not apply to cinematographic works. In response to a Member who noted that the exceptions provided for in Articles 26 and 33 appeared to be too broad and therefore inconsistent with the TRIPS Agreement, the representative of Viet Nam said that the exceptions stipulated in these Articles were limited to cases which did not conflict with a normal exploitation of the work and did not prejudice the rights of the right holder. He noted that broadcasting organizations in Viet Nam were operated by the State and were required to pay royalties

only when they broadcasted sponsored programmes, programmes with advertisements, or programmes involving money collection.

399. Authors or owners of works whose rights were being infringed were entitled to request the organization or individual having committed the acts of infringement to stop his infringement acts, apologize, publicly rectify and compensate for damages; request the competent State agencies to handle infringement acts in accordance with the provisions of the Intellectual Property Law and other related laws and regulations; or initiate a lawsuit at a competent court or an arbitrator to protect their legitimate rights and interests (Article 198 of the 2005 Intellectual Property Law). Criminal remedies were stipulated in Article 131 of the Criminal Code. Violators could face a fine of VND 200 million 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 2001 Customs Law, the right holder could also request customs offices to halt clearance temporarily of infringing imported or exported goods.

400. 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.

401. The representative of Viet Nam replied that all films being shown in theatres 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 No. 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.

402. Asked specifically about Viet Nam's regulation of digital copyright issues, the representative of Viet Nam said that digital copyright protection was provided for in Articles 4.10, 20.1(dd), 29.3(d), 30.1(b), and 31.1(d) of the 2005 Intellectual Property Law. The principles and forms of fair use exceptions were laid down in Articles 25 and 32 of the 2005 Intellectual Property Law. Provisions on technological protection measures for protected copyright had been included in Articles 28 and 35 of the 2005 Intellectual Property Law. 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.

403. Some Members observed that it had been brought to their attention that some agencies of the Government of Viet Nam used computer software that had not been authorized by the right holder. These Members also noted that an agency of the Government of Viet Nam and a State-owned enterprise were providing unlicensed cable television programming to Vietnamese customers. They requested such a practice should be eliminated by Viet Nam in the context of its accession to the

WTO and the implementation of the obligations in the WTO Agreement on TRIPS. The representative of Viet Nam confirmed that prior to the date of accession, Viet Nam would issue appropriate legal instruments mandating that all government agencies use only legitimate computer software and not infringe the copyright of such software. Such measures would regulate the acquisition and management of all software for use by government agencies. The representative of Viet Nam also confirmed that prior to the date of accession, Viet Nam would issue appropriate legal instruments mandating that all cable television purveyors provide only fully licensed products to their customers. The Working Party took note of these commitments.

(b) Trademarks, including service marks

404. The representative of Viet Nam said that trademarks were protected in accordance with Articles 750 to 753 of the 2005 Civil Code and Part III of the 2005 Intellectual Property Law. Mandatory registration was not required for any goods or services. All trademark registrations were published in the Official Gazette of Industrial Property.

405. A trademark could be words, letters, pictures, figures − including three-dimensional figures − or a combination of such elements represented in one or many colours (Article 72 of the 2005 Intellectual Property Law). A sign capable of distinguishing goods or services of different owners could be protected as trademark, unless it was excluded from protection under Article 73 of the 2005 Intellectual Property Law. Signs excluded from protection included signs identical with or confusingly similar to national flags, national emblems; flags, emblems, armorial bearings, abbreviations, full names of State agencies, political organizations, socio-political organizations, socio-political professional organizations, social organizations or socio-professional organizations of Viet Nam or international organizations, unless so permitted by such agencies or organizations; real names, alias, pen names or images of leaders, national heroes or famous persons of Viet Nam or foreign countries; certification seals, control seals, warranty seals of international organizations; and signs likely to mislead, confuse or deceive consumers as to the origin, functional parameters, intended purposes, quality, value or other characteristics of the good or service. While Viet Nam's laws did not list personal names as signs that could be protected as trademarks, personal names were, as words, ex officio recognized as signs that could be registered pursuant to Article 72.1 of the 2005 Intellectual Property Law. Applications for registration of marks were filed with the competent State authority (the National Office of Intellectual Property). In accordance with Article 89.2 of the 2005 Intellectual Property Law, foreign natural persons not resident in Viet Nam and legal persons not industrially or commercially established in Viet Nam were required to file applications for trademark registration through a legally operating industrial property representative of their choice. Use was not a condition for entitlement to file an application for registration of a trademark. A sign which did not possess a distinctive character could be protected if it had been widely used and recognized as a trademark (Article 74.2 of the 2005 Intellectual Property Law). Current laws and regulations also applied to service marks. Well-known marks were protected under Articles 74.2(i), 75, and 129.1(d) of the 2005 Intellectual Property Law. These provisions were, in his view, in compliance with the Paris Convention and the TRIPS Agreement.

406. 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 (Article 139 of the 2005 Intellectual Property Law). 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.

407. Legal entities, including charitable organizations, could apply for trademark registration only if legally engaged in business activities (production, service or trading), in accordance with

Articles 87.1 and 87.2 of the 2005 Intellectual Property Law. However, charitable entities not engaged in business activities were protected against non-authorized registration of signs and designations identical with or similar to their emblems or designations according to Article 73.2 of the 2005 Intellectual Property Law.

408. 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. In reply, the representative of Viet Nam said that neither the TRIPS Agreement nor the Paris Convention required recognition of jointly owned trademarks. Nevertheless, provisions on the right to register such marks had been included in Article 87.5 of the 2005 Intellectual Property Law.

409. 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 judicial review of any administrative decision was guaranteed by the Law on Complaints and Denunciations of 1998, as amended in 2005, and the Ordinance on Procedures for Settlement of Administrative Cases of 1996, as amended in 2006. Pursuant to these texts, decisions relating to the establishment, maintenance, termination and invalidation of trademarks, and industrial property rights in general, having been appealed to the Director General of the National Office of Intellectual Property could be further appealed, at the appellant's discretion, either to the Minister of Science and Technology or to the Administrative Court, in accordance with Article 39 of the Law on Complaints and Denunciations of 1998, as amended in 2005, and Article 2 of the Ordinance on Procedures for Settlement of Administrative Cases of 1996, as amended in 2006. As such, in his view, existing laws and regulations provided an opportunity for both judicial and administrative review in compliance with the TRIPS Agreement.

410. He added that the scope of trademark protection, which under previous legislation had been narrower than the requirement in Article 16.1 of the TRIPS Agreement, had been extended by Decree No. 06/2001/ND-CP of 1 February 2001. The provisions of Decree No. 06/2001/ND-CP had subsequently been included in Article 129.1 of the 2005 Intellectual Property Law. In particular, Article 129.1 stipulated as infringement of a trademark owner's rights the use of signs identical with or similar to a protected mark for goods or services identical with, similar to or related to those in the list registered with the mark if such use was likely to cause confusion as to the origin of the goods or services. He further noted that Articles 46, 181, 287, and 289 of the 2005 Commercial Law required the concerned parties to ensure the legality of intellectual property rights in commercial transactions, and Articles 109, 134 and 320 of the Commercial Law prohibited acts deceiving and confusing customers, as well as acts of displaying false advertisements or counterfeit goods.

411. The definition of a well-known mark as "a mark widely known to consumers throughout the territory of Viet Nam" and the criteria for the recognition of well-known marks were provided in Articles 4.20 and 75 of the 2005 Intellectual Property Law. Pursuant to Article 75, the criteria included 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 trademarked 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. Ownership of well-known marks should be established on the basis of use without registration (Article 6.3(a) of the 2005 Intellectual Property Law). He confirmed that in drafting the 2005 Intellectual Property Law, 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 6bis of the Paris Convention.

(c) Geographical indications, including appellations of origin

412. The representative of Viet Nam said that geographical indications were protected under Articles 750 to 753 of the 2005 Civil Code and Part III of the 2005 Intellectual Property Law. The 2005 Intellectual Property Law provided for a single model of protection applicable to all types of geographical indications, including appellations of origin. Pursuant to Article 6.3 of the Law, industrial property rights of geographical indications, including appellations of origin, were established on the basis of registration with the competent State authority (the National Office of Intellectual Property). The time-limit for formality examination was one month from the filing date and six months for substantive examination. The term of protection of geographical indications was indefinite. Article 79 of the 2005 Intellectual Property Law laid down the conditions for protection of a geographical indication. Products bearing a geographical indication should (i) originate from the area, locality, territory or country corresponding to such geographical indication and (ii) have the reputation, quality or characteristics essentially attributable to the geographical conditions of the area, locality, territory, or country corresponding to such geographical indication. Geographical indications corresponding to regions and localities within a country or territories crossing international borders were protected if they complied with all requirements stipulated by law. The provisions were, in his view, in compliance with Article 22.1 of the TRIPS Agreement. In response to a question, he added that a geographical indication would not be protected pursuant to Article 80.1 of the 2005 Intellectual Property Law if it had become a generic name in Viet Nam. As of early 2006, five geographical indications were protected in Viet Nam.

413. Acts infringing geographical indications were handled in accordance with Part V of the 2005 Intellectual Property Law on enforcement of intellectual property rights. A person having the right to use a geographical indication could require the competent State authorities to stop unlawful use of such indication and demand compensation from unlawful users for the damage caused (Article 198.1, paragraphs (b) and (c) of the 2005 Intellectual Property Law). However, that person would not have exclusive rights to such geographical indication, and could not grant licenses to other persons.

414. Article 129.3 of the 2005 Intellectual Property Law provided for additional protection for wines and spirits. Under this Article, the use of a protected geographical indication identifying wines or spirits that were not originating in the territories corresponding to the geographical indication, even where the true origin of the goods was indicated or the geographical indication was used in translation or transcription or accompanied by words such as "kind", "type", "style", "imitation" or the like was considered an infringement of the rights to a protected geographical indication. 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.

415. As to the relationship between the protection of geographical indications and trademarks, Articles 73.5 and 74.2(l) of the 2005 Intellectual Property Law prohibited the registration of a trademark identical with or confusingly similar to protected geographical indications, including appellations of origin, if the use of such trademark was likely to mislead consumers as to the geographical origin of the goods. The time to be taken into consideration for the protection of geographical indications was the priority date of the trademark application. Asked how Viet Nam could confer exclusive rights to trademark owners consistent with the TRIPS Agreement if its legislation appeared to allow trademarks to coexist with confusingly similar and later-in-time geographical indications, he replied that Viet Nam had included a provision in the 2005 Intellectual Property Law to exclude the protection of geographical indications identical with or confusingly

similar to an already protected trademark where actual use thereof would create confusion as to the origin of the goods (Article 80.3).

416. Noting that the right to register geographical indications belonged to the State pursuant to Article 88 of the 2005 Intellectual Property Law, a Member asked Viet Nam to explain how foreign applicants could register geographical indications, as opposed to the "mode of filing registration applications" set out in Article 89. This Member also asked Viet Nam to clarify how ownership and regulation of foreign-owned geographical indications were treated under the 2005 Intellectual Property Law as the State was the owner of Viet Nam's geographical indications and regulated the use of Vietnamese geographical indications pursuant to Article 121. In response, the representative of Viet Nam said that the provisions of the 2005 Intellectual Property Law on registration rights, ownership, management and use of geographical indications applied only to Vietnamese geographical indications. He noted that, in accordance with Article 80.2 of the Law, only foreign geographical indications protected in their country of origin could be protected in Viet Nam. Any entity having the right, under foreign national law, to own, use or file an application for registration of a geographical indication in the country of origin had the right to file an application for registration of such geographical indication in Viet Nam and could be recorded as such in Viet Nam's Registry of Geographical Indications. This provision was, in his view, in conformity with Article 24.9 of the TRIPS Agreement. The filing of a registration application, directly or through a lawful representative, had to comply with the provisions of Article 89. He was of the view that these provisions were not contradictory. He cited the example of the geographical indication "cognac", which was currently protected in Viet Nam and whose application for registration in Viet Nam had been filed through the French embassy by the National Inter-Professional Bureau of Cognac. Ownership, management and use of geographical indications in Viet Nam were required to comply with the provisions of Chapter IX of the 2005 Intellectual Property Law. In his view, the 2005 Intellectual Property Law protected Vietnamese and foreign geographical indications in conformity with the TRIPS Agreement. He noted, in this regard, that conformity with the TRIPS Agreement was guaranteed by Article 5.3 of the Law, according to which the provisions of international treaties to which Viet Nam was a party should apply in case of a conflict.

417. A Member raised the issue of whether Viet Nam would protect and register Geographical Indications of a Member that provided protection to geographical indications through a means other than registration, such as through certification marks or unfair competition laws. This Member requested that Viet Nam recognize such forms of protection and permit registration.

418. The representative of Viet Nam confirmed that since a form of protection was accorded to Geographical Indications in the country of origin, even if such protection was through means other than through "registration as a Geographical Indication", geographical indications from that Member could be registered and recorded in Viet Nam's Registry of Geographical Indications.

(d) Industrial designs

419. 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 worldwide novelty capable of serving as a pattern for a product of industry or handicraft - were protected in accordance with Articles 750-753 of the 2005 Civil Code and Part III of the 2005 Intellectual Property Law. Textile designs were protected 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 from the filing date - taking effect from the registration date - and it could be renewed for two consecutive terms of five years (Article 93.4 of the 2005 Intellectual Property Law).

420. The owner of a protected industrial design had the exclusive right to use, licence or assign the right to use such industrial design to other persons (Article 123 of the 2005 Intellectual Property Law), 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 (Articles 255 and 751 of the 2005 Civil Code and Article 198 of the 2005 Intellectual Property Law). 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 of Articles 123.1(a), 124.2 and 126.1 of the 2005 Intellectual Property Law also covered the making, selling or importing of Articles embodying designs which were "substantially a copy" of a protected design.

421. The rights were restricted when provisions on prior user were applied. The rights of prior users were provided in Article 134 of the 2005 Intellectual Property Law. As for compulsory licensing, he noted that the 2005 Intellectual Property Law no longer provided for compulsory licensing in respect of industrial design.

(e) Patents

422. The representative of Viet Nam said that any invention involving worldwide novelty, an inventive step and industrial applicability was protected in accordance with Articles 750 to 753 of the 2005 Civil Code and Part III of the 2005 Intellectual Property Law. 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 Article 119 of the 2005 Intellectual Property Law. He added that utility solutions, which did not require protection under the TRIPS Agreement, were protected in Viet Nam. Any invention possessing worldwide novelty with industrial applicability − even if it did not involve an inventive step but was not of common knowledge − could be protected by a Utility Solution Patent (Article 58.2 of the 2005 Intellectual Property Law). By 31 December 2005, 5,342 invention patents had been granted, and the National Office of Intellectual Property had a staff of approximately 200.

423. 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 programmes; designs and planning schemes for construction works; and projects for regional development and planning; (ii) subject matters which should be protected under other forms of protection than patents, i.e., plant and animal varieties; and (iii) those not industrially applicable such as methods for the prevention, diagnosis, and treatment of human or animal diseases, essentially biological processes for the production of plants or animals other than non-biological and microbiological processes (Article 59 of the 2005 Intellectual Property Law). 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 Article 59 of the 2005 Intellectual Property Law. Responding to a Member, who considered that 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 provided for in Viet Nam's legislation 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 8 of the 2005 Intellectual Property Law. This provision applied irrespective of whether the commercial exploitation of such inventions was prohibited by law.

424. Owners of Invention Patents or Utility Solution Patents had the exclusive right to use, licence and assign the right to use the invention to other persons. They had the right to demand that other persons stop infringements, and could seek compensation for damages caused by acts of infringement

(Article 255 of the 2005 Civil Code and Articles 123, 125, and 198 of the 2005 Intellectual Property Law). In response to a question, he added that the rights conferred to the patent owner by Article 28.1 of the TRIPS Agreement were set out in Articles 123.1(b), 124.1, and 125 of the 2005 Intellectual Property Law. As for the provisions of Article 28.2 of the TRIPS Agreement, these had been included in Articles 123.1(a) and 123.1(c) of the Law. He noted, in this regard, that the use of an invention was defined in Article 124.1 of the Law as the production, application, exploitation, circulation, advertisement, offering for sale, stocking for circulation, and importation of a protected product or process. In his view, these Articles fully complied with the provisions of Article 28 of the TRIPS Agreement.

425. A Member noted that Article 124 did not include "selling" and so asked how this Article was consistent with Article 28 of the TRIPS Agreement. The representative of Viet Nam stated that "circulation" in Article 124.1(c) included "selling" and that the term "circulation" had been clarified in Decree No. 103/2006/ND-CP of 22 September 2006 providing detailed provisions and guidelines for implementing certain articles of the 2005 Intellectual Property Law concerning industrial property.

426. The terms of Invention Patents and Utility Solution Patents were 20 and ten years respectively counting from the official filing date − taking effect on the grant date (Article 93.2 of the 2005 Intellectual Property Law) − and were, in his view, in compliance with Article 33 of the TRIPS Agreement.

427. The owner of an invention or his exclusive licensee were obliged to use the invention (or transfer the right of use) in conformity with the requirements of socio-economic development of Viet Nam (Articles 136.1 and 142.5 of the 2005 Intellectual Property Law), and the owner was required to pay a remuneration to the author of the invention (Article 135 of the 2005 Intellectual Property Law). He confirmed that importation would satisfy the "use" requirement stipulated in Viet Nam's legislation (Article 136.1 of the 2005 Intellectual Property Law). The representative of Viet Nam stated that this issue would be resolved through the implementing decree. The rights to a patent (invention) were restricted by provisions on prior use right and compulsory licensing (Articles 134 and 145 to 147 of the 2005 Intellectual Property Law).

428. Conditions and procedures for granting compulsory licenses were laid down in Section 3, Chapter X of the 2005 Intellectual Property Law (Articles 145 to 147). Compulsory licensing could only be applied (i) for reasons of national defence and security, the prevention and treatment of diseases, or other urgent needs of the society; (ii) for reasons of non-use or improper use; (iii) if the proposed user had failed to reach an agreement with the owner on reasonable commercial terms and conditions within a reasonable period of time; or (iv) in case of anti-competitive practices. Provisions on conditions for granting compulsory licenses in compliance with Articles 31(f), 31(k) and 31(l) of the TRIPS Agreement had been introduced in Article 146 of the Law. Pursuant to Section 3 of Chapter X, compulsory licenses could not be granted before the expiration of a four-year period after the filing of an application for a Protection Title and three years after a Protection Title had been granted. The licensee of an invention by compulsory licensing was required to pay adequate remuneration to the owner, taking into account the economic value of the authorization, as required by Article 31(h) of the TRIPS Agreement (Article 146.1). The patent owner was entitled to request the termination of the use of a compulsory licence if the circumstances which led to it had ceased and were unlikely to recur, provided such termination would not prejudice the grantee of the compulsory licence (Article 145.2). Ministries and other ministerial-level authorities were responsible for granting and terminating compulsory licenses with regard to inventions in their field of action, when such licenses had been granted for reasons of national defence and security, the prevention and treatment of diseases or other urgent needs of the society; the Ministry of Science and Technology was responsible for granting and terminating compulsory licenses in the other cases (Article 147.1). He noted that no compulsory licence had been granted in Viet Nam thus far.

429. In response to a question concerning the "remuneration frame provided for by the Government" stipulated in Article 146.1(d), the representative of Viet Nam said that the term "remuneration frame" referred to the ceiling level of remuneration and principles for determining the adequate level of remuneration under compulsory licensing. The "remuneration frame" would be used as a basis for establishing the remuneration. The frame had been set out in detail in Government Decree No. 103/2006/ND-CP of 22 September 2006 providing detailed provisions and guidelines for implementing certain articles of the 2005 Intellectual Property Law concerning industrial property. According to Decree No. 103/2006/ND-CP, the remuneration should take into account the economic value of the right transferred, including the contractual licensing price of the invention, the funds invested for the creation of the invention, the profits gained by using the invention, the remaining duration of validity of the patent, and the need for licensing the invention.

430. He added that judicial review of decisions on compulsory licensing and of the use of inventions under compulsory licenses was guaranteed by the Law on Complaints and Denunciations, the Ordinance on Procedures for Settlement of Administrative Cases, and Article 147.4 of the 2005 Intellectual Property Law. Pursuant to Article 147.4, decisions on compulsory licensing were subject to both administrative appeal and judicial litigation. Asked specifically about judicial review of decisions related to remuneration, he noted that decisions on compulsory licensing - which could be appealed under Article 147.4 - were required, pursuant to Article 147.2, to provide for appropriate scope and conditions in accordance with Article 146, including the right to an adequate remuneration (Article 146.1). Thus, decisions on remuneration could be appealed. In his view, the provisions of Articles 146.1, 147.2 and 147.4 of the 2005 Intellectual Property Law complied fully with the provisions of Article 31(j) of the TRIPS Agreement.

431. 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 751 of the 2005 Civil Code and Article 123.1 of the 2005 Intellectual Property Law. The assignment or licensing of a patented invention was subject to certain restrictions permitted by Articles 30 and 40 of the TRIPS Agreement (Articles 139 and 142 of the 2005 Intellectual Property Law). In response to concerns expressed by a Member about limitations on royalty payments applied by Viet Nam, the representative of Viet Nam said that ceilings on royalty payments for intellectual property rights had been abolished by Decree No. 11/2005/ND-CP of 2 February 2005 on Technology Transfer, replacing Decree No. 45/1998/ND-CP of 1 July 1998.

432. 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 (Article 125.2 of the 2005 Intellectual Property Law).

433. Procedures for the termination and invalidation of invention patents were regulated by Articles 95 and 96 of the 2005 Intellectual Property Law. 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. Minister's decisions could be reviewed by the Administrative Court under the Law on Complaints and Denunciations of 1998, as amended in 2005 (Article 39), and the Ordinance on Procedures for Settlement of Administrative Cases of 1996, as amended in 2006 (Article 2). He considered Viet Nam to be in full compliance with Article 32 of the TRIPS Agreement.

434. 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.

(f) Plant variety protection

435. The representative of Viet Nam said that, having studied the compliance of Viet Nam's 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. New plant varieties were now protected pursuant to Part I (Articles 4.5 and 6.4) and Part IV (Articles 157 to 197) of the 2005 Intellectual Property Law. The substantive provisions of the 2005 Intellectual Property Law on plant variety protection were derived from the UPOV. Nationals and foreigners were eligible for protection pursuant to Article 157 of the 2005 Intellectual Property Law. The protection criteria applied to plant varieties under Articles 158 to 162 of the Law corresponded precisely to those provided for in Articles 5 to 9 of the UPOV, including novelty, distinctness, uniformity and stability. The requirements on variety denomination under Article 163 of the 2005 Intellectual Property Law were compatible with those prescribed in Article 20 of the UPOV. As for the establishment of rights to plant varieties, he noted that Articles 164 to 184 of the 2005 Intellectual Property Law satisfied the requirements and criteria set out in Articles 10, 11, 12, 19, 21, and 22 of the UPOV concerning the filing of applications, the right of priority, the examination of applications, and validity and duration of breeder's rights. Article 169, in particular, provided for a duration of breeder's rights of 25 years for trees and vines and 20 years for other species, counting from the date the rights had been granted. The provisions on provisional protection, scope and limitations of breeder's rights, and exhaustion of breeder's rights of Articles 185 to 197 of the 2005 Intellectual Property Law corresponded to the language of Articles 13 to 18 of the UPOV. He noted that Article 187 of the 2005 Intellectual Property Law did not extend breeder's rights to harvested material or products made directly from harvested material obtained through the unauthorized use of propagating material of protected variety, in conformity with Articles 14(2) and (3) of the UPOV. In his view, the provisions on plant variety protection included in the 2005 Intellectual Property Law met the minimum standards of the UPOV. He added that Viet Nam had promulgated Government Decree No. 104/2006/ND-CP of 22 September 2006 providing detailed provisions and guidelines for implementing certain articles of the 2005 Intellectual Property Law concerning rights to plant varieties.

(g) Layout designs of integrated circuits

436. The representative of Viet Nam said that layout designs of semiconductor integrated circuits were protected under Articles 4.4, 6.3(a) and Part III of the 2005 Intellectual Property Law. Viet Nam had also promulgated Government Decree No. 103/2006/ND-CP of 22 September 2006 providing detailed provisions and guidelines for implementing certain articles of the 2005 Intellectual Property Law concerning industrial property, including those related to layout designs of semiconductor integrated circuits.

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

437. The representative of Viet Nam said that business secrets, including trade secrets and test data, were protected under the provisions of the 2005 Intellectual Property Law on industrial property rights, including Articles 4.4, 6.3(c) and Part III of the Law. Business secrets would be protected as long as they satisfied all prescribed conditions without being required for registration. The owner of business secrets had the right to prohibit the unauthorized use of his business secrets and demand injunctions from the State competent authorities to stop infringements and to claim damages (Articles 121, 123 to 125, 127, and 198 of the 2005 Intellectual Property Law). The representative of Viet Nam explained that Viet Nam had, in practice, provided protection of undisclosed test or other data submitted as a condition for approving the marketing of pharmaceutical or agricultural chemical

products since 2003. This protection was codified in Article 128 of the 2005 Intellectual Property Law. Under this Article, the authorities concerned had the obligation, when an applicant requested that data submitted as a condition for approving the marketing of pharmaceutical or agricultural chemical products be kept secret, to take necessary measures so that such data were neither used for unfair commercial purposes nor disclosed, except if disclosure was necessary to protect the public. The authorities concerned were not allowed to grant any licence during a five-year period from the date a licence had been granted to an applicant to any subsequent applicant using undisclosed data in his applications without permission of the prior applicant, except in cases where the undisclosed data had been created independently by the subsequent applicant as provided for in Article 125.3(d) of the Law. He noted a new Decree, Decree No. 103/2006/ND-CP providing detailed provisions and guidelines for implementing certain articles of the 2005 Intellectual Property Law concerning industrial property, and a regulation including procedural details, i.e. Decision No. 30/2006/QD-BYT of the Minister of Health on promulgation of regulations on data protection applied to Drug Registration Dossiers, had been issued in September 2006.

438. He added that the new Law on Competition, which had been adopted by the National Assembly on 3 December 2004 (Law No. 27/2004/QH11), included provisions dealing with unfair competition (Article 39) and infringement of business secrets, including accessing and acquiring information on business secrets of others in procedures for marketing approval of products, using such information for business purposes or for obtaining business-related licenses or marketing approval of products, or acting against secret-keeping measures of State agencies (Article 41.4).

3. Measures to control abuse of intellectual property rights

439. The representative of Viet Nam said that violations of the procedures establishing a right in relation to an object of industrial property could lead to the annulment of the granted protection certificate (Article 96.1 of the 2005 Intellectual Property Law). Failure to use or licence a patented invention could result in compulsory licensing (Article 136.1 of the 2005 Intellectual Property Law).

440. A Member asked whether importation of a product covered by the patent would satisfy the requirement of Article 136.1. The representative of Viet Nam stated that importation would satisfy the requirement, and that this issue would be clarified through the implementing decree. He added that legal provisions had been included in the 2005 Intellectual Property Law to enable Viet Nam to take appropriate measures to prevent or control anti-competitive practices in contractual licenses. Article 144.2 of the Law 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.

441. 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 1 July 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 licenses. 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.

442. 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. Ceilings on royalty payments for

intellectual property rights had been abolished by Decree No. 11/2005/ND-CP on Technology Transfer, promulgated on 2 February 2005.

4. Enforcement

(a) Civil judicial procedures and remedies

443. The representative of Viet Nam said that People's Courts (Civil Court), at district and provincial level, had jurisdiction over disputes of infringement relating to intellectual 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 registration right and the right of authorship, and disputes relating to contracts concerning assignment 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 intellectual property right as well as evidence of infringement of the rights (Article 203 of the 2005 Intellectual Property Law). 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, if necessary, to collect evidence itself (Articles 85 and 94 of the 2004 Civil Procedure Code). The persons or institutions requested to provide evidence had 15 days to present such evidence. Concerned parties could appeal the Court's collection of evidence to the People's Prosecutor, which could request the Court to verify and collect evidence according to the concerned parties' request. People's Prosecutors were responsible for controlling and supervising civil courts' judgments and decisions and ensuring their timely settlement and conformity with Viet Nam's laws and regulations (Article 21 of the 2004 Civil Procedure Code). All Court decisions were provided in written form to the concerned parties and the People's Prosecutor within ten days (Article 241 of the 2004 Civil Procedure Code). Detailed provisions on necessary evidence had been included in Article 203 of the 2005 Intellectual Property Law. Pursuant to Article 203, documentation to be submitted to prove ownership of an intellectual property right could include, for registered rights, a legitimate copy of Protection Titles, any extract of Register on patents, industrial designs, etc., a certificate of copyright registration, or a certificate of related right registration. For unregistered rights, any document proving the existence of copyright, related rights, well-known marks etc. could be accepted. He confirmed that the plaintiff was not required to submit an affidavit of ownership to the court. Procedures also existed for amicable settlement of disputes over royalty, remuneration, licensing contracts and contracts to transfer ownership rights.

444. The Court could rule that the act of infringement be stopped, recognize the legitimate rights to objects of intellectual 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 307.2 of the 2005 Civil Code). "Mental damages" included damages to honour, dignity and prestige of the victim (Article 204.1(b) of the 2005 Intellectual Property Law). The 2005 Intellectual Property Law contained detailed provisions on calculation of damages (Article 204), compensation of right holders (Article 205), remedies (Article 202), provisional measures (Article 207), burden of proof (Article 203), and authority of People's Courts to order provisional measures (Article 210). Pursuant to the 2004 Civil Procedure Code, the Court would decide upon the apportioning of legal costs based on the rights and faults of the parties concerned and the parties could appeal decisions of the first instance civil judgment and request a hearing at higher instance.

445. The representative of Viet Nam explained that detailed provisions concerning indemnification of the defendant in the case of abuse of civil enforcement procedures by the complainant had been stipulated in the 2004 Civil Procedure Code and the 2005 Intellectual Property Law (Article 208.2).

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 or, in case of unknown value of the good, a sum of at least VND 20 million, or provide a guarantee ensuring compensation to the owner of the goods (Article 217.2 of the 2005 Intellectual Property Law). The intellectual property right owner having registered his right at a Customs Unit (or a Customs Department or the General Department of Customs if he wished to register his right at two or more Customs Units) and having paid the prescribed registration fee could request customs authorities to take necessary actions to detect suspected infringing goods at the borders (Article 216 of the 2005 Intellectual Property Law and Articles 48.1 and 49.2 of Decree No. 154/2005/ND-CP of 15 December 2005). Customs registration of intellectual property rights was valid for one year and could be renewed at the request of the intellectual property right owner, as long as the latter paid the prescribed fee (Article 49.1 of Decree No. 154/2005/ND-CP of 15 December 2005). In response to a Member who noted that the requirement to deposit 20 per cent of the value of the good could place an unreasonable burden on effective border enforcement and enquired about the alternative guarantee, the representative of Viet Nam said such alternative guarantee had been included in Article 217.2(b) of the 2005 Intellectual Property Law.

446. 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 a minimum of three years in order to provide sufficient protection. The representative of Viet Nam replied that Article 159.3 of the 2004 Civil Procedure Code provided for a two-year period for filing suits for the settlement of civil disputes, including those involving infringement of intellectual property rights. He considered this period sufficient compared to other types of violations.

447. He added that Viet Nam had attached increasing importance in recent years to the strengthening of the judicial system, in particular the civil judicial system. In addition to the promulgation of the 2005 Intellectual Property Law, specialized short-term courses on intellectual property had been organized for judges with the assistance of several WTO Members.

(b) Provisional measures

448. The representative of Viet Nam said that the Courts having jurisdiction over violations and disputes in relation to intellectual property rights could decide on the application of provisional measures. Detailed provisions were laid down in the 2004 Civil Procedure Code and the 2005 Intellectual Property Law. Pursuant to Article 207.1 of the 2005 Intellectual Property Law, provisional measures included seizure, attachment, or sealing of goods suspected to infringe intellectual property rights, and of materials, raw materials or implements for producing or trading such goods; the prohibition to change or displace such goods and materials; and the prohibition to transfer ownership of such goods and materials. Provisional measures could be lifted when no longer considered necessary by the imposing authority.

449. 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 (Articles 99 and 119 of the 2004 Civil Procedure Code). Pursuant to Article 206.2 of the 2005 Intellectual Property Law, the Court could, prior to hearing the opinion of the party liable for provisional measures, take an immediate decision which would also be effective immediately. The decision could be appealed to the Chief of Justice by either party, in which case the Prosecution Institute would have the right to make a proposal to the Chief of Justice, who was required to respond within three days (Articles 124 and 125 of the 2004 Civil Procedure Code).

(c) Administrative procedures and remedies

450. The representative of Viet Nam said that Viet Nam had no special agency for the enforcement of Intellectual Property Rights. Pursuant to Article 200.1 of the 2005 Intellectual Property Law and

the 2002 Ordinance on handling administrative violations, the bodies competent to take administrative action in relation to infringement of intellectual property rights were the market control agencies of the trade administration (Market Control Department and Market Control Branch Offices), customs agencies (Customs Department, Customs branch offices, anti-smuggling inspection office), specialized inspection authorities such as the Culture and Information Inspectorates at the national and provincial levels and the Science and Technology Inspectorates at the national and provincial levels, the People's Committees at the district and provincial levels, and public security agencies (District Police, Provincial Police, and the Economic Police). He added that the 2005 Intellectual Property Law limited the administrative handling of IPR infringement to counterfeiting, pirating, intentional infringements and infringements of remarkable social effect (Article 211).

451. The responsibilities of each agency depended on their area of administration and jurisdiction, as spelled out in Article 200 of the 2005 Intellectual Property Law. Market control agencies could impose administrative remedies and other measures against infringements of industrial property rights and trade in cultural-informational products and services occurring in the country. Customs agencies had the competence to impose administrative remedies against infringements of intellectual property rights in the course of exportation and importation, Science and Technology Inspectorates against infringements of industrial property rights, Culture and Information Inspectorates against infringements of copyright, and People's Committees against infringements of intellectual property rights occurring within their jurisdiction. As for public security agencies, these were responsible for handling infringements of intellectual property rights in the course of production and trade. The Economic Police - composed of the heads of the District Police and Economic Police Division, of the Director of the Provincial Police, and of the Director General of the Economic Police Department - had the competence to investigate and handle infringements of intellectual property rights in all areas of production and business. The Economic Police could search the houses of persons deemed to hide instruments involved in or evidence of infringement cases, and suspend business licenses in case of serious violation of the provisions regulating the use of business licenses. It could impose administrative remedies against acts of industrial property infringement related to business and production activities and acts of copyright infringement associated with public order and security. The Economic Police received specialized training on intellectual property enforcement. It had the same jurisdiction and resources as other police forces. These regulations, which were spelled out in Decrees No. 12/1999/ND-CP of 6 March 1999 and No. 31/2001/ND-CP of 26 June 2001, had been included in Government Decree No. 106/2006/ND-CP of 22 September 2006 on handling administrative violations in the industrial property field.

452. In 2005, Science and Technology Inspectorates, in coordination with the Hanoi Police, had investigated several infringing business bases and imposed fines on eight enterprises for a total of VND 64 million. Science and Technology Inspectorates had also organized two board meetings with the participation of trade representatives from the French and US embassies to destroy intellectual property infringing products. Furthermore, the National Office of Intellectual Property of Viet Nam had conducted a legal assessment of the handling of 592 industrial property infringement cases by enforcement agencies. It had also participated in an inter-ministerial group under the lead of the Ministry of Industry to control the implementation of existing intellectual property laws and regulations in 30 domestic enterprises producing and assembling motorbikes in the provinces of Hai Phong, Ha Noi, Nam Dinh, Ha Tay, Ho Chi Minh, Da Nang, and Nghe An. Finally, in order to ensure the quality of goods in the market, Science and Technology Inspectorates, in coordination with local Departments of Science and Technology and other related agencies, had inspected 17,317 business bases and imposed 1,953 fines for a total of VND 842 million.

453. Asked about the allocation of staff to fight IPR infringement 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. He noted that Government Decree No. 106/2006/ND-CP of 22 September 2006 on handling administrative violations in the

industrial property field included detailed provisions clarifying the scope of duties, responsibilities and jurisdiction of each enforcement agency. Pursuant to this Decree, the Economic Police was entitled to investigate intellectual property infringement and impose administrative remedies, but not to prosecute or adjudicate crimes. In addition, with a view to further improving the efficiency of law enforcement staff, specific provisions on training had been included in the 2005 Intellectual Property Law. He noted that capacity building had been one of the main concerns of his Government in recent years. A "Project on enhancement of intellectual property enforcement efficiency" was also being prepared. The Project would establish a system of information to assist competent agencies in investigating, controlling and handling violations of intellectual property rights, as well as an inter-agency communication channel and fora to provide and exchange information and experiences in the application of remedies and modes of infringement. His authorities were also considering plans to develop statistics and a general assessment system of infringements of intellectual property rights to ensure a good coordination between enforcement agencies.

454. Administrative measures and remedies were governed, under the new legislative framework, by Government Decree No. 106/2006/ND-CP of 22 September 2006 on handling administrative violations in the industrial property field and Government Decree No. 105/2006/ND-CP of 22 September 2006 providing detailed provisions and guidelines for implementing certain articles of the 2005 Intellectual Property Law regarding the protection of intellectual property rights and State management of intellectual property. Under the 1998 Law on Complaints and Denunciations, as amended in 2005, 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.

455. Pursuant to Article 214 of the 2005 Intellectual Property Law, main administrative measures were warnings and monetary fines amounting to one to five times the value of the discovered infringing goods. Additional measures included suspension of business activities for a definite term, and in the case of counterfeit and piracy goods, and materials and implements used for manufacturing or trading such goods, confiscation, destruction, distribution, use for non-commercial purposes, or compulsory delivery of transiting goods out of the territory of Viet Nam or re-exportation, after infringing elements had been removed. The representative of Viet Nam explained that it was the practice to apply each of these administrative measures in a single case, unless, for example, the infringer did not have a business licence. The cumulative effect of these measures would, in his view, deter further infringement.

456. He noted, however, that the imposition of a compensation for damages - up to VND 1 million - under administrative procedures had been abolished in 2002 by the Ordinance on handling administrative violations No. 44/2002/PL-UBTVQH10. Compensation for damages was now conducted only under civil procedures. Customs procedures for imports and exports could be suspended to protect intellectual property rights in accordance with Articles 57, 58, and 59 of the Customs Law of 29 June 2001 as amended and supplemented in 2005 by the Law No. 42/2005/QH11, Decree No. 154/2005/ND-CP of 15 December 2005, and Article 218 of the 2005 Intellectual Property Law.

457. A Member expressed concern regarding the method of calculating fines under the 2005 Intellectual Property Law. It appeared that fines would be levied based on the price of the infringing good rather than the price of the legitimate good. This limited the deterrent effect of imposing fines, and made them a cost of doing business for pirates and counterfeiters. The representative of Viet Nam, as noted previously, stated that as multiple administrative measures are imposed in addition to the fine, the cumulative effect of these measures would serve as deterrent to future infringing actions.

458. Decisions to impose an administrative measure 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 1996 Ordinance on procedures for judgment of administrative cases, and the Law on

Complaint and Denunciation of 1998 as amended by Law No. 58/2005/QH11 (Articles 1.19 and 2.2). 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. Decisions of the superior administrative body could be further appealed to the administrative court.

459. In his view, administrative procedures were speedy, simple, inexpensive, and equitable, and right owners relied heavily on the administrative authorities, especially the market control agencies. The injunctions were powerful enough to prevent further infringement as most infringements addressed through administrative procedures were minor and unintentional. However, the administrative system had been further strengthened under the 2005 Intellectual Property Law. In particular, the scope of application of administrative remedies had been limited and emphasis had been shifted to civil remedies, administrative procedures had been further elaborated (Chapter XVII of the 2005 Intellectual Property Law), the principle of administrative fines exceeding the benefit gained from infringement had been established (Article 214.4 of the 2005 Intellectual Property Law), the functions of enforcement authorities had been more clearly defined to avoid overlapping and cumbersome procedures, and a coordinating authority had been established (Article 200 of the 2005 Intellectual Property Law). The combination of administrative procedures and remedies, compensation under civil procedures, and recourse to criminal prosecution in cases of trademark counterfeiting and copyright piracy on a commercial scale provided, in his view, the deterrent effect foreseen in Article 41 of the TRIPS Agreement, the indemnification of the defendant stipulated in Article 48, and criminal actions stipulated in Article 61.

(d) Special border measures

460. The representative of Viet Nam said that Customs agencies had the authority to detain imported or exported goods temporarily upon request of the right holder. Pursuant to Article 217 of the 2005 Intellectual Property Law, requests for temporary detention of goods had to be filed with the customs agencies where the goods were imported or exported, accompanied by evidence to substantiate lawful ownership right or use right to the object, and evidence testifying the infringement. The right holder was also required to deposit an amount equal to 20 per cent of the value of the goods or at least 20 million dong in case such value could not be determined, or provide a guarantee ensuring compensation in case of a wrongful request (Article 217.2 of the 2005 Intellectual Property Law). Decisions to suspend the release of goods from customs were issued by the Chief of the Customs Bureau pursuant to Article 218.1 of the 2005 Intellectual Property Law, 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 (Article 218.2 of the 2005 Intellectual Property Law). 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 intellectual 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). He added that Joint Circular No. 58/2002/TTLT-BVHTT-BTC of 17 October 2003 contained detailed provisions on the implementation of border control measures for copyright. Specific provisions on the implementation of border control measures concerning industrial property had also been included in the Joint Circular No. 129/2004/TTLT-BTC-BKHCN of the Ministry of Finance and Ministry of Science and Technology on border control measures in respect of industrial property rights for imports and exports, promulgated on 29 December 2004.

461. A Member was concerned that the provisions on suspension of customs clearance included in the 2005 Intellectual Property Law required the right holder to submit extensive information, which could impede many right holders from filing an application. This Member was also of the view that the time period for right holders to respond to the detection of infringing goods (one day) was too short. In response, the representative of Viet Nam said that, under Article 217.1(b) of the 2005 Intellectual

Property Law, the right holder was only required to provide information sufficient to identify the suspected infringing goods or to discover infringing goods. Other types of information, such as the name and address of the importer and exporter, a photo of the goods or information on the predicted time and venue of arrival of the goods, should be submitted only if available. He considered this provision in full compliance with Article 51 of the TRIPS Agreement. The time period for responding to the detection of infringing goods had been increased to three working days in the 2005 Intellectual Property Law. He added that detailed provisions had been included in Government Decree No. 105/2006/ND-CP of 22 September 2006 providing detailed provisions and guidelines for implementing certain articles of the 2005 Intellectual Property Law regarding protection of intellectual property rights and State management of intellectual property.

462. In response to specific questions, he said that the 2005 Intellectual Property Law provided customs authorities with the right to check, detect, and suspend customs clearance of counterfeit trademark goods at their own initiative or at the request of the trademark holder. Joint Circular No. 129/2004/TTLT-BTC-BKHCN of the Ministry of Finance and Ministry of Science and Technology on border enforcement of industrial property rights included provisions allowing right holders or importers to inspect the detained goods to reinforce their claims. The exemption for *de minimis* imports allowed under Article 60 of the TRIPS Agreement was addressed in Article 25.2 of the 2005 Intellectual Property Law which referred to usage for "personal needs or non-commercial purposes" 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. had been included in the Circular No. 129/2004/TTLT-BTC-BKHCN (Article 2.2).

463. Asked whether Viet Nam's Customs Law or related laws and regulations contained a definition of "counterfeit of trademark" and "piratical acts", the representative of Viet Nam said that, pursuant to Joint Circular No. 58/TTLT-BVHTT-BTC of 17 October 2003 of the Ministry of Culture and Information and Ministry of Finance guiding the protection of copyright at customs agencies for imported and exported goods, "copyright infringing imported and exported goods" were imported and exported goods, including copies of works, infringing the moral rights or economic rights of the author or owner of the work. As for "counterfeit trademark goods", they were defined in Joint Circular No. 129/2004/TTLT-BTC-BKHCN of 29 December 2004 of the Ministry of Finance and Ministry of Science and Technology on border controls in respect of industrial property rights as imported or exported goods, including packaging, labels and decals, bearing a trademark which was identical with or which could not be distinguished in its essential aspects from a protected trademark without the authorization of the trademark's owner. He added that the 2005 Intellectual Property Law designated both "trademark counterfeit goods" (defined in Article 213.2) and "piracy goods" (defined in Article 213.3) with the common term of "intellectual property counterfeit goods" in its Article 213.1 with a view to making provisions of Articles 156 to 158 of the Criminal Code applicable to intentional and commercial-scale counterfeiting and pirating and for imposing strong administrative remedies for counterfeiting and pirating.

(e) Criminal procedures

464. The representative of Viet Nam said that the criminal courts of the People's Courts, at district and provincial level, had jurisdiction over crimes relating to intellectual property rights. The Criminal Code of 1999 included provisions on copyright infringement (Article 131), production and trade in counterfeits (Articles 156-158), deceptive practices (Article 162), false advertising (Article 168), and infringement of industrial property rights (Article 171). Any person appropriating 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 producing 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 from 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. 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. He confirmed that acts of wilful trademark counterfeiting and copyright piracy on a commercial scale were considered crimes under Articles 156-158 of the Criminal Code and Article 213 of the 2005 Intellectual Property Law. Criminal liability for these acts would be further clarified in the regulations on the implementation of the 2005 Intellectual Property Law and the Criminal Code that would be issued prior to accession. He added that criminal intellectual property enforcement officials were entitled to take ex-officio actions against criminal infringement of intellectual property rights.

465. A Member noted that Article 131 of the Criminal Code did not appear to provide criminal liability for all commercial scale copyright piracy. The Member also noted that Viet Nam's laws did not provide criminal liability for all activities involving commercial scale trademark counterfeiting nor did they provide the authority to their competent authorities, in criminal cases, to seize and destroy infringing goods and material and implements the predominant use of which had been in the commission of the offence. The representative of Viet Nam explained that a circular was currently being drafted to clarify that all commercial scale trademark counterfeiting and copyright piracy was subject to criminal prosecution and that competent authorities had seizure and destruction authority in criminal cases. The Working Party took note of these commitments.

466. The representative of Viet Nam explained that pursuant to Article 170 of the Criminal Procedure Code, as amended in 2003, the District People's Courts had the jurisdiction as the first instance over offences subject to less than seven years imprisonment, except offences harmful to national security and peace, war crimes, crimes against humanity, and other specific cases as specified by law. District People's Courts therefore had jurisdiction as the first instance over offences in respect of intellectual property rights. Criminal proceedings for intellectual property infringement cases were identical to procedures for other criminal cases and involved the denouncement of the crime before the competent police, an investigation, the transfer of the file to the prosecution agency (Supreme People's Prosecution Institute), criminal proceedings at the competent court, judgment and enforcement of the judgment.

467. 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. A Member also noted that the criminal remedies against infringements of organized character or carrying out very serious consequences appeared to be stricter than the standards set by the TRIPS Agreement. This Member was of the view that criminal prosecution should be available when commercial intent could be proven and asked Viet Nam to clarify the meaning of "organized character"

and "serious consequences". 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. Concerning criminal remedies against infringements of "organized character" or "causing very serious consequences", he noted that the commercial objective of an infringement act was one of the factors constituting a crime pursuant to Articles 156, 157, 158, and 171 of the 1999 Criminal Code. An infringement of organized character had an intentional nature, not an infringement causing serious consequences.

468. 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 handling administrative 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 Civil Procedure Code of 2004. In response to a Member, he noted that infringers could be prosecuted either for administrative remedies or for criminal penalties, not both simultaneously. Administrative measures only applied to acts of low gravity. Any person involved in an act including a criminal element or having repeated an offence sanctioned administratively was subject to criminal prosecution. The provisions of the 2005 Intellectual Property Law together with the Circulars issued by the Supreme People's Court and Ministry of Justice were a clear indication of Viet Nam's commitment to provide effective enforcement of intellectual property rights, including through use of the criminal laws.

469. 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.

470. In reply, the representative of Viet Nam referred to the 2005 Intellectual Property Law and implementing Decrees. He also noted that an Action Plan on Cooperation for Preventing and Fighting Infringements of Intellectual Property Rights for the period of 2006-2010 had been issued on 19 January 2006 (Action Plan No. 168/CTHD/VHTT-KH&CN-NN&PTNT-TC-TM-CA of the Ministries of Culture and Information, Science and Technology, Agriculture and Rural Development, Finance, Trade, and Public Security).

471. The representative of Viet Nam confirmed that his Government would take all actions necessary to fully comply with all of 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

472. 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 37.98 per cent of Viet Nam's GDP in 2004.

473. 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 and Technology; Natural Resources and Environment; Labour, War Invalids and Social Affairs; Health; Education and Training; and Industry; the State Bank; the Ministry of Posts and Telematics; the General Department of Tourism; and the Directorate for Standards and Quality. 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.

474. 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).

475. In response to questions from Members, the representative of Viet Nam confirmed that foreign service suppliers were free to choose their partners unless otherwise specified in Viet Nam's Schedule of Specific Commitments. He further confirmed that foreign investors were not obliged to establish a representative office in Viet Nam.

476. Concerning professional services, the representative of Viet Nam explained that the requirements for establishment, operation, rights and obligations of legal professionals practising in Viet Nam were specified in Decree No. 87/2003/ND-CP of 22 July 2003. Pursuant to this Decree, foreign lawyer organizations could practise in Viet Nam in the form of a branch of a foreign lawyer organization, a foreign law firm, or a foreign-Vietnamese law partnership. Foreign lawyers could practise foreign and international law as members or employees of foreign lawyers' law-practising organizations' commercial presence in Viet Nam, or as employees of Vietnamese lawyer offices or Vietnamese law partnerships. To work as a lawyer in Viet Nam, foreigners were required to hold a valid practising certificate issued by a competent foreign agency or organization, show goodwill towards the State of Viet Nam, and be employed by a foreign lawyer organization's commercial presence in Viet Nam, or by a Vietnamese lawyer organization. Foreign auditing firms could operate in Viet Nam in the form of a joint-venture with a Vietnamese auditing firm or as wholly foreign-owned auditing firms. Wholly foreign-owned auditing firms had to be licensed as provided for in the Foreign Investment Law and other related legal acts.

477. Domestic and foreign engineers and architects had to be certified in accordance with the Regulation on Granting Certificate for Design Practice of Construction Work, as amended by Decree No. 16/2005/NP-CP of 7 February 2005, and Decision No. 15/2005/QD-BXD. Renewable certificates valid for five years were granted by the Construction Departments of cities and provinces. The Ministry of Construction was responsible for supervising the granting of certificates. Activities 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, including foreign providers, were required to hold a Bachelor or higher degree, have minimum five years' experience in the design of construction works, and have participated in the design of a minimum of five projects. He added that the Vietnamese

authorities recognized practising certificates granted by competent foreign organizations. Foreign architects holding such certificates were allowed to practise in Viet Nam without applying for a Vietnamese certificate in accordance with the requirements of Vietnamese laws and regulations. Foreign architects could also practise architectural design and/or planning in Viet Nam through bilateral or multilateral Mutual Recognition Agreements on professional qualifications to which Viet Nam was a party.

478. The Ordinance on Posts and Telecommunications had been enacted in October 2002. The representative of Viet Nam explained that the Ordinance governed the regulatory, operational and business activities in posts, telecommunications and radio frequency management, and 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. The use of telecommunications gateways and networks was regulated by Article 43 of the Ordinance and Articles 27 to 33 and 60 of the implementing Decree. These Articles were designed to ensure the rights and obligations of telecommunications services providers to access and use each other's public telecommunications transport networks. Non-discrimination in granting access to and use of public telecommunications transport networks was guaranteed by Article 43.2 of the Ordinance. Under this Article, public telecommunications services providers had an obligation to allow other public telecommunications services providers to interconnect with their own network under equitable and reasonable conditions. Long-term development plans and strategies had been approved and published. In his view, the regulatory and business environment had been improved to become more transparent, predictable and pro-competitive.

479. A Member raised questions about licensing procedures in the telecommunications and express delivery sectors. In response, the representative of Viet Nam confirmed that licensing decisions for both facilities-based and non-facilities-based services would be made in accordance with transparent and objective criteria. He also confirmed that Vietnamese enterprises that were not State-owned or State-controlled were eligible to be licensed to provide non-facilities-based services in Viet Nam and to form joint-ventures with foreign firms, in accordance with Viet Nam's Schedule of Specific Commitments. With respect to express delivery services, he further confirmed that Viet Nam would adopt licensing requirements that were consistent with the WTO Agreement and Viet Nam's accession commitments. He noted that his Government did not currently have a legal basis under Vietnamese law to issue a decree providing for such licensing; because Viet Nam's Protocol of Accession was needed to provide that necessary legal basis, he confirmed that Viet Nam would issue such a decree promptly upon ratification of Viet Nam's Protocol of Accession, and in any event, within three months of ratification. He further confirmed that licensing of express delivery services during those three months would proceed in a manner consistent with the commitments set out in paragraph 507 of this Report. The Working Party took note of these commitments.

480. A Member noted that Viet Nam had introduced new measures on 25 August 2005, retroactive to 1 August 2005, setting a price floor for international calls into Viet Nam and a system of allocation of calls by quota among six Vietnamese carriers (Decision No. 8/2005/QD-BBCVT and Official Letter No. 1683/BBCVT-KHTC). These measures did not appear to be consistent with Viet Nam's WTO commitments, nor with Viet Nam's competition policies as described in paragraphs 104-109. This Member invited the representative of Viet Nam to confirm that Viet Nam would abolish these measures prior to accession. Noting that these measures had been introduced without prior notice nor possibilities for comment, this Member asked the representative of Viet Nam to confirm that any future measure of this sort would be subject to advance notice and comment procedures as described in paragraphs 510-513. The representative of Viet Nam was also invited to explain how an Official Letter, which was not recognized as a legal normative document according to the information provided in paragraph 517, could set a price floor or establish a system for allocating calls by quota.

In response, the representative of Viet Nam said that the Official Letter only specified the quota policy set out in Article 2.1 of the Decision. The Letter was available on the website of the Ministry of Post and Telecommunications. He noted that the quota allocation system had been agreed beforehand by consensus among the six carriers and submitted to the Ministry. By limiting the traffic of traditional services providers, the measure aimed at facilitating the development of new providers, thereby fostering competition on the whole market. Providers would meet periodically to discuss and review the allocation of quotas. He confirmed that these measures would be eliminated prior to accession. The Working Party took note of this commitment.

481. The representative of Viet Nam further explained that the organization and operation of credit institutions and the banking activities of other organizations were governed by the Law on Credit Institutions, the Law on Amending and Supplementing a number of Articles of the Law on Credit Institutions and some other legal documents. The Government and 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. Foreign credit institutions could operate in Viet Nam in the form of a representative office, a foreign bank branch, a joint-venture bank, or a 100 per cent foreign-owned bank, a joint-venture finance company, or a 100 per cent foreign-invested finance company, a joint-venture financial leasing company, or a 100 per cent foreign-invested financial leasing company. Pursuant to Articles 11 and 12 of the Decree No. 22/2006/ND-CP of 28 February 2006, the term of operation of a foreign bank branch, a joint-venture bank, or a 100 per cent foreign-owned bank of a foreign credit institution should not exceed 99 years; the term of operation of a foreign bank branch should not exceed the term of operation of the parent foreign bank; and the term of operation of a representative office of a foreign credit institution should not exceed the term of operation of that foreign credit institution. The term of operation should be specifically stipulated in the granted licence and could be extended upon request. However, the maximum term of extension should not exceed the term of operation previously stipulated in the licence (a domestic bank was also required to apply for the extension of its term of operation). The maximum term of operation was 50 years for a joint-venture finance company, a 100 per cent foreign-invested finance company, a joint-venture financial leasing company, and a 100 per cent foreign-invested financial leasing company, and these operating licenses could be extended. 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. The aggregate share of foreign institutions and individuals could be limited to 30 per cent of the registered capital of a Vietnamese joint stock commercial bank, unless otherwise permitted by Viet Nam's laws or the relevant Vietnamese authority.

482. Some Members requested information on the regulation of the banking sector and in particular information on the conditions under which a foreign bank would be able to obtain a licence to establish a branch in Viet Nam. In response, the representative of Viet Nam stated that direct branching was permitted under the current banking law and the Law on Amending and Supplementing a number of Articles of the Law on Credit Institutions. He reported that banking institutions' activities were currently regulated by the Law on Credit Institutions and related amendments. Beginning on 1 April 2007, foreign credit institutions would be allowed to open 100 per cent foreign-owned banks in Viet Nam. He added that any natural or legal person was required to have a licence to engage in a banking business. One of the key conditions for establishing a branch of a foreign commercial bank in Viet Nam was that the parent bank should have total assets of more than US$20 billion at the end of the year prior to application.

483. He further explained that a key condition for the establishment of a joint-venture bank or a 100 per cent foreign-owned bank was that the parent bank was required to have total assets of more than US$10 billion at the end of the year prior to application. A key condition for establishing a 100 per cent foreign-invested finance company, a joint-venture finance company, a 100 per cent

foreign-invested financial leasing company or a joint-venture financial leasing company was that the foreign credit institution had total assets of more than US$10 billion at the end of the year prior to application. The Government of Viet Nam viewed these conditions to be prudential in nature. Similarly, the representative of Viet Nam stated that his Government anticipated that its future licensing requirements for 100 per cent foreign-owned banks would be prudential and address issues such as capital adequacy, liquidity and corporate governance. Further, the criteria for both foreign bank branches and 100 per cent foreign-owned banks would be applied on a non-discriminatory basis. The representative of Viet Nam confirmed that the State Bank of Viet Nam would comply with the requirements of Articles XVI and XVII of the GATS when considering an application for a new licence, subject to the limitations set forth in the Vietnamese Services Schedule. He further confirmed that a foreign commercial bank could simultaneously have a 100 per cent foreign-owned bank and branches. The representative of Viet Nam further confirmed that a 100 per cent foreign-owned bank in Viet Nam was not treated as a foreign institution or individual and was accorded full national treatment as a Vietnamese commercial bank, with respect to establishment of commercial presence. The Working Party took note of these commitments.

484. A Member urged Viet Nam to reduce the minimum capital requirement for a foreign bank branch to a level at or below that of a domestically-owned bank incorporated in Viet Nam. Such a change would be more consistent with international norms, which were based on the level of activity and risks of the branch. In response, the representative of Viet Nam noted that Viet Nam already allowed foreign bank branches to operate based on the capital of the parent bank for the purpose of lending. The representative of Viet Nam further confirmed that Viet Nam would progressively bring its regulatory regime for foreign bank branches, including minimum capital requirements, in line with commonly accepted international practice. The Working Party took note of these commitments.

485. The representative of Viet Nam confirmed that a foreign bank branch would not be permitted to open transaction points, which were dependent on the capital of the branch. The representative of Viet Nam further confirmed that there was no quantitative limit on the number of foreign bank branches. Transaction points did not, however, include offsite Automatic Teller Machines (ATMs). Foreign banks operating in Viet Nam were granted full MFN and national treatment in the placement and operation of ATMs. The Working Party took note of these commitments.

486. The representative of Viet Nam further explained that securities trading centres had been established in Ho Chi Minh City and Hanoi. Foreign securities companies wishing to trade securities in Viet Nam would be required to operate in conformity with the Enterprise Law and Government Decree No. 144/2003/ND-CP on securities and stock exchange, and other applicable laws and regulations. In addition, foreign securities companies wishing to trade securities in Viet Nam would be subject to limitations, as indicated in Viet Nam's Schedule of Specific Commitments. He provided information on criteria for granting securities services licenses in Annex II to document WT/ACC/VNM/44.

487. The representative of Viet Nam explained that the National Assembly had approved the Law on Insurance Business on 9 December 2000 and the Law had entered into force on 1 April 2001. In addition, he provided information on the criteria for granting insurance services licenses in Annex II to document WT/ACC/VNM/44.

488. A Member noted that Viet Nam had provided clarifications on the licensing criteria for insurance services licenses and securities services licenses in Annex II of WT/ACC/VNM/44. This Member sought assurance that in the event that these criteria were inconsistent with the commitments undertaken by Viet Nam in its Schedule of Specific Commitments, or elsewhere in the Working Party Report, the commitments would prevail. In response, the representative of Viet Nam confirmed that in the event that the licensing criteria described in Annex II of WT/ACC/VNM/44 were inconsistent or incompatible with Viet Nam's commitments in its Schedule of Specific Commitments, or elsewhere

in the Working Party Report, the commitments would prevail. The Working Party took note of this commitment.

489. In response to a question, the representative of Viet Nam confirmed that the Government of Viet Nam would ensure that foreign-invested as well as Vietnamese-invested insurance companies and intermediaries were accorded meaningful and fair opportunities to be informed of, comment on, and exchange views with officials regarding measures relating to or affecting the supply of insurance services in Viet Nam. He further stated that, with respect to regulatory changes in the insurance sector, foreign-invested insurance companies would be accorded access to information by the Government of Viet Nam on a national treatment basis. The Working Party took note of these commitments.

490. In response to a question from a Member, the representative of Viet Nam confirmed that, provided that separate applications were submitted for life and non-life insurance, there was no limit, in law or in practice, on the number of new licenses that a foreign insurance company could submit at one time. He further stated that there was also no limitation on the number of product approval applications that a foreign-invested insurance company could submit at one time, and that no requirement or regulatory practice restricted a foreign-invested insurance company from submitting additional applications based upon whether the Government of Viet Nam had completed its review of that company's previous applications.

491. In response to a Member's question concerning transparency in the regulation of insurance services, the representative of Viet Nam confirmed that standards relating to licensing and approval of new products and rates would be compiled, published and made available to the public consistent with paragraphs 505-507. He further confirmed that administrative guidance would be delivered in writing. The Working Party took note of these commitments.

492. A Member inquired whether a formal appeal process was available for all dispositions (including approvals for a licence to provide insurance and approvals of new products) relating to the supply of insurance. In response, the representative of Viet Nam confirmed that a formal appeal process had been established for all service sectors in the Law on Complaints and Denunciations No. 58/2005/QH11 of 29 November 2005 and the Ordinance Amending and Supplementing Some Articles of the Ordinance on Procedures for the Settlement of Administrative Cases (OPSAC) No. 29/2006/PL-UBTVQH11.

493. A Member asked whether Viet Nam's laws ensured that administrative guidance issued to an insurance company by an insurance administrative agency would be consistent with competition legislation in force in Viet Nam. This Member further inquired whether any recipient of such administrative guidance could seek the views of the appropriate authority as to whether the person's conduct proposed to be taken in response to the administrative guidance was inconsistent with the competition legislation in effect in Viet Nam. In response, the representative of Viet Nam confirmed that the Law on Promulgation of Legal Normative Documents No. 02/2002/QH11 of 16 December 2002 ensured that administrative guidance issued by Viet Nam's regulatory bodies would not be inconsistent with legislation in force in Viet Nam. He further confirmed that recipients of such administrative guidance were entitled to seek the views of the appropriate authority as to whether the person's conduct proposed to be taken in response to the administrative guidance was inconsistent with the competition legislation in effect in Viet Nam.

494. Members also sought clarification about how Viet Nam would implement its commitment to allow direct branching for foreign non-life insurance companies after five years from the date of accession. The representative of Viet Nam explained that the legislation and regulations necessary to implement this commitment would be developed with the goal of promoting investment and the creation of meaningful commercial opportunities, ensuring the sustainable development of Viet Nam's

insurance market and protecting the legitimate interests of policy-holders and the safety and soundness of the insurance market in Viet Nam. He further stated that regulation of such branches would be in line with the internationally recognized insurance industry standards and principles of the International Association of Insurance Supervisors (IAIS). The Working Party took note of these commitments.

495. In response to a specific question on the electronic games business, the representative of Viet Nam said that Circular No. 08/2000/TT-BVHTT of 28 April 2000 of the Ministry of Culture and Information defined the electronic game business as the provision by an organization, enterprise, private individual, or household of electronic games between human beings and machines with a built-in electronic game programme. Individuals or organizations using or commercializing electronic games were required to use machines, tapes, disks and accessories with a healthy entertainment content. The number of enterprises licensed to conduct business in electronic games with prizes was limited, and any application for a licence to conduct such a business was subject to approval by the Prime Minister pursuant to Decision No. 32/2003/QD-TTg of 27 February 2003.

496. A Member raised concerns about the equity limitations and economic needs test included in Viet Nam's commitments for road transport services. The Member asked specifically how these limitations would affect the ability of foreign companies to supply express delivery services. In response, the representative of Viet Nam confirmed that foreign-invested express delivery companies licensed to supply express delivery services in Viet Nam under the terms of Viet Nam's commitments for express delivery services would have the right to own and operate road transport vehicles used to supply their own express delivery services. The Working Party took note of this commitment.

497. A Member noted that Viet Nam had scheduled phase-in periods for foreign equity participation in many services sectors, and asked whether there were transparent and pre-established procedures for increasing foreign equity in a joint-venture and for transitioning from a joint-venture to a 100 per cent foreign-owned enterprise. This Member further stated that foreign partners in joint ventures would need assurance that it was possible to effect such changes in foreign participation and/or transition to a wholly foreign-owned enterprise in a manner that would be efficient, timely and not create disruption of normal operations. This Member asked, for example, whether a foreign partner in a joint-venture seeking to buy out the capital contribution of its Vietnamese partner(s) in order to achieve 100 per cent ownership would be required to apply for a new licence or other authorization in order to continue supplying the same service(s).

498. In response, the representative of Viet Nam explained that, subject to agreement with its Vietnamese partner(s), and to limitations provided for under Viet Nam's Schedule of Specific Commitments, a foreign partner in a joint-venture could buy out the capital contribution of its Vietnamese partner(s). He further explained that the procedures and conditions for re-allocating capital within a joint-venture, and transitioning from a joint-venture to a 100 per cent foreign-owned enterprise were laid out in detail in the Decree No. 108/2006/ND-CP of 22 September 2006 on the Implementation of the 2005 Investment Law. The representative of Viet Nam further confirmed that such re-allocation of capital within a joint-venture, or the transition from a joint-venture to a 100 per cent foreign-owned enterprise would be subject to transparent and pre-established procedures, which in themselves would not require any disruption of the company's normal operations. He also confirmed that joint-ventures seeking to transition to a 100 per cent foreign-owned enterprise may be required to apply for and receive an amended licence/investment certificate to supply the same services, with a comparable scope of business. A decision on such applications would be provided promptly so that the enterprise could continue operation without disruption. The Working Party took note of these commitments.

499. A Member noted that Viet Nam's market access commitments for retailing services included gradual phase-in to 100 per cent foreign participation. The Member asked how Viet Nam would implement its commitments for retail services in light of provisions in Decree No. 110 restricting foreign participation in multi-level sales activities. In response, the representative of Viet Nam confirmed that the restrictions on foreign participation in multi-level sales activities described in Decree No. 110 applied only to foreign natural persons working in Viet Nam and to those foreign entities whose scope of business did not include distribution services, including retail services, in Viet Nam. He further confirmed that such restrictions would not apply to foreign participation in terms of investment in retailing services consistent with the terms and conditions set forth in Viet Nam's Schedule of Specific Commitments on trade in services. Foreign equity limitations for multi-level sales were those indicated in Viet Nam's market access commitments for retail services. The Working Party took note of these commitments.

500. In response to a Member's request for clarification of the scope of Viet Nam's mode 1 distribution services commitment, the representative of Viet Nam confirmed that its commitment included the electronic distribution of legitimate computer software. This commitment was without prejudice to the ongoing discussion in the WTO, and Viet Nam's position, on the appropriate classification of computer software delivered electronically.

501. A Member noted that Viet Nam had scheduled limits on foreign participation in most services sectors in its Schedule of Specific Commitments. For example, some sectors were subject to a permanent limitation on foreign equity, while other sectors were subject to temporary foreign equity limitations as part of a gradual phase-in to 100 per cent foreign ownership. This Member voiced strong concerns about how certain provisions of the 2005 Enterprise Law would affect the ability of a majority share-holder (i.e., owning at least 51 per cent but less than 65 or 75 per cent) to control an investment and make fundamental decisions about the operation of the enterprise. Provisions on limited liability companies of more than one member and provisions on shareholding companies stipulated how fundamental decisions were to be made within an enterprise, by requiring that these fundamental issues be subject to approval by the Members' Council or Shareholders' Meeting and specifying a minimum percentage of votes necessary for the Members' Council or Shareholders' Meeting to make such a decision. According to these provisions, making certain fundamental decisions about the enterprise would require at least a majority of 65 per cent of the Members' Council in the case of a limited liability company of more than one person, or a majority of 75 per cent of the Shareholders' Meeting in the case of a shareholding company.

502. In response, the representative of Viet Nam confirmed that the Enterprise Law established minimum percentages of votes required to make fundamental decisions in various forms of enterprises. He recognized the validity of Members' concerns regarding the capability of majority shareholders (i.e., owning at least 51 per cent) to make these fundamental decisions, especially in sectors in which Viet Nam had included foreign equity limitations in its Schedule of Specific Commitments. The representative of Viet Nam confirmed that, upon accession, Viet Nam would ensure that, notwithstanding the requirements in the 2005 Enterprise Law, investors establishing a commercial presence as a joint-venture under the commitments in Viet Nam's Schedule of Specific Commitments would have the right to establish, through the enterprise's Charter, all the types of decisions that had to be submitted to the Members' Council or Shareholders' Meeting for approval; the quorum rules, if any, that governed voting procedures; and the precise percentages of voting majorities necessary to make all decisions, including a simple majority of 51 per cent. He further confirmed that Viet Nam would give legal effect to these provisions of such enterprises' Charters. In addition, prior to accession, Viet Nam would give effect to the obligations in this paragraph through appropriate legal means. In this respect, the representative of Viet Nam noted that Article 3.3 of the 2005 Enterprise Law provided that treaties would prevail in the event of discrepancies between provisions of that Law and treaty commitments, and confirmed that, pursuant to Article 6.3 of the Law on Treaties, Viet Nam would make a determination, upon ratification of the Protocol of Accession, as to the existence of

such discrepancies and whether they would be resolved by direct application of the treaty or amendment of the Law. The Working Party took note of these commitments.

503. A Member asked how these provisions of the 2005 Enterprise Law would affect foreign investors who had already established joint-ventures in Viet Nam. In response, the representative of Viet Nam confirmed that enterprises established by Vietnamese investors together with investors of a WTO Member prior to the date of entry into force of the 2005 Enterprise Law would, if such a joint-venture desired, be permitted, for a period of two years after the date of entry into force of the 2005 Enterprise Law, to modify provisions of the enterprise's original Charter related to all the types of decisions that had to be submitted to the Members' Council or Shareholders' Meeting for approval; the quorum rules, if any, that governed voting procedures; and the precise percentages of voting majorities necessary to make all decisions, including a simple majority of 51 per cent, as the enterprise deemed appropriate. Approval of such modifications of enterprise Charters during the period stipulated would be granted expeditiously in order to avoid disruption of business operations. The Working Party took note of these commitments.

504. A Member observed that licensing procedures and conditions should not act as an independent barrier to market access and requested Viet Nam to guarantee transparency of licensing requirements and procedures, qualification requirements and procedures as well as of other licensing requirements. In particular, this Member requested Viet Nam to publish a list of all organizations responsible for authorizing, approving or regulating services, including those organizations that had been delegated such authority from national authorities, as well as Viet Nam's licensing procedures and conditions. Viet Nam was asked to ensure that its licensing procedures and conditions were pre-established, publicly available, based on objective criteria; identified activities, terms, and conditions; included all critical information for valid completion of applications; included relevant timeframe and critical deadlines; and identified the competent authority for granting the licence. This Member also requested Viet Nam to ensure that licensing procedures and conditions would be published prior to becoming effective and include a reasonable timeframe for review and decision in that publication. Furthermore, any fees charged would not constitute an independent barrier to market access and the applicant would be informed whether the application was complete or, in case of incomplete application, what additional information was required. This Member requested that decisions on an application be taken promptly and if an application was terminated or denied, the applicant would be informed in writing and without delay of the reasons for such action. The Member also requested that examinations to licence professionals be scheduled at reasonable intervals.

505. Some Members stated that transparency of regulations and other measures, particularly of sub-national authorities, was essential since these authorities often provided the details on how the more general laws, regulations and other measures of the central government would be implemented. This information needed to be received in a timely fashion so that services suppliers could be prepared to comply with such provisions and could exercise their rights in respect of implementation and enforcement of such measures. Pre-publication of these measures was important to enhancing secure, predictable trading relations. The development of the Internet and other means of communication could help ensure that information from all government bodies at all levels could be assembled in one place and made readily available to the public. The creation and maintenance of a single, authoritative journal and enquiry point would greatly facilitate dissemination of information and help promote compliance.

506. In response, the representative of Viet Nam confirmed that Viet Nam would publish all laws, regulations and other measures of general application pertaining to or affecting trade in services. Publication of such laws, regulations and other measures would include the effective date of these measures and the general scope of services or activities affected. The representative of Viet Nam further confirmed that Viet Nam would publish a list of all organizations that were responsible for authorizing, approving or regulating service activities for each service sector. In addition, from the

date of accession Viet Nam would publish in the official journal all of its existing licensing procedures and conditions. The Working Party took note of these commitments.

507. With respect to licensing procedures, the representative of Viet Nam confirmed that Viet Nam would ensure that its licensing procedures and conditions would not act as independent barriers to market access. The representative of Viet Nam confirmed that for those services included in its Schedule of Specific Commitments, Viet Nam would ensure that: (a) Viet Nam's licensing procedures and conditions were published prior to becoming effective; (b) in that publication, Viet Nam would specify the timeframe for the relevant authorities' decision on the license; (c) relevant authorities would review and make a decision on licensing within the period specified in official procedures; (d) any fees charged in connection with the filing and review of an application would not constitute an independent barrier to market access; (e) on the request of an applicant, Viet Nam's relevant regulatory authority would inform the applicant of the status of its application and whether it was considered complete. An application would not be considered complete until all information specified in the relevant implementing measure was received. If the authority required additional information from the applicant, it would notify the applicant without undue delay and specify the additional information required to complete the application. Applicants would have the opportunity to cure deficiencies in the application; (f) on the request of an unsuccessful applicant, a regulatory authority that had denied an application would inform the applicant in writing of the reasons for denial of the application; (g) where an application had been denied, an applicant may submit a new application that attempted to address any prior problems; (h) where approval was required, once the application was approved, the applicant would be informed in writing without undue delay; and (i) where Viet Nam required an examination to licence professionals, such examinations would be scheduled at reasonable intervals. The Working Party took note of these commitments.

508. The representative of Viet Nam further confirmed that for the service sectors included in Viet Nam's Schedule of Specific Commitments, the relevant regulatory authorities would be separate from, and not be accountable to, any service suppliers they regulated. Further, the representative of Viet Nam confirmed that, except in emergency situations or for regulations and other measures involving national security, specific measures setting foreign exchange rates or monetary policy and other measures the publication of which would impede law enforcement, Viet Nam would (a) publish in advance any regulations or other implementing measures of general application that it proposed to adopt and the purpose of the regulation or other implementing measure; (b) provide interested persons and other Members a reasonable opportunity to comment on such proposed regulation or other implementing measure; and (c) allow reasonable time between publication of the final regulation or other implementing measure and its effective date. The Working Party took note of these commitments.

TRANSPARENCY

Publication of information on trade

509. Some Members requested information on Viet Nam's implementation of the transparency requirements prescribed in Article X of the GATT 1994, Article III of the GATS and other provisions of the WTO Agreement. These Members asked whether a legal obligation existed in Viet Nam to publish in an official journal all laws, regulations, decrees, judicial decisions and administrative orders or rulings of general application or other measures having similar effect relating to trade or economic policy "in such a manner as to enable governments and traders to become acquainted with them". These Members further inquired as to what extent publication occurred prior to entry into force, and whether any such measures could enter into force without being published in the Official Gazette.

510. The representative of Viet Nam said that provisions on publication of legal acts and the opportunity for public comment had been included in the Law on the Enactment of Legal Normative Documents of 12 November 1996 together with its amendment approved by the National Assembly on 16 December 2002. Detailed rules and procedures had been established through Government Decree No. 161/2005/ND-CP of 27 December 2005 implementing the Law on the Enactment of Legal Normative Documents, Government Decree No. 104/2004/ND-CP on the Official Gazette, Circular No. 04/2005/TT-VPCP guiding the implementation of Decree No. 104/2004/ND-CP, and the Prime Minister's Directive No. 28/2001/CT-TTg of 28 November 2001 on the Continuous Improvement of the Business Environment.

511. The general procedures for soliciting public comment on draft legal instruments were laid down in Articles 40, 62, 65, 66 and 70 of the Law on the Enactment of Legal Normative Documents (as amended). In practice, the drafting entities circulated the draft legal instruments to organizations and individuals potentially affected by them or published the drafts in newspapers to elicit comments from the general public. Articles 62.2 and 65.4 of the amended Law on the Enactment of Legal Normative Documents required the Office of the Government to publish draft Government Resolutions and Decrees, and Decisions and Instructions of the Prime Minister, on the Internet or in mass media for comments by agencies, organizations and individuals. There was no specialized website for the publication of draft legal documents; draft legal documents were published on the website of the responsible Ministry and drafting agency, i.e., on the Ministry of Planning and Investment's website for documents related to investment (www.mpi.gov.vn), on the Ministry of Trade's website for documents concerning trade rules and regulations (www.mot.gov.vn), and on the Ministry of Finance's website for documents on tax and finance (www.mof.gov.vn). A number of draft documents were also published on the website of the Ministry of Justice (www.moj.gov.vn). Drafting entities could also organize workshops and seminars to discuss the drafts with those interested. He noted that Directive No. 28/2001/CT-TTg required ministries and agencies to seek comments from the business community through the Viet Nam Chamber of Commerce and Industry in the drafting of any policies or rules affecting business operations. Draft legal documents affecting the business community were published on the Internet site of the Chamber of Commerce and Industry (http://www.vibonline.com.vn). He added that a draft Resolution or Decree would not be published for comment if it related to national security, State secrets, or its nature or contents did not require such publication.

512. 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 the Enactment of Legal Normative Documents. Article 3.3 of the Law required the drafting agency to synthesize, analyze and evaluate the comments received and, as necessary, to propose adjustments to the original draft. The comments received by the drafting agency were attached to the draft legal instrument when forwarded to the appropriate decision-making body.

513. The Law did not specify how many times a draft legal instrument would be available for public comment. The drafts were normally available for comment only once, although specific cases could arise that would allow multiple opportunities for public comment. The Law did not stipulate any timeframe for the solicitation and provision of comments. Such issues were left to the discretion of the drafting entity, taking into account the complexity and importance of the proposed legal instrument. Asked about five-day or seven-day time limits specified in a new Law on the Promulgation of Legal Documents of People's Councils and People's Committees, he added that the limits stipulated in Articles 23, 30 and 41 of this Law were minimum, and not maximum, timeframes. The Law had been drafted to be fully consistent with WTO rules on transparency, and the implementing regulations for the Law would ensure uniform and consistent implementation of this Law throughout Viet Nam.

514. He confirmed that Article 47 of the Law on the Enactment of Legal Normative Documents authorized the Standing Committee of the National Assembly to invite relevant agencies or individuals to address the Committee on a draft ordinance. Although the Law did not provide similar authority to the National Assembly or to his Government, Article 32.2 allowed the lead examination committee of the National Assembly to conduct surveys and study "the reality of the issues belonging to the contents of the draft" and agencies, organizations and individuals contacted by the committee were required to provide information and materials to serve this examination.

515. As for the publication of legal instruments, the Law on the Enactment of Legal Normative Documents required that these documents 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. According to the amended Law, 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. Pursuant to Article 8.1(b) of Decree No. 161/2005/ND-CP of 27 December 2005, legal normative documents issued by State bodies at the central level had to be sent to the Office of the Government no later than two working days from the date of promulgation or signing for publication in the Official Gazette. He added that legal documents were accessible on the Internet, for the time being in Vietnamese only. Legal normative documents issued by local authorities and provincial People's Councils were put up in notices on their premises. 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 Normative 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.

516. A Member noted that Vietnamese ministries appeared to use documents called "official letters" - not qualifying as legal normative documents in Viet Nam's legislation - to set policy, and that most ministries would deny requests to provide these documents. Viet Nam was requested to update the Working Party on measures taken to bring this practice into conformity with WTO rules on transparency. This Member also sought confirmation that the Government of Viet Nam would no longer use "official letters" as policy-setting documents, and that the policies contained in existing "official letters" would be discontinued or, if adhered to by ministries, would be followed in a manner consistent with WTO rules on transparency.

517. In reply, the representative of Viet Nam said that "official letters" had not been recognized as legal normative documents under the Law on the Enactment of Legal Normative Documents or under the Law on the Promulgation of Legal Documents of People's Councils and People's Committees. Pursuant to Article 3 of Government Decree No. 161/2005/ND-CP of 27 December 2005, any document providing for legal normative rules, but not adopted in the form prescribed for legal normative documents, such as official letters, notices and guidelines, would be invalid and sanctions applied for its issuance in accordance with the law. The Government Office had issued Circular No. 04/2005/TT-VPCP and the Prime Minister has issued Directive No. 08/2005/CT TTg to ensure full implementation of the two Laws and to make the use of "official letters" more transparent and consistent with WTO rules. The Working Party took note of this commitment.

518. The representative of Viet Nam confirmed that from the date of accession his Government would fully implement Article X of the GATT 1994, Article III of the GATS and the other WTO transparency requirements, including those requiring notification, prior comment and publication. As such, all laws, regulations, decrees, judicial decisions and administrative rulings of general application pertaining to or affecting customs issues, trade in goods, services, intellectual property and the control of foreign exchange would be published promptly in a manner that fulfils the WTO requirements, and

no such laws, regulations, decrees, judicial decisions and administrative rulings of general application would become effective or be enforced prior to such publication, except for those regulations, judicial decisions and administrative rulings of general application, and other measures involving national emergency or security, or for which publication would impede law enforcement. To this end, he further confirmed that Viet Nam would, as of the date of accession, establish or designate an official journal or website for each of the topics (or an aspect of a topic) identified above, dedicated to the publication, prior to their entry into force, of all regulations, decisions, orders, and administrative rulings of general application, pertaining to or affecting that topic. Such journals or websites would be updated on a regular basis, notified to the WTO, and readily available to WTO Members, individuals, associations and enterprises. The websites or journals where these measures would be published are listed in Table 23. The publication of such regulations and other measures would include, as appropriate, the following: (i) the names of the authorities (including contact points) responsible for implementing a particular measure; and (ii) the effective date of the measure. The representative of Viet Nam confirmed that with respect to proposed laws, ordinances, decrees and other regulations and measures issued by the National Assembly and the Government pertaining to or affecting trade in goods, services, and intellectual property, Viet Nam would provide a reasonable period, i.e., no less than 60 days, for Members, individuals, associations and enterprises to provide comments to the appropriate authorities before such measures are adopted. The Government would take into account any comments received during the period for commenting. The only exceptions to this opportunity for comment would be for those regulations and other measures involving national emergency or security, or for which publication would impede law enforcement. The Working Party took note of these commitments.

Notifications

519. The representative of Viet Nam said that at the latest upon accession, Viet Nam would submit all initial notifications required by the WTO Agreement. Any laws, regulations, or other measures subsequently enacted by Viet Nam, and which were required to be notified pursuant to the WTO Agreement, would also be notified in a time and manner consistent with WTO requirements. The Working Party took note of these commitments.

TRADE AGREEMENTS

520. 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, although concluded on a bilateral basis, provided for MFN treatment. 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 a 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.

521. 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. Viet Nam was also invited to provide a description of its goods and services commitments as part of the AFTA/China Free Trade Agreement.

522. 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. As for the AFTA/China Free Trade Agreement (ACFTA), ASEAN and China had signed, on 4 November 2002, the Framework Agreement on Comprehensive Economic Cooperation between ASEAN and China, paving the way towards the realization of an ACFTA for goods, which was set to be established by 2010 for ASEAN 6 and China, and by 2015 for the newer ASEAN Member States, including Viet Nam. According to the Agreement In Goods to implement the above-mentioned Framework Agreement, which had been signed on 6 December 2004, the participating countries committed to eliminate most tariffs over a period of time. In Viet Nam's case, the bulk of goods would be subject to tariffs ranging from 0 to 5 per cent in 2015, with some flexibility for certain products, to 2018. As part of the package, ASEAN and China also committed to eliminate non-tariff barriers, in particular quantitative restrictions, unless otherwise permitted by WTO disciplines. Supporting the implementation of the Agreement, Rules of Origin and related Operational Certification Procedures, and an Agreement on Dispute Settlement Mechanism had also been signed at the same time. Full texts of the above agreements and relevant tariff commitments were available on the official website of the ASEAN Secretariat (www.aseansec.org). The Agreement In Goods would be augmented by services and investments with negotiations on agreements on these relevant areas being pursued by ASEAN and China, with the aim of achieving concrete results by the end of 2007.

523. Upon accession, Viet Nam would notify these agreements in conformity with WTO rules. The Working Party took note of this commitment.

524. Some Members noted that Viet Nam was required – under a bilateral agreement on textiles and clothing − to reduce its tariffs on a number of 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.

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

526. 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, with respect to the trade agreements to which it belongs, and would ensure that from the date of accession, it complied with the provisions of the WTO Agreement relating to notification, consultation and other requirements concerning free trade areas and customs unions of which Viet Nam was a member. 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 (CRTA) for review. The Working Party took note of this commitment.

CONCLUSIONS

527. 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 31, 78, 79, 95, 103, 117, 119, 134, 135, 139, 146, 147, 155, 158, 162, 174, 177, 184, 198, 199, 206, 208, 209, 215, 216, 218, 227, 238, 244, 250, 253, 255, 260, 269, 281, 286, 288, 303, 315, 316, 328, 332, 339, 355, 366, 403, 465, 471, 479, 480, 483, 484, 485, 488, 489, 491, 494, 496, 498, 499, 502, 503, 506, 507, 508, 517, 518, 519, 523 and 526 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.

528. 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 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/48/Add.1) and its Schedule of Specific Commitments on Services (document WT/ACC/VNM/48/Add.2) that are annexed to the 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

- Directive of the Prime Minister No. 08/2005/CT-TTg "On Advancing the Process of and Improving the Quality of the Drafting of Laws and Ordinances in the Year of 2005 in Support of WTO Negotiations and Accession" of 4 April 2005;
- 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;
- Order of the President No. 06/2004/L/CTN "On Promulgation of the Ordinance of the National Assembly Standing Committee" of 12 May 2004;
- Ordinance of the State Council on Royalties of 30 March 1990;
- Decision No. 396/TTg of 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 No. 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 Rage 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);
- Ordinance No. 28/2005/PL-UBTVQH11 "On Foreign Exchange" of January 2006;
- 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;
- Draft Commercial Law;
- Decree No. 12-2006-ND-CP "On Making Detailed Provisions for Implementation of the Commercial Law with Respect to International Purchases and Sales of Goods; and Agency for Sale and Purchase, Processing and Transit of Goods Involving Foreign Parties" of 23 January 2006;
- Decree No. 19/2006/ND-CP "On Making Detailed Provisions for Commercial Law on the Origin of Goods" of 20 February 2006;
- Decree No. 20-2006-ND-CP "On Making Detailed Provisions for Implementation of the Commercial Law with Respect to the Business of Commercial Assessment Services" of 20 February 2006;
- Decree No. 35-2006-NP-CP "On Making Detailed Provisions for Implementation of the Commercial Law with Respect to Franchising Activities" of 31 March 2006;
- Decree No. 37-2006-ND-CP "On Providing Detailed Regulations for Implementation of Commercial Law with Respect to Commercial Enhancement Activities" of 4 April 2006;
- Decree No. 57/2006/ND-CP "On Electronic Commerce";

- Decree No. 59-2006-ND-CP "On Making Detailed Provisions for Implementation of the Commercial Law with Respect to Goods and Services in which Business is Prohibited, Restricted and Subject to Conditions" of 12 June 2006;
- Draft Decree "On Detailed Provisions of the Commercial Law on Enterprises with Foreign-Invested Capital Specializing in Purchase and Sale of Goods and Other Activities Directly Relating to Purchase and Sale of Goods in Viet Nam (Pursuant to the Commercial Law dated 14 June 2005);
- Draft Decree "On Providing Detailed Provisions of the Commercial Law on Representative Offices and Branches of Foreign Business Entities in Viet Nam" (Pursuant to the Commercial Law dated 14 June 2005);
- Draft Decree "On Business Registration and Business Registries" (Pursuant to the Enterprise Law No. 60/2005/QH11 of 29 November 2005);
- Law on Business Bankruptcy of 30 December 1993;
- Law "On Enterprises" of December 2005;
- Draft Decree "On Conversion of State-owned Companies into Limited Liability Companies that Operate under the Enterprise Law" (Pursuant to the Enterprise Law No. 60/2005/QH11 of 29 November 2005);
- Law No. 13/1999/QH10 – The Enterprise Law;
- Law No. 59-2005-QH11 "On Investment" of December 2005;
- Draft Law "On Investment";
- Draft Decree "On Providing Guidelines for Implementation of the Law on Investment" (Pursuant to the Law on Investment No. 59-2006-WH11 dated 29 November 2005);
- 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;
- Government 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;
- Decree No. 76-2000-ND-CP "On Making Detailed Provisions on the Implementation of the Mineral Law" of 15 December 2000;
- Law No. 46/2005/QH11 "On Amendment and Supplement of Some Articles of the Mineral Law" of 14 June 2005;
- Law on Land of 31 May 2001;
- Law No. 10/1998/QH10 mending and complementing a number of Articles of the Land Law of 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 No. 41/2005/QH11 "On Conclusion, Accession and Implementation of Treaties" of June 2005;
- Draft Law "On the Conclusion, Accession and Implementation of International Treaties";

- 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 No. 29/2006/PL-UBTVQH11 "On the Amendment to and Supplementation of Some Articles of the Ordinance on Procedures to Settle Administrative Case" of 5 April 2006;
- Ordinance on Most-Favoured-Nation and National Treatment in International Trade of 7 June 2002;
- Law No. 58 "On Amendment of and Addition to some Articles of the Law Complaints and Denunciations" of December 2005;
- Draft Law Amending and Supplementing a Number of Articles of the Law on Complaints and Denunciations;
- Commercial Law No. 36/2005/QH11 of June 2005;
- The Law No. 42/2005/QH10 "Amending and Supplementing a Number of Articles of the Customs Law" of June 2005;
- Law on Customs (Law No. 29-2001-QH10 of 29 June 2001);
- Draft Law amending and supplementing some Articles of the Customs Law of 29 June 2001;
- Decision No. 46/2005/QD-TTg "On Revisions of the List of Imported Goods Subject to Tariff Rate Quotas" of 3 March 2005;
- 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);
- Circular No. 114/2005/TT-BTC Guiding the Post-Customs Clearance Inspection of Exports and Imports of 15 December 2005;
- 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;
- Circular No. 87/2004/TT-BTC Guiding the Implementation of Export Tax, Import Tax of 31 August 2004;
- Circular No.113/2005/TT-BTC Guiding the Implementation of the Import Tax and Export Tax Law of 15 December 2005;
- Law No. 45/2005/QH11 "On Export and Import Duties" of June 2005;
- Law on Export and Import Duties (1991) of 26 December 1991, as amended 16 January 1992 and 5 July 1993;
- Comparison Between the Proposed Law "On Export and Import Duties" and "The Provisions of the Existing Law on Export and Import Duties";

- Government Decree No. 54-CP of 28 August 1993 on Export-Import Duty (1993);
- Law No. 57-2005-QH11 "On Amendment of and Addition to some Articles of the Law on VAT and Excise Tax" of December 2005;
- 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 Government 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);
- Law No. 34/2005/QH11 "On Pharmaceuticals" of June 2005;
- Decree No. 154/2005/ND-CP Detailing the Implementation of a Number of Articles of the Customs Law Regarding Customs Procedures, Inspection and Supervision of 15 December 2005;
- 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);
- Circular No. 118/2003/TT-BTC Guiding the Implementation of Government's Decree No. 60/2002/ND-CP of 6 June 2002 Prescribing the Determination of Tax Calculation Values of Import Goods According to the Principles of the Agreement Implementing Article 7 of the General Agreement on Tariffs and Trade" of 8 December 2003;
- 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;
- Decree No. 19-2006-ND-CP "On Making Detailed Provisions for Implementation of the Commercial Law with Respect to Origin of Goods" of 20 February 2006;
- Ordinance No. 20-2004-PL-UBTVQH11 "Against Dumping of Imported Goods into Viet Nam" of 29 April 2004;
- Revised unofficial English translation of the Ordinance No. 20-2004-PL-UBTVQH11 "On Anti-Dumping of Imported Products into Viet Nam" of 29 April 2004;

- Ordinance No. 22-2004-PL-UBTVQH11 "On Measures against Subsidized Products Imported into Viet Nam of 20 August 2004;
- Government Decree No. 89-2005-ND-CP "On Detailing the Implementation of a Number of Provisions of the Ordinance on Measures Against Subsidized Goods Imported into Viet Nam" of 11 July 2005;
- Ordinance on Safeguards in the Import of Foreign Goods into Viet Nam (No. 42/2002/PL-UBTVQH10 of 1 September 2002);
- Decree No. 179/2004/ND-CP "On Providing State Management Over Product and Goods Quality" of 21 October 2004;
- Law "On Standards and Technical Regulations" dated 29 June 2006;
- Draft Law "On Standards and Technical Regulations" (draft of 21 April 2006);
- Draft Ordinance "On Standardization";
- Decision No. 114/2005/QD-TTg "On Establishing and Promulgating the Regulation on Organization and Operation of Viet Nam's Network of Notification Authorities and Enquiry Points on Technical Barrier to Trade" of 26 May 2005;
- Decision No. 444/QD-TTg "On Approving the Scheme on Implementation of the Agreement on Technical Barriers to Trade" of 26 May 2005;
- Decision No. 2424/2000/QDD-BKHCNMT of the Minister of Science, Technology and Environment "On Temporary Regulations on Declaration of Goods Conformity with Standards" of 12 December 2000;
- Decision No. 50/2006/QD-BCN "On the Issuance of the List of Products and Goods Subject to Quality Control" of 7 March 2006;
- Ordinance on the Quality of Goods of 27 December 1990;
- Ordinance on Weights and Measures (1990) of 16 July 1990;
- Ordinance No. 12/2003/PL-UBTVQH11 "On Food Hygiene and Safety" of 26 July 2003;
- Order No. 20/2003/L-CTN Promulgating the Ordinance on Food Hygiene and Safety (passed on 26 July 2003) of 7 August 2003;
- Decree No. 163/2004/ND-CP of the Government of the Socialist Republic of Viet Nam "On Implementation of some Articles of the Food Hygiene and Safety Ordinance" of 7 September 2004;
- Decision No. 1091/1999/QD-BKHCNMT Promulgating the Regulation on the State Control of Import-Export Goods Quality of 22 June 1999;
- Inter-Circular No. 37/2001/TTLT/BKHCNMT-TCHQ "On Guiding the Customs Procedures for and Quality Inspection of Export and Import Goods Subject to the State Quality Inspection" of 28 June 2001;
- 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 of 1 September 1999 and No. 14-2000-ND-CP Of 5 May 2000 (Decree No. 66-2003-ND-CP of 12 June 2003);
- Decree No. 43/CP of 16 July 1996 on Procurement;
- Law No. 61-2005-QH11 "On Tendering" of December 2005;
- Law No. 37/2005/QH11 "On the State Audit" of June 2005;
- Law No. 50/2005/QH11 "On Intellectual Property" of December 2005;
- Draft Law "On Intellectual Property";

- Draft Decree "On Making Detailed Provisions and Providing Guidelines for Implementation of Certain Articles of the Law on Intellectual Property regarding Protection of Intellectual Property Rights" (Pursuant to Law No. 50/2005/QH11 on Intellectual Property dated 29 November 2005);
- Draft Decree "On Making Detailed Provisions and Providing Guidelines for Implementing the Provisions of the Intellectual Property Law concerning Intellectual Property" (Pursuant to Law No. 50/2005/QH11 on Intellectual Property dated 29 November 2005);
- Civil Code No. 33/2005/QH11 of June 2005;
- Part VI of the Civil Code – Intellectual Property Rights and Technology Transfer;
- Part VI of the draft Law "On Intellectual Property Rights and Technology Transfer;
- Decree No. 63/CP of October 1996 on Detailing the Regulations on Industrial Property;
- Government Decree on Detailed Regulations Concerning Industrial Property (Decree No. 63/CP of 24 October 1996, amended and supplemented by Government 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 No. 63-CP of the Government of 24 October 1996 on Industrial Property (Decree No. 06-2001-ND-CP of 1 February 2001);
- Circular No. 23-TC/TCT of 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-BKHCNMT of 3 May 2000, as Amended and Supplemented by the Ministry's Circular No. 49/2001/TT-BKHCNMT 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;
- Draft Decree "On Stipulating in Detail and Instructing the Implementation of some Articles of the Civil Code, and the Law on Intellectual Property of Copyright and Neighbouring Rights" (Pursuant to Law No. 50/2005/QH11 on Intellectual Property dated 29 November 2005);
- 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);
- Circular of the Ministry of Science and Technology No. 30/2003/TT-BKHCN "Guiding the carrying out of the Procedures for Establishment of Industrial Property Rights over Inventions/Utility Solutions" of 5 November 2003;
- Decree on the Protection of New Plant Varieties (Decree No. 13/2001/ND-CP) of 20 April 2002;
- Circular on the Implementation of Government Decree No. 13/2001/ND-CP of 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;
- Law on Insurance Business of 9 December 2000;
- Decree No. 64-CP of 9 October 1995 On Organization and Operation of Finance Leasing Companies;
- Circular No. 03-TT-NH5 of 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 of 8 July 1995 On Legal Consultancy Practices of Foreign Law Firms in Viet Nam;
- Circular No. 791-TT-LS-TVPL of 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);
- Law No. 38/2005/QH11 "On Education" of June 2005;
- Law No. 44/2005/QH11 "On Tourism" of June 2005;
- Law No. 40/2005/QH11 "On Maritime Code" of June 2005;
- Law "On Railways" of June 2005;
- Ordinance on Post and Telecommunication of 7 June 2002;
- Decree on Management, Provision and Use of Internet Services (Decree No. 55-2001-ND-CP);
- Law No. 51/2005/QH11 "On E-Transactions" of December 2005;
- Draft Law "On E-Transactions";
- 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 1005);
- Decree on Amendment and Addition to Decree No. 48-CP of the Government Dated 17 July 1995 on Cinematographic Organizations and Activities (Decree No. 26-2000-ND-CP);
- Circular No. 04/2005/TT-VPCP "On Guiding the Implementation of the Government's Decree No. 104/2004/ND-CP of 23 March 2004 on the Cong Bao of the Socialist Republic of Viet Nam Regarding activities related to Cong Bao (the Official Gazette) of the Central Government" of 21 March 2005;
- 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;
- Decree No. 12/2000/ND-CP "On Amending and Supplementing a Number of Articles of the Investment and Construction Management Regulation Issued Together with the Government's Decree No. 52/1999/ ND-CP of 8 July 1999" of 5 May 2000;
- Decree No. 07/2003/ND-CP "On Amendment of a Number of Articles of Regulations on Management of Investment and Construction Issued with Decree No. 52/1999/ND-CP of the Government of 8 July 1999 and Decree 12/2000/ND-CP of the Government of 5 May 2000" of 30 January 2003;
- Import-Export Statistics for 1997;
- Import-Export Statistics for 2003; and
- Ordinance on Entry, Exit, Residence and Travel of Foreigners in Viet Nam of 28 April 2000.

ANNEX 2

Table 1: List of Goods and Services in which Business is Prohibited
(Issued with Decree No. 59-2006-ND-CP of the Government dated 12 June 2006)

No.	Name of Goods and Services	Current Legal Instrument[1]	Industry Management Body
A - Goods			
1.	Weapons, military equipment and technical facilities, ammunition and specialized facilities for the army and police; military paraphernalia (including badges, medals and insignia of the army and police); accessories, and materials and technology used to manufacture the former items.	Decree 47-CP dated 12 August 1996; Decree No. 100-2005-ND-CP.	Ministry of Defence, Ministry of Police.
2.	Drugs of addiction.	Law on Fighting Drugs of Addiction, 2000; Decree No. 67-2001-ND-CP; Decree No. 133-2003-ND-CP.	Ministry of Police.
3.	List I chemicals (stipulated in International Treaties).	Decree No. 100-2005-ND-CP.	Ministry of Industry.
4.	Products of reactionary culture and pornographic products; products serving superstitious purposes or products which are harmful to personal development.	Law on Publishing 2004; Decree No. 03-2000-ND-CP.	Ministry of Culture and Information; Ministry of Police.
5.	All types of firecrackers.	Decree No. 03-2000-ND-CP.	Ministry of Police.
6.	Games and toys which are harmful to the personal development and health of children or to the security, order and safety of society (including electronic games).	Decree No. 03-2000-ND-CP.	Ministry of Education and Training; Ministry of Police.
7.	Veterinary medicine and plant protection agents which are prohibited or not yet permitted to be used in Viet Nam pursuant to the Ordinance on Veterinary Medicine and the Ordinance on Protection and Quarantine of Plants.	Ordinance on Veterinary Medicine 2004; Ordinance on Protection and Quarantine of Plants 2001.	Ministry of Agriculture and Rural Development; Ministry of Aquatic Products.

[1] If the current legal instrument has been amended, supplemented or replaced, then the amended, supplementary or replacing legal instrument applies.

No.	Name of Goods and Services	Current Legal Instrument[1]	Industry Management Body
8.	Rare wild animals and plants (including both living animals and processed matter taken from animals) on the lists in international treaties of which Viet Nam is a member, and all types of rare wild animals and plants on the lists prohibiting their use and exploitation.	CITES Convention; Decree No. 32-2006-ND-CP.	Ministry of Agriculture and Rural Development; Ministry of Aquatic Products.
9.	Aquatic products which are prohibited from use; aquatic products containing toxic chemicals in excess of the permissible limits; and aquatic products containing life-endangering natural toxins.	Law on Aquatic Products 2003.	Ministry of Aquatic Products.
10.	Fertilisers not on the list of fertilisers permitted to be manufactured, traded and used in Viet Nam.	Decree No. 113-2003-ND-CP.	Ministry of Agriculture and Rural Development.
11.	Plant varieties not on the list of plant varieties permitted to be manufactured and traded; plant varieties which are harmful to manufacture, human health, the environment and the ecosystem.	Ordinance on Plant Varieties 2004.	Ministry of Agriculture and Rural Development.
12.	Animal breeding varieties not on the list of varieties permitted to be produced and traded; breeding varieties which are harmful to human health, animal genetic sources, the environment and the ecosystem.	Ordinance on Animal Varieties 2004.	Ministry of Agriculture and Rural Development; Ministry of Aquatic Products.
13.	Specially toxic minerals.	Mineral Law 1996; Decree No. 160-2005-ND-CP.	Ministry of Natural Resources and Environment.
14.	Imported scrap causing environmental pollution.	Decree No. 175-CP dated 18 October 1994.	Ministry of Natural Resources and Environment.
15.	All types of curative medicine for people, all types of vaccine, biological products, cosmetics, chemicals and products for the extermination of insects and bacteria used in homes and in medicine generally which are not yet permitted to be used in Viet Nam.	Law on Pharmacy 2005; Ordinance on Private Medical and Pharmaceutical Practice 2003.	Ministry of Health.

No.	Name of Goods and Services	Current Legal Instrument[1]	Industry Management Body
16.	Medical apparatus not yet permitted to be used in Viet Nam.	Ordinance on Private Medical and Pharmaceutical Practice 2003.	Ministry of Health.
17.	Foodstuff additives, preservatives which assist processing, nutritional substances, functional foodstuffs, high-risk foodstuffs, foodstuffs protected by radioactive means and foodstuffs containing transformed genes not yet permitted by the competent State body.	Ordinance on Safety and Hygiene of Foodstuffs 2003.	Ministry of Health.
18.	Products and materials containing ammonium in the amphibole group.	Decree 12-2006-ND-CP.	Ministry of Construction.

No.	Name of Goods and Services	Current Legal Instrument[1]	Industry Management Body
B - Services			
1.	Brothel businesses, organizing prostitution, trafficking in women and children.	Decree No. 03-2000-ND-CP.	Ministry of Police.
2.	Organized gambling in any form.	Decree No. 03-2000-ND-CP.	Ministry of Police.
3.	Investigation services into the secrecy or infringement of State rights, or of the rights and legitimate interests of organizations and individuals.	Decree No. 14-2001-ND-CP.	Ministry of Police.
4.	Marriage broking involving a foreign element for profit-making purposes.	Decree No. 68-2002-ND-CP.	Ministry of Justice.
5.	Adoption broking services involving a foreign element for profit-making purposes.	Decree No. 68-2002-ND-CP.	Ministry of Justice.

Table 2: List of Conditional Business Sectors
I. List of Goods and Services in which Business is Restricted*
(Issued with Decree No. 59-2006-ND-CP of the Government dated 12 June 2006)

No.	Name of Goods and Services	Current Legal Instrument[2]	Industry Management Body
A – Goods			
1.	Hunting guns, sports weaponry and ammunition, and protective tools and equipment.	Decree No. 47-CP dated 12 August 1996; Decree No. 08-2002-ND-CP.	Ministry of Police; Ministry of Defence; Committee for Sports and Physical Education.
2.	Goods containing radioactive substances; equipment emitting radiation or radiating sources.	Ordinance on Safety and Control of Radiation 1996; Decree No. 50-1998-ND-CP.	Ministry of Science and Technology.
3.	Industrial explosives; high concentration (98.5% or more) ammonium nitrate (NH4NO3).	Decree 27-CP dated 20 April 1995; Decree No. 02-CP dated 5 January 1995; Decree No. 08-2002-ND-CP.	Ministry of Industry.
4.	Types 1 and 2 toxic chemicals (stipulated in International Treaties).	Decree No. 100-2005-ND-CP.	Ministry of Industry.
5.	Rare wild animals and plants (including both living animals and plants and processed matter taken from animals and plants).	CITES Convention; Decree No. 32-2006-ND-CP.	Ministry of Agriculture and Rural Development.
6.	Cigarettes, cigars and all other forms of tobacco finished products.	Decree No. 76-2001-ND-CP and this Decree.	Ministry of Industry; Ministry of Trade.
7.	All types of spirits.	This Decree.	Ministry of Industry.
B – Services			
1.	Karaoke and dancing club services.	Decree No. 11-2006-ND-CP; Decree No. 08-2001-ND-CP.	Ministry of Culture and Information; Ministry of Police.

* Business is restricted by means of certain conditions stipulated in the applicable legal documents.

II. List of Goods and Services in which Business is Subject to Conditions
(Issued with Decree 59-2006-ND-CP of the Government dated 12 June 2006)

No.	Name of Goods and Services	Current Legal Instrument[3]	Industry Management Body
I.	**Goods and services in respect of which a certificate of satisfaction of business conditions is required:**		
A - Goods			
1.	Petrol and oil of all types.	This Decree.	Ministry of Trade.
2.	Natural gas of all types (including filling and storing).	This Decree.	Ministry of Trade.
3.	Medicine for people.	Law on Pharmacy 2005.	Ministry of Health.
4.	Foodstuffs on the list of high-risk foodstuffs.	Ordinance on Safety and Hygiene of Foodstuffs 2003; Decree No. 163-2004-ND-CP.	Ministry of Health.
5.	Veterinary medicine and plant protection agents; raw materials for the production of veterinary medicine and plant protection agents.	Ordinance on Veterinary Medicine 2004; Ordinance on Protection and Quarantine of Plants 2001.	Ministry of Agriculture and Rural Development; Ministry of Aquatic Products.
6.	Antiques, precious objects and national treasures.	Ordinance on Cultural Relics 2004; Decree No. 92-2002-NDCP.	Ministry of Culture and Information.
7.	Films, tapes and disks (including printing and copying).	Decree No. 11-2006-NDCP.	Ministry of Culture and Information.
8.	Tobacco raw materials.	Decree No. 76-2001-NDCP.	Ministry of Industry.
B - Services			
1.	Medical and health services, traditional medicine services.	Ordinance on Private Medical and Pharmaceutical Practice 2003; Decree No. 103-2003-ND-CP.	Ministry of Health.

[2] If the current legal instrument has been amended, supplemented or replaced, then the amended, supplementary or replacing legal instrument applies.

[3] If the current legal instrument has been amended, supplemented or replaced, then the amended, supplementary or replacing legal instrument applies.

No.	Name of Goods and Services	Current Legal Instrument[3]	Industry Management Body
2.	Medicine business services including services for preserving and testing medicine.	Law on Pharmacy 2005.	Ministry of Health.
3.	Veterinary practice.	Ordinance on Veterinary Medicine 2004.	Ministry of Agriculture and Rural Development; Ministry of Aquatic Products.
4.	Disinfecting and sterilizing services.	Ordinance on Protection and Quarantine of Plants 2001.	Ministry of Agriculture and Rural Development.
5.	Network installation and provision of telecommunications services.	Ordinance on Posts and Telecoms 2002; Decree No. 160-2004-ND-CP.	Ministry of Posts and Telematics.
6.	Internet access services (ISP).	Decree No. 55-2001-NDCP.	Ministry of Posts and Telematics.
7.	Internet connection services (IXP).	Decree No. 55-2001-NDCP.	Ministry of Posts and Telematics.
8.	Internet application services in posts and telecoms (OSP Posts, OSP Telecoms).	Decree No. 55-2001-NDCP.	Ministry of Posts and Telematics.
9.	Provision of postal services.	Ordinance on Posts and Telecoms 2002; Decree No. 157-2004-ND-CP.	Ministry of Posts and Telematics.
10.	Domestic and international mail courier services.	Ordinance on Posts and Telecoms 2002; Decree No. 157-2004-ND-CP.	Ministry of Posts and Telematics.
11.	Electricity distribution, wholesale, retail and specialized consultancy on electricity.	Law on Electricity 2004.	Ministry of Industry.
12.	Services for the organization of artistic performances.	Decree No. 11-2006-NDCP.	Ministry of Culture and Information.
13.	Film making co-operative services.	Decree No. 48-CP dated 17 July 1995.	Ministry of Culture and Information.
14.	Multi-modal international transport services.	Decree No. 125-2003-ND-CP.	Ministry of Transport and Communications.

No.	Name of Goods and Services	Current Legal Instrument[3]	Industry Management Body
15.	Services being the design of means of transportation.	Decree No. 125-2003-ND-CP.	Ministry of Transport and Communications.
16.	Insurance services: life insurance, non-life insurance, reinsurance, insurance brokerage and insurance agency.	Law on Insurance Business 2000; Decree No. 42-2001-ND-CP; Decree No. 43-2001-ND-CP.	Ministry of Finance.
17.	Securities and securities market services: brokerage, self-trading, portfolio management, underwriting issues of securities, financial and securities investment consultancy, registration, depository and clearing services, underwriting issues of government bonds and local government bonds; tendering for government bonds, government guaranteed bonds and local government bonds.	Decree No. 141-2003-ND-CP; Decree No. 144-2003-ND-CP.	Ministry of Finance.
18.	Labour export services.	Decree No. 81-2003-ND-CP.	Ministry of Labour, War Invalids and Social Affairs.
19.	Legal consultancy services (including giving advice and acting as counsel) conducted by Vietnamese lawyers.	Ordinance on Lawyers 2001; Decree No. 94-2001-ND-CP.	Ministry of Justice.
20.	Legal consultancy services conducted by foreign lawyers.	Decree No. 87-2003-ND-CP.	Ministry of Justice.
21.	Seal engraving services.	Decree No. 08-2001-ND-CP.	Ministry of Police.
22.	Security services.	Decree No. 14-2001-ND-CP.	Ministry of Police.
23.	International travel services.	Law on Tourism 2005.	General Department of Tourism.
II.	**Goods and services in which business is subject to conditions but in respect of which a certificate of satisfaction of business conditions is not required:**		
A - Goods			
1.	Toxic chemicals other than those on the Lists stipulated in International Treaties.	Decree No. 100-2005-ND-CP.	Ministry of Industry.

No.	Name of Goods and Services	Current Legal Instrument[3]	Industry Management Body
2.	Foodstuffs other than those on the List of high-risk foodstuffs, raw materials for foodstuffs, additives and preservatives which assist in processing.	Ordinance on Safety and Hygiene of Foodstuffs 2003; Decree No. 163-2004-ND-CP; Decree No. 59-2005-ND-CP.	Ministry of Health; Ministry of Aquatic Products.
3.	All types of medical equipment and apparatus.	Ordinance on Private Medical and Pharmaceutical Practice 2003.	Ministry of Health.
4.	Fishing equipment and apparatus (including raw materials to make fishing equipment and apparatus) and equipment to exploit aquaculture.	Decree No. 59-2005-NDCP.	Ministry of Aquatic Products.
5.	Aquaculture feed.	Decree No. 59-2005-NDCP.	Ministry of Aquatic Products.
6.	Animal breeding varieties permitted to be produced and traded.	Ordinance on Plant Varieties 2004; Decree No. 59-2005-NDCP.	Ministry of Agriculture and Rural Development; Ministry of Aquatic Products.
7.	Animal feed.	Decree 15-CP dated 19 March 1996.	Ministry of Agriculture and Rural Development.
8.	Main plant varieties and rare plant varieties which need to be protected and preserved.	Ordinance on Plant Varieties 2004.	Ministry of Agriculture and Rural Development.
9.	Fertilisers.	Decree No. 113-2003-ND-CP.	Ministry of Agriculture and Rural Development.
10.	Building materials.	Law on Construction 2003.	Ministry of Construction.
11.	Coal.	Mineral Law 1996; Decree No. 160-2005-ND-CP.	Ministry of Industry.
12.	Telecommunications equipment and materials (except radio broadcasting and receiving).	Ordinance on Posts and Telecoms 2002; Decree 160-2004-ND-CP.	Ministry of Posts and Telematics.

No.	Name of Goods and Services	Current Legal Instrument[3]	Industry Management Body
13.	Radio broadcasting and receiving equipment.	Ordinance on Posts and Telecoms 2002; Decree 24-2004-NDCP.	Ministry of Posts and Telematics.
14.	All types of machinery, equipment, materials and substances having strict requirements regarding labour safety and hygiene.	Law on Labour; Decree No. 06-CP dated 20 January 1995; Decree No. 110-2002-ND-CP.	Ministry of Labour, War Invalids and Social Affairs; Ministry of Health.
15.	Gold.	Decree No. 174-1999-ND-CP; Decree No. 64-2003-ND-CP.	State Bank of Viet Nam.
B - Services			
1.	Slaughtering and preliminary processing of animals and animal products; preservation and transportation of animal products after slaughtering.	Ordinance on Veterinary Medicine 2004.	Ministry of Agriculture and Rural Development; Ministry of Aquatic Products.
2.	Services regarding plant and animal varieties as regulated by the Ordinance on Plant Varieties and the Ordinance on Animal Varieties.	Ordinance on Plant Varieties 2004; Ordinance on Plant Animal 2004.	Ministry of Agriculture and Rural Development; Ministry of Aquatic Products.
3.	Postal agency services, mail courier agency services (including mail courier agency for foreign express courier organizations).	Ordinance on Posts and Telecoms; Decree No. 157-2004-ND-CP.	Ministry of Posts and Telematics.
4.	Telecomm agency services.	Ordinance on Posts and Telecoms 2002; Decree No. 160-2004-ND-CP.	Ministry of Posts and Telematics.
5.	Public internet agency services.	Decree No. 55-2001-NDCP.	Ministry of Posts and Telematics.
6.	Services being distribution of publications.	Law on Publishing 2004.	Ministry of Culture and Information.
7.	Advertising services.	Ordinance on Advertising 2001; Decree No. 24-2003-NDCP.	Ministry of Culture and Information.

No.	Name of Goods and Services	Current Legal Instrument[3]	Industry Management Body
8.	House leasing services.	Decree No. 08-2001-NDCP.	Ministry of Police.
9.	Business services in 10 or more storey buildings as hotels, residences or working offices.	Decree No. 08-2001-NDCP.	Ministry of Police.
10.	Pawn services.	Decree No. 08-2001-NDCP.	Ministry of Police.
11.	Printing services.	Decree No. 08-2001-NDCP.	Ministry of Police.
12.	Services for making, printing and distributing all types of maps not within State management authority at the central level.	Decree No. 12-2002-NDCP.	Ministry of Natural Resources and Environment
13.	Inspection services of all types of machinery, equipment, materials and substances having strict requirements regarding labour safety and hygiene.	Decree No. 06-CP dated 20 January 1995; Decree No. 110-2002-ND-CP.	Ministry of Labour, War Invalids and Social Affairs.
14.	Occupational training and consultancy services.	Decree No. 02-2001-NDCP.	Ministry of Labour, War Invalids and Social Affairs.
15.	Work and career introduction services.	Decree No. 19-2005-NDCP.	Ministry of Labour, War Invalids and Social Affairs.
16.	Automobile transport services.	Law on Road Transport 2001; Decree No. 92-2001-NDCP.	Ministry of Transport and Communications.
17.	Rail transport services.	Law on Railways 2005.	Ministry of Transport and Communications.
18.	Rail Infrastructure business	Law on Railways 2005.	Ministry of Transport and Communications.
19.	Rail transport support services		
20.	Urban Rail transport services		
21.	Services for construction, upgrade, repair and recovery of inland watercraft.	Law on Inland waterway transport Decree No. 21-2005-ND-CP.	Ministry of Transport and Communications.
22.	Services for handling cargo and servicing passengers at port and inland waterways		
23.	Inland waterway transport services		

No.	Name of Goods and Services	Current Legal Instrument[3]	Industry Management Body
24.	Shipping agency	Decree No. 10-2001-ND-CP.	Ministry of Transport and Communications.
25.	Oceanic transport Agency		
26.	Marine Broking services		
27.	Services of supplying sea-going ship.		
28.	Services of calculating and checking cargo.		
29.	Ship towing services		
30.	Cargo handling services at seaports.		
31.	Ship cleaning services		
32.	Oceanic transport services.		
33.	Oceanic transport services.	Decree No. 57-2001-NDCP.	Ministry of Transport and Communications.
34.	Customs agency services.	Law on Customs 2001; Decree No. 79-2005-NDCP.	Ministry of Finance.
35.	Accounting services.	Law on Accounting 2003; Decree No. 129-2004-ND-CP.	Ministry of Finance.
36.	Auditing and other related services regarding finance, accounting and tax.	Law on Accounting 2003; Decree No. 105-2004-ND-CP.	Ministry of Finance.
37.	Valuation services.	Ordinance on Prices 2002; Decree No. 101-1112005-ND-CP.	Ministry of Finance.
38.	Building services as stipulated in the Law on Construction.	Law on Construction 2003.	Ministry of Construction.
39.	Services for foreigners and Vietnamese residing overseas to rent houses in Viet Nam.	Decree No. 56-CP dated 18 September 1995; Decree No. 08-2001-NDCP.	Ministry of Construction; Ministry of Police.
40.	Tourist lodging services	Law on Tourism 2005.	General Department of Tourism.
41.	Domestic travel services		
42.	Travel Agency		
43.	Tourist transportation services		
44.	Tourism services within tourism zones, tourism sites and tourist centres.		
45.	Tour guide services		

No.	Name of Goods and Services	Current Legal Instrument[3]	Industry Management Body
46.	Commercial evaluation services	Commercial Law 2005; Degree No. 20-2005-ND-CP.	Ministry of Trade.

Table 3: Statistics on Industrial Production, Import and Export Values by Form of Enterprises
Number of Vietnamese Enterprises Engaged in Import and Export Activities as of December 2004

Forms of Enterprises	Import	Export
State-owned enterprises	1,740	1,265
Joint-stock companies	1,577	752
Limited liability companies	9,726	5,101
Collectives	50	80
Private companies	995	951
Companies under social organisations	67	45
Other domestic enterprises	425	266
100% foreign-invested companies	2,075	1,717
Foreign-invested Joint-ventures	650	440
Total	17,305	10,617

Note: The total number of enterprises above include those engaging in both import and export activities.

Import and Export Values of Vietnamese Enterprises by 30 November 2004

Forms of Enterprises	Export		Import	
	Value (in million US$)	%	Value (in million US$)	%
Companies under social organisations	74.2	0.40	421	1.67
100% foreign-invested enterprises	6,706.4	36.37	6,747.8	26.75
Other forms of foreign-invested enterprises	3.21	0.02	6.43	0.03
Joint-stock companies	1,270.5	6.89	2,156.1	8.55
Collectives	30.3	0.16	16.7	0.07
Foreign-invested Joint-ventures	1,135.2	6.16	3,156.2	12.51
State-owned enterprises	5,125.7	27.79	7,149.2	28.34
Private enterprises	386.4	2.10	321.1	1.27
Limited liability companies	3,676.4	19.93	5,020.4	19.90
Other domestic companies	32.8	0.18	228.1	0.91
Total	18,441.11	100	25,223.03	100

Note: The trade data of State-owned enterprises excludes those in crude oil and other oil products.

Import-Export Estimated Data of 2004 by Form of Enterprise

	Export		Import	
	Number of exporting enterprises (%)	Export value (%)	Number of importing enterprises (%)	Import value (%)
State-owned enterprises	13.6	44	11	37.2
Limited liability enterprises	55	16.1	61.6	18.7
Joint-Stock enterprises	8.1	5.7	10	8.1
Enterprises with foreign-invested capital	23.3	34.2	17.4	36

Source: Ministry of Trade

Value of Industrial Production by Economic Sectors (Real Price)

	Billion VND						
	1996	1997	1998	1999	2000	2001	2002
Total	149,432.5	180,428.9	208,676.8	244,137.5	336,100.2	395,809.3	476,350.0
Domestic economic sectors	109,843.3	128,041.2	139,320.0	151,076.1	197,298.9	231,400.4	278,041.4
State-owned economic sector	74,161.1	85,290.3	94,727.5	97,472.1	114,799.9	124,379.7	149,651.5
- Central	49,493.4	56,862.7	64,287.0	65,473.6	78,586.5	85,947.4	104,626.7
- Local	24,667.7	28,427.6	30,440.5	31,998.5	36,213.4	38,432.3	45,024.8
Non State-owned economic sectors	35,682.2	42,750.9	44,592.6	53,604.0	82,499.0	107,020.7	128,389.9
- Collectives	836.4	970.5	1,086.0	1,331.3	2,165.6	2,162.0	2,727.0
- Private	11,758.3	16,472.8	19,109.6	22,262.7	47,861.0	64,608.0	79,402.7
- Households	23,087.5	25,307.6	24,397.0	30,010.0	32,472.4	40,250.7	46,260.2
Foreign investment sector	39,589.2	52,387.7	69,356.8	93,061.4	138,801.3	164,408.9	198,308.6
	STRUCTURE (%)						
Total	100.00	100.00	100.00	100.00	100.00	100.00	100.00
Domestic economic sectors	73.51	70.96	66.76	61.88	58.70	58.46	58.37
State-owned economic sector	49.63	47.27	45.39	39.93	34.16	31.42	31.42
- Central	33.12	31.52	30.81	26.82	23.38	21.71	21.96
- Local	16.51	15.76	14.59	13.11	10.77	9.71	9.45
Non State-owned economic sectors	23.88	23.69	21.37	21.96	24.55	27.04	26.95
- Collectives	0.56	0.54	0.52	0.55	0.64	0.55	0.57
- Private	7.87	9.13	9.16	9.12	14.24	16.32	16.67
- Households	15.45	14.03	11.69	12.29	9.66	10.17	9.71
Foreign investment sector	26.49	29.04	33.24	38.12	41.30	41.54	41.63

Source: General Statistics Office of Viet Nam

Table 4: Classification of State-Owned Enterprises
(Decision No. 155/2004/QD-TTg dated 24 August 2004)

Group 1: 100 per cent State-Owned Enterprises	
1.	Companies engaged in a number of important sectors: − Production and supply of explosives; − Production and supply of toxic chemicals; − Production and supply of radioactive substances; − The national power transmission system; − International and national communication backbone networks; − Production of cigarettes; − Flight control; − Navigation direction; − Manufacture and repair of weapons, military equipment and specialized equipment used for national defence and security; equipment and technical documents and provision of services for keeping confidentiality of information by coding techniques; − Companies which are assigned to perform duties of national defence or security, and companies located in strategic areas important in both economic and national defence aspects as decided by the Prime Minister; − Printing of currency and valuable papers; production of coins; − Construction lotteries; − Publishing houses; − Production of scientific films, newsreels, documentaries and films for children; − Mapping; − Management and maintenance of the national network of railways or airports and seaports of a large size in important locations as decided by the Prime Minister; − Management and operation of upstream irrigation works or irrigation works of a large size; − Afforestation and protection of upstream forests, protective forests or specialized forests; − Drainage in large urban areas; − Urban lighting; and − Other important sectors as decided by the Prime Minister.[4]
2.	Companies ensuring essential needs for development of production and improvement of the material and spiritual life of ethnic minorities living in mountainous, remote or distant areas (supply of text book, cultural products; supply of salt for human consumption and other essential commodities; supply of materials for agriculture and forest development).
3.	Companies satisfying all of the following conditions: possessing VND 30 billion or more of State-owned capital; having made an average annual payment of three billion or more dong to the State Budget in the last three years; leading in the application of cutting edge technology or high-technology (except for wholesale trade in foods, printing of political books or newspapers, and wholesale trade of petrol and oil – see below); making an important contribution to stabilization of the macroscopic economy and operations in the following industries and sectors: − Processing of petroleum; − Exploitation of ores containing radioactive substances; − Building and repair of means of transportation by air; − Printing of political books or newspapers; − Wholesale trade of medicines for disease prevention and treatment and pharmaceutical chemistry; − Wholesale trade of foods; − Wholesale trade of petrol and oil; and − Transportation by air or rail.

[4] Sectors that may emerge during the process of economic development and affect the stability and common interest of the society, and in which other economic entities would not be interested or found it difficult to operate. In these particular cases, the Prime Minister could decide to maintain a 100 per cent State ownership.

Group 2: Enterprises with a Majority of State-Owned Shares	
1.	Companies possessing VND 20 billion or more of State-owned capital; having made an average annual payment of VND 2 billion or more to the State Budget in the last three years; operating in the industries and sectors specified in clause 3 of Section I mentioned above and in the following industries and sectors: − Generation of electricity; − Exploitation of important minerals: coal, bauxite, copper ores, iron ores, tin ores, gold and precious stones; − Manufacture of the following mechanical products: electrical equipment and materials; specialized industrial machinery; machinery and equipment serving agriculture, forestry and fishery; building and repair of means of transportation by sea or rail; − Provision of infrastructure of telecommunications networks; − Manufacture of ferrous metals (cast iron and steel) with a capacity of more than 100,000 tons per annum; − Manufacture of high-quality cement by a modern technology with a designed capacity of more than 1.5 million tons per annum; − Production of fertilizers and pesticides; − Production of the following consumer goods and foods: Table salt; milk; beer with a capacity of more than 50 million litres per annum; alcohol and spirits with a capacity of more than 10 million litres per annum; − Exploitation, filtering and supply of clean water in large cities; − Maritime transportation; and − Monetary or insurance business.
2.	Other companies: − Production of domestic animal breeding stock, cultivated plant seeds and frozen sperm; − Services for deep-sea fishing; − Management and maintenance of networks of important roads and waterways; − Management and operation of irrigation works; − Services for labour cooperation; and − Operation of floors of fairs or exhibitions.

Table 6: Number of Enterprises Equitized by Stages

Stage	Number of enterprises
Pilot stage (1992 – mid 1996)	5
Extended pilot stage (mid 1996 - mid 1998) according to Decree No. 28/CP	25
Accelerated stage (mid 1998 - 2001) according to Decree No. 44/1998/ND-CP	745
Speed-up stage according to the Resolution of the Central Executive Committee of the Party (2002-2004)	1,467
Total up to 31 December 2004	2,242
Total up to 31 December 2005	2,935
Equitization plan for post-2005 period	736

Table 7: Authorities Responsible for Granting Investment Licenses

Authority Responsible for Granting Investment Licenses	Type of project

Prime Minister (upon recommendation of the Ministry of Planning and Investment)	Group A projects
	
	- Projects in the following sectors, irrespective of invested capital:
	
	  - Infrastructure construction of Industrial Zones, Export Processing Zones, High-Tech Zones, urban areas, BOT, BTO and BT projects;
	  - Construction and operation of sea ports and airports; operation of sea and air transportation; Oil and Gas;
	  - Post and telecommunication services;
	  - Publishing, printing services (except projects for printing of technical materials, printing of packaging, printing of labels of goods, and printing of normal patterns on textiles and garments, leather and footwear), press; radio and television broadcasting; advertising services together with publication of advertisements; cinematographic activities, artistic performance; conducting games with prizes; medical examination and treatment establishments; pre-tertiary education, college, undergraduate and postgraduate training or equivalent levels; scientific research and production of medicine for humans;
	  - Insurance, finance, auditing and valuation;
	  - Exploration and exploitation of rare and precious natural resources;
	  - Construction of residential houses for sale;
	  - National defense and security projects.
	- Projects with invested capital of at least US$40 million in the following fields: electricity, mining, metallurgy, cement, mechanical engineering manufacturing, chemicals, hotels, apartments for lease, or tourism-entertainment areas.
	
	- Projects using at least 5 hectares of urban land or at least 50 hectares of land of other categories.

Ministry of Planning and Investment	Group B projects, i.e., projects not stipulated within the authority of the Prime Minister, except for projects referred to the authority of provincial people's committees.

Authority Responsible for Granting Investment Licenses	Type of project
Provincial people's committees	Projects satisfying the following criteria and conditions: (a) Being consistent with the Government's approved planning and plan for socio-economic development; (b) Not being included on the list of Group A projects stipulated within the authority of the Prime Minister and having the amount of invested capital as stipulated by the Prime Minister of the Government. Provincial people's committees shall not be delegated with the authority to issue investment licenses to the following projects (irrespective of the amount of invested capital): (a) Construction of national roads or railways; (b) Production of cement, metallurgy, electricity, sugar, alcohol, beer and cigarettes; (c) Travel tours; (d) Projects in the sectors of culture, education and training; and (e) Construction and the operation of supermarkets.

Table 8(a): Schedule of Commitments On Import Trading Rights

HS	Description	Schedule	Rationale
	Pharmaceutical products		
3003	Medicaments nesoi of mixtures, not dosage etc form...	2009	Essential to human life
3003.10. 10	- - Containing amoxicillin (INN) or its salts		
3003.10. 20	- - Containing ampicillin (INN) or its salts		
3003.10. 90	- - Other		
3003.20. 00	- Containing other antibiotics		
3003.31. 00	- - Containing insulin		
3003.39. 00	- - Other		
3003.40. 10	- - Antimalarial		
3003.40. 90	- - Other		
3003.90. 10	- - Containing vitamins		
3003.90. 20	- - Containing analgesics or antipyretics, whether or not containing antihistamines		
3003.90. 30	- - Other preparations for the treatment of coughs and colds, whether or not containing antihistamines		
3003.90. 40	- - Antimalarial		
3003.90. 90	- - Other		
3004	Medicaments nesoi, mixed or not, in dosage etc form...	2009	Essential to human life
3004.10. 11	- - - Containing penicillin G or its salts (excluding penicillin G benzathin)		
3004.10. 12	- - - Containing phenoxymethyl penicillin or its salts		
3004.10. 13	- - - Containing ampicillin or its salts, for taking orally		
3004.10. 14	- - - Containing amoxycillin or its salts, for taking orally		
3004.10. 19	- - - Other		
3004.10. 21	- - - Ointment		
3004.10. 29	- - - Other		
3004.20. 11	- - - For taking orally		
3004.20. 12	- - - Ointment		
3004.20. 19	- - - Other		
3004.20. 21	- - - For taking orally		
3004.20. 22	- - - Ointment		
3004.20. 29	- - - Other		
3004.20. 31	- - - For taking orally		
3004.20. 32	- - - Ointment		
3004.20. 39	- - - Other		
3004.20. 41	- - - Containing gentamycines or derivatives thereof, for injection		
3004.20. 42	- - - Containing lincomycins or derivatives thereof, for taking orally		
3004.20. 43	- - - Ointments		
3004.20. 49	- - - Other		
3004.20. 51	- - - For taking orally		
3004.20. 52	- - - Ointments		
3004.20. 59	- - - Other		
3004.20. 60	- - Containing isoniazide, pyrazinamide or derivatives thereof, for taking orally		
3004.20. 90	- - Other		
3004.31. 00	- - Containing insulin		
3004.32. 10	- - - Containing hydrocortisone sodium succinate		
3004.32. 20	- - - Containing dexamethasone or its derivatives		
3004.32. 30	- - - Containing fluocinolone acetonide		
3004.32. 90	- - - Other		
3004.39. 10	- - - Containing adrenaline		
3004.39. 90	- - - Other		
3004.40. 10	- - Containing morphine or its derivatives, for injection		
3004.40. 20	- - Containing quinine hydrochloride or dihydrochloride, for injection		

HS	Description	Schedule	Rationale
3004.40. 30	- - Containing quinine sulphate or bisulphate, for taking orally		
3004.40. 40	- - Containing quinine or its salts and anti-malarial substances, other than goods of subheadings 3004.10 to 30		
3004.40. 50	- - Containing papaverine or berberine		
3004.40. 60	- - Containing theophylline		
3004.40. 70	- - Containing atropin sulphate		
3004.40. 90	- - Other		
3004.50. 10	- - Syrups and drops of vitamins, of a kind suitable for children		
3004.50. 20	- - Containing vitamins A, other than goods of subheading 3004.50.10 and 3004.50.79		
3004.50. 30	- - Containing vitamins B1, B2, B6 or B12 , other than goods of subheadings 3004.50.10, 3004.50.71 and 3004.50.79		
3004.50. 40	- - Containing vitamins C, other than goods of subheadings 3004.50.10 and 3004.50.79		
3004.50. 50	- - Containing vitamins PP, other than goods of subheadings 3004.50.10 and 3004.50.79		
3004.50. 60	- - Containing other vitamins, other than goods of subheadings 3004.50.10 and 3004.50.79		
3004.50. 71	- - - Containing B complex vitamins		
3004.50. 79	- - - Other		
3004.50. 90	- - Other		
3004.90. 10	- - Specialised medicines for cancer, AIDS or other intractable diseases		
3004.90. 21	- - - Sodium chloride solution		
3004.90. 22	- - - 5% glucose solution		
3004.90. 23	- - - 30% glucose solution		
3004.90. 29	- - - Other		
3004.90. 30	- - Antiseptics		
3004.90. 41	- - - Containing procaine hydrochloride		
3004.90. 49	- - - Other		
3004.90. 51	- - - Containing acetylsalicylic acid, paracetamol or dipyrone (INN)		
3004.90. 52	- - - Containing chlorpheniramine maleate		
3004.90. 53	- - - Containing diclofenac		
3004.90. 54	- - - Analgesic balm oil, solid or liquid		
3004.90. 59	- - - Other		
3004.90. 61	- - - Containing artemisinin, artesunate or chloroquine (INN)		
3004.90. 62	- - - Containing primaquine		
3004.90. 69	- - - Other		
3004.90. 71	- - - Containing piperazine or mebendazole (INN)		
3004.90. 72	- - - Containing dichlorophen (INN)		
3004.90. 79	- - - Other		
3004.90. 80	- - Transdermal therapeutic systems (TTS) patches for cancer or heart diseases		
3004.90. 91	- - - Containing sulpiride (INN), cimetidine (INN), ranitidine (INN), aluminium hydroxide or magnesium hydroxide or oresol		
3004.90. 92	- - - Containing piroxicam (INN) or ibuprofen (INN)		
3004.90. 93	- - - Containing phenobarbital, diazepam, chlorpromazine		
3004.90. 94	- - - Containing salbutamol (INN)		
3004.90. 95	- - - Closed sterile water for inhalation, pharmaceutical grade		
3004.90. 96	- - - Containing o-methoxyphenyl glyceryl ether (Guaifenesin)		
3004.90. 97	- - - Nose-drop medicaments containing naphazoline, xylometazoline or oxymetazoline		

HS	Description	Schedule	Rationale
3004.90. 98	- - - Sorbitol		
3004.90. 99	- - - Other		
3006	Pharmaceutical goods in note 4 to chapter 30...	2009	Essential to human life
3006.10. 00	- Sterile surgical catgut, similar sterile suture materials and sterile tissue adhesivesfor surgical wound closure; sterile laminaria and sterile laminaria tents; sterile absorbable surgical or dental haemostatics		
3006.20. 00	- Blood-grouping reagents		
3006.30. 10	- - Barium sulfate (for taking orally)		
3006.30. 20	- - Reagents of microbial origin for veterinary biological diagnosis		
3006.30. 30	- - Other microbial diagnostic reagents		
3006.30. 90	- - Other		
3006.40. 10	- - Dental cements and other dental fillings		
3006.40. 20	- - Bone reconstruction cements		
3006.50. 00	- First-aid boxes and kits		
3006.60. 00	- Chemical contraceptive preparations based on hormones, on other products of heading 29.37 or on spermicides		
3006.70. 00	- Gel preparations designed to be used in human or veterinary medicine as a lubricant for parts of the body for surgical operations or physical examinations or as a coupling agent between the body and medical instruments		
3006.80. 00	- Waste pharmaceuticals		
	Cinematographic film		
3706	Motion-picture film, exposed and developed...	2009	Sensitive to public morals
3706.10. 10	- - Newsreels, travelogues, technical and scientific films		
3706.10. 20	- - Consisting only of sound track		
3706.10. 91	- - - With picture taken abroad		
3706.10. 99	- - - Other		
3706.90. 10	- - Newsreels, travelogues, technical and scientific films		
3706.90. 20	- - Consisting only of sound track		
3706.90. 90	- - Other		
	Unused postage, printed cards, calendars...		
4907	Unused postage, check forms, banknotes, stock, etc...	2009	Sensitive to public morals
4907.00. 10	- Banknotes, being legal tender		
4907.00. 20	- Unused postage stamps		
4907.00. 30	- Revenue or similar stamps		
4907.00. 40	- Stock, share or bond certificates and similar documents of title; cheque forms		
4907.00. 90	- Other		
4909	Printed or illustrated post cards, greeting cards, etc....	2009	Sensitive to public morals
4909.00. 00	Printed or illustrated postcards; printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings		
4910	Calendars, calendar blocks of any kind, printed...	2009	Sensitive to public morals
4910.00. 00	Calendars of any kind, printed, including calendar blocks		
4911	Printed matter nesoi, incl print pictures & photos...	2009	Sensitive to public morals
4911.10. 00	- Trade advertising material, commercial catalogues and the like		
4911.91. 10	- - - Anatomical or botanical instruction charts and diagrams and the like		
4911.91. 20	- - - Other wall pictures and diagrams for instructional purposes; pictures, designs and photographs for incorporation into books, advertising circulars or commercial catalogues		
4911.91. 90	- - - Other		
4911.99. 10	- - - Printed cards for jewellery or for small objects of personal adornment or for Articles of personal use normally carried in the pocket, in the handbag or on the person		

HS	Description	Schedule	Rationale
4911.99. 20	- - - Printed stickers for explosives		
4911.99. 90	- - - Other		
	Industrial printers		
8442	Machinery etc nesoi for type-setting, making printing plates etc...	2009	Sensitive to public order
8442.10. 10	- - Electrically operated		
8442.10. 20	- - Not electrically operated		
8442.20. 10	- - Electrically operated		
8442.20. 20	- - Not electrically operated		
8442.30. 11	- - - Impressed flongs and matrices		
8442.30. 12	- - - Machinery for type founding machines		
8442.30. 19	- - - Other		
8442.30. 21	- - - Impressed flongs and matrices		
8442.30. 22	- - - Machinery for type founding machines		
8442.30. 29	- - - Other		
8442.40. 10	- - Of electrically operated machines, apparatus or equipment		
8442.40. 21	- - - Of type-founding or type-setting machinery		
8442.40. 29	- - - Other		
8442.50. 10	- - Printing type of all kinds		
8442.50. 90	- - Other		
8443	Print machinery excluding ink-jet printers (HS 84435100), machinery for used ancillary to printing nesoi...	2009	Sensitive to public morals
8443.11. 10	- - - Electrically operated		
8443.11. 20	- - - Not electrically operated		
8443.12. 10	- - - Electrically operated		
8443.12. 20	- - - Not electrically operated		
8443.19. 10	- - - Electrically operated		
8443.19. 20	- - - Not electrically operated		
8443.21. 10	- - - Electrically operated		
8443.21. 20	- - - Not electrically operated		
8443.29. 10	- - - Electrically operated		
8443.29. 20	- - - Not electrically operated		
8443.30. 10	- - Electrically operated		
8443.30. 20	- - Not electrically operated		
8443.40. 10	- - Electrically operated		
8443.40. 20	- - Not electrically operated		
8443.59. 10	- - - Platen presses		
8443.59. 20	- - - Screen printing machinery for the manufacture of PCB/PWBs [ITA/2 (AS2)]		
8443.59. 90	- - - Other		
8443.60. 10	- - Electrically operated		
8443.60. 20	- - Not electrically operated		
8443.90. 10	- - Of screen printing machinery for the manufacture of PCB/PWBs [ITA/2 (AS2)]		
8443.90. 20	- - Other, for electrically operated machines		
8443.90. 90	- - Other		
	Other machinery		
8525	Transmission apparatus for radio-telephony etc; TV camera & other video camera recorders excluding mobile phones (HS 852520) and consumer cameras (HS 85254010)	2009	Sensitive to public morals
8525.10. 10	- - For radio-broadcasting		
8525.10. 21	- - - Video senders		
8525.10. 22	- - - Central monitoring systems		
8525.10. 23	- - - Telemetry monitoring systems		
8525.10. 29	- - - Other		
8525.10. 30	- - Data compression tools		
8525.30. 90	- - Other		
8525.40. 20	- - Other still image video cameras		

HS	Description	Schedule	Rationale
8525.40. 30	- - Digital cameras		
8525.40. 40	- - Other video camera recorders		
8526	Radar apparatus, radio navigational aid apparatus and radio remote control apparatus	2009	Sensitive to public morals
8526.10. 90	- - Other		
8526.91. 90	- - - Other		
8526.92. 00	- - Radio remote control apparatus		

Note: For the purpose of this Table, schedule starts from 1 January of the specified year.

Table 8(b): Schedule of Commitments On Export Trading Rights

HS	Description	Schedule	Rationale
	Cereals		
1006	Rice	2011	Food security
1006.10.10	- - Suitable for sowing		
1006.10.90	- - Other		
1006.20.10	- - Thai Hom Mali rice		
1006.20.90	- - Other		
1006.30.11	- - - Whole		
1006.30.12	- - - Not more than 5% broken		
1006.30.13	- - - More than 5% but not more than 10% broken		
1006.30.14	- - - More than 10% but not more than 25% broken		
1006.30.19	- - - Other		
1006.30.20	- - Parboiled rice		
1006.30.30	- - Glutinous rice (pulot)		
1006.30.40	- - Basmati rice		
1006.30.50	- - Thai Hom Mali rice		
1006.30.61	- - - Whole		
1006.30.62	- - - Not more than 5% broken		
1006.30.63	- - - More than 5% but not more than 10% broken		
1006.30.64	- - - More than 10% but not more than 25% broken		
1006.30.69	- - - Other		
1006.40.00	- Broken rice		

Note: For the purpose of this Table, schedule starts from 1 January of the specified year.

Table 8(c): List of Goods Subject to State Trading Enterprises

No	HS	Description	Rationale
1.	2402	Cigars, cheroots, cigarillos and cigarettes...	Both domestic production and consumption are restricted
	2402.10.00	- Cigars, cheroots and cigarillos, containing tobacco	
	2402.20.10	- - Beedies	
	2402.20.90	- - Other	
	2402.90.10	- - Cigars, cheroots and cigarillos of tobacco substitutes	
	2402.90.20	- - Cigarettes of tobacco substitutes	
	2403	Other manufactured tobacco and manufactured tobacco ...	
	2403.10.11	- - - Blended tobacco	
	2403.10.19	- - - Other	
	2403.10.21	- - - Blended tobacco	
	2403.10.29	- - - Other	
	2403.10.90	- - Other	
	2403.91.00	- - "Homogenised" or "reconstituted" tobacco	
	2403.99.10	- - - Tobacco extracts and essences	
	2403.99.30	- - - Manufactured tobacco substitutes	
	2403.99.40	- - - Snuff	
	2403.99.50	- - - Smokeless tobacco, including chewing and sucking tobacco	
	2403.99.60	- - - Ang Hoon	
	2403.99.90	- - - Other	
2.	2709	Crude oil from petroleum and bituminous minerals...	Natural monopoly
	2709.00. 10	- Crude petroleum oil	
	2709.00. 20	- Condensate	
	2709.00. 90	- Other	
	2710	Oil (not crude) from petrol & bitum mineral etc....	
	2710. 11. 11	- - - Motor spirit, premium leaded	
	2710. 11. 12	- - - Motor spirit, premium unleaded	
	2710. 11. 13	- - - Motor spirit, regular leaded	
	2710. 11. 14	- - - Motor spirit, regular unleaded	
	2710. 11. 15	- - - Other motor spirit, leaded	
	2710. 11. 16	- - - Other motor spirit, unleaded	
	2710. 11. 17	- - - Aviation spirit	
	2710. 11. 18	- - - Tetrapropylene	
	2710. 11. 21	- - - White spirit	
	2710. 11. 22	- - - Low aromatic solvents containing by weight less than 1% aromatic content	
	2710. 11. 23	- - - Other solvent spirits	
	2710. 11. 24	- - - Naphtha, reformate or preparations for preparing spirits	
	2710. 11. 25	- - - Other light oil	
	2710. 11. 29	- - - Other	
	2710. 19. 11	- - - - Lamp kerosene	
	2710. 19. 12	- - - - Other kerosene, including vaporising oil	
	2710. 19. 13	- - - - Aviation turbine fuel (jet fuel) having a flash point of not less than 23o C	
	2710. 19. 14	- - - - Aviation turbine fuel (jet fuel) having a flash point of less than 23°C	
	2710. 19. 15	- - - - Normal paraffin	
	2710. 19. 19	- - - - Other medium oils and preparations	

No	HS	Description	Rationale
	2710. 19. 21	- - - - Topped crudes	
	2710. 19. 22	- - - - Carbon black feedstock oil	
	2710. 19. 23	- - - - Lubricating oil basestock	
	2710. 19. 24	- - - - Lubricating oils for aircraft engines	
	2710. 19. 25	- - - - Other lubricating oil	
	2710. 19. 26	- - - - Lubricating greases	
	2710. 19. 27	- - - - Hydraulic brake fluid	
	2710. 19. 28	- - - - Oil for transformer or circuit breakers	
	2710. 19. 31	- - - - High speed diesel fuel	
	2710. 19. 32	- - - - Other diesel fuel	
	2710. 19. 33	- - - - Other fuel oils	
	2710. 19. 39	- - - - Other	
	2710. 91. 00	- - Containing polychlorinated biphenyls (PCBs), polychlorinated terphenyls (PCTs) or polybrominated biphenyls (PBBs)	
	2710. 99. 00	- - Other	
3.	4902	Newspapers, journals & periodicals...	Cultural products affecting to society morals
	4902. 10. 00	- Appearing at least four times a week	
	4902. 90. 11	- - - Scientific, technical or economic	
	4902. 90. 19	- - - Other	
	4902. 90. 21	- - - Scientific, technical or economic	
	4902. 90. 29	- - - Other	
	4902. 90. 91	- - - Scientific, technical or economic	
	4902. 90. 99	- - - Other	
4.	8524	Records, tapes and other recorded media for sound or ... excluding 852410, 852431, 852432, 85243910, 85244000, 852491, 85249920	Cultural products affecting to society morals
	8524. 39. 20	- - - For cinematographic film	
	8524. 39. 90	- - - Other	
	8524. 51. 10	- - - Videotape	
	8524. 51. 20	- - - Computer tape	
	8524. 51. 30	- - - For cinematographic film	
	8524. 51. 90	- - - Other	
	8524. 52. 10	- - - Videotape	
	8524. 52. 20	- - - Computer tape	
	8524. 52. 30	- - - For cinematographic film	
	8524. 52. 90	- - - Other	
	8524. 53. 10	- - - Videotape	
	8524. 53. 20	- - - Computer tape	
	8524. 53. 30	- - - For cinematographic film	
	8524. 53. 90	- - - Other	
	8524. 60. 00	- Cards incorporating a magnetic stripe	
	8524. 99. 10	- - - For video	
	8524. 99. 30	- - - For cinematographic film	
	8524. 99. 90	- - - Other	

No	HS	Description	Rationale
5.	8802	Other aircraft (for example, helicopters, aeroplanes); spacecraft (including satellites) and suborbital and spacecraft launch vehicles.	Natural monopoly
	8802. 11. 00	- - Of an unladen weight not exceeding 2,000 kg	
	8802. 12. 00	- - Of an unladen weight exceeding 2,000 kg	
	8802. 20. 10	- - Aeroplanes	
	8802. 20. 90	- - Other	
	8802. 30. 10	- - Aeroplanes	
	8802. 30. 90	- - Other	
	8802. 40. 10	- - Aeroplanes	
	8802. 40. 90	- - Other	
	8802. 60. 00	- Spacecraft (including satellites) and suborbital and spacecraft launch vehicles	
	8803	Parts of goods of heading 88.01 or 88.02	
	8803. 10. 10	- - Of helicopters or aeroplanes	
	8803. 10. 90	- - Other	
	8803. 20. 10	- - Of helicopters, aeroplanes, balloons, gliders or kites	
	8803. 20. 90	- - Other	
	8803. 30. 00	- Other parts of aeroplanes or helicopters	
	8803. 90. 10	- - Parts of telecommunication satellites [ITA/2]	
	8803. 90. 20	- - Of ballons, gliders or kites	
	8803. 90. 90	- - Other	

Table 9: 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

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 20(a) and 20(b).

Table 11: List of Products Not Subject to VAT (as of 1 January 2006)

1.	Products of cultivation, husbandry, fishery or aquaculture which have not yet been processed into other products or which have only been semi-processed by organizations or individuals self-producing and selling such products and imports
2.	Animal breeds and plant breeds
3.	Salt products
4.	Specialized machinery, equipment or means of transportation which form part of a technological process or construction materials which are not yet able to be produced domestically and are required to be imported to form the fixed assets of enterprises; aircraft, drilling platforms or watercraft leased from foreign parties which are not yet able to be produced domestically used for production or business; equipment, machinery, replacement parts, specialized means of transportation and supplies which are required to be imported in service of prospecting, exploration and development of petroleum fields and which are not yet able to be produced domestically
5.	Sales of State-owned houses by the State to existing tenants
6.	Transfers of land use rights
7.	Credit services, investment funds and securities trading activities
8.	Life insurance; student insurance; insurance of animals and plants and non-profit-making insurance activities
9.	Medical services
10.	Non-profit-making cultural, exhibition and sports activities; artistic performances, film production; import, publication and screening of film footage and documentary videos
11.	Education and vocational training
12.	Radio and television broadcasting according to programmes funded by the State Budget
13.	Printing, publication, import and distribution of newspapers, magazines, specialized newsletters, political books, textbooks, teaching materials, books on legislation, books printed in languages of ethnic minorities, propaganda pictures, photos and posters; Printing of money
14.	Public services of cleaning and water drainage in urban areas and residential areas, maintenance of zoos, flower gardens, parks, trees in streets, public lighting systems and funeral services
15.	Repair, renovation and construction of cultural and artistic works, public works, infrastructure and welfare housing funded by public contribution and humanitarian aid
16.	Public passenger transportation by bus; electrical bus
17.	Geological surveys, exploration, measuring and formulation of maps, which can be characterized as basic surveys of the State
18.	Water supply and drainage serving agricultural production; clean water produced by organizations and individuals for consumption in rural, mountainous and island areas and remote and distant regions
19.	Specialized arms and weaponry required for national defence and security
20.	Imported goods in the following cases: humanitarian aid, non-refundable aid; gifts to State bodies, political organizations, socio-political organizations, social organizations, socio-professional organizations; units of the people's armed forces; donations and gifts to individuals in Viet Nam within the limits stipulated by the Government, personal effects of foreign organizations and individuals under diplomatic immunity regulations; hand luggage within duty-free limits; goods to be sold to international organizations and foreign individuals for humanitarian and non-refundable aid to Viet Nam
21.	Goods in transit or transhipment or crossing Vietnamese borders; goods temporarily imported and re-exported and goods temporarily exported and re-imported
22.	International transportation, goods and services provided directly for international transportation and re-insurance to abroad
23.	Technology transfers; software
24.	Post and Telecommunication services and universal internet programme in accordance with Government's plan
25.	Gold imported in bars and foils which are not yet processed into fine art articles, jewellery or other products
26.	Certain exported unprocessed minerals to be stipulated in detail by the Government
27.	Products that are man-made substitute for human parts of patients; crutches and other specialized equipments for invalid people
28.	Goods and services of business individuals having low income levels. Low income levels shall be stipulated by the Government

Note: The list of products by six-digit HS code is not available.

Table 12: Import Prohibitions (as per August 2006)

HS	Description	Rationale	Legal basis	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 orngs 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 armoured 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		Import prohibition to be replaced by automatic import licensing not later than 1 June 2007

HS	Description	Rationale	Legal basis	Note
ex 8702 8703 8704 8707 8708	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.			
9301 00 00	Military weapons, other than revolvers, pistols and the arms of heading 307: revolvers, pistols.	Military equipment	Decision No. 28/TTg dated 13 January 1997 by PM	
9302 00 00	Revolvers and pistols, other than those of heading 9303 or 9304.	Weapons	Decision No. 28/TTg dated 13 January 1997 by PM	
9304	Other arms (for example, spring, air or gas guns and pistols, truncheons), excluding those of heading 9307.	Weapons	Decision No. 28/TTg dated 13 January 1997 by PM	
9305	Parts and accessories of Articles of headings 9301 to 9304.	Weapons	Decision No. 28/TTg dated 13 January 1997 by PM	
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	Decision No. 28/TTg dated 13 January 1997 by PM	
9307	Swords, cutlasses, bayonets, lances and similar arms and parts thereof and scabbards and sheaths thereof.	Weapons	Decision No. 28/TTg dated 13 January 1997 by PM	

HS	Description	Rationale	Legal basis	Note
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	Decision No. 28/TTg dated 13 January 1997 by PM	
NA	Used materials and equipment, including: - Used machines, structures, inner tires, tires, accessories, motors of automobiles, tractors, 2-wheel and 3-weel motorbikes; - Internal combustion engines and machines with internal combustion engines having capacity below 30 CV - Bicycles, 2-wheel and 3-wheel vehicles;	Traffic safety	Decision No. 28/TTg dated 13 January 1997 by PM	
NA	Toxic chemicals. List published by the Ministry of Industry.	Environment protection, protection of human health	Decision No. 28/TTg dated 13 January 1997 by PM	

HS	Description	Rationale	Legal basis	Note
NA	Garbage and waste materials which may cause environmental pollution and epidemics. List published by the Ministry of Science and Technology.	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 and 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 November 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		

HS	Description	Rationale	Legal basis	Note
NA	Specialized encryption machines and encryption software subject to State secret.	National security		This restriction shall not apply to general, commonly traded goods equipped with encryption technology which are destined for mass consumption.

Table 13(a): Import Prohibitions- Highly Toxic Chemicals

Persistence Organic Pollutants			
No.	Name of chemicals	Formula	Concentration
	Aldrin	$C_{12}H_8C_{l6}$	
	Chlordane		
	DDT		
	Dieldrin		
	Eldrin		
	Heptachlor	$C_{10}H_5C_{l5}$	
	Captofol		
	Hexachlorobenzen	C_6C_{l6}	
	24,5 T (Brochtoc, Decamine)		

Note: Applied in accordance with the Stockholm Convention on Persistent Organic Pollutants (POPs); HS codes are not applicable.

Severely Hazardous Pesticide Formulation (PIC)			
No.	Name of chemicals	Formula	Concentration
10.	Methamidophos	$C_2H_8NO_2PS$	
11	Monocrotophos	$C_7H_{14}NO_5P$	
12	Methyl Parathion	$C_8H_{10}NO_5PS$	
13	Phosphamidon		
14	Methyl parathion (demetil paranitro photpho, volfatoc...)		0.0001

Note: These chemicals fall under the Rotterdam Treaty on Prior Informed Consent as Severely Hazardous Pesticide Formulations, which Viet Nam had approved and would officially become a party by the end of 2006.

No.	Name of chemicals	Formula	Concentration
15	Isobenzen		
16	Isodrin		
17	Ethyl Parathion		
18	Polychlorocamphere		
19	Captan		
20	BHC (Lindane)	$C_6H_6O_6$	

Note: These chemicals fall under Decision No.31/2006/QD-BNN dated 27 April 2006 promulgating the list of insecticide allowed, restricted and prohibited to use.

Toxic Chemicals That Can Be Used In Chemical Weapons SCHEDULE 1			
No.	Name of Chemical	CAS Registry number	HS
1.	O-Alkyl (<C10, incl. cycloalkyl) alkyl (Me, Et, n-Pr or i-Pr)-phosphonofluoridates E.g. Sarin: O-Isopropylmethylphosphonofluoridate Soman: O-Pinacolyl methylphosphonofluoridate	 107-44-8 96-64-0	 2931.00
2.	O-Alkyl (<C10, incl. cycloalkyl) N,N-dialkyl (Me, Et, n-Pr hoÆc i-Pr) phosphoramidocyanidates e.g. Tabun:O-Ethyl N,N-dimethyl phosphoramidocyanidate	 77-81-6	 2931.00

Toxic Chemicals That Can Be Used In Chemical Weapons SCHEDULE 1			
No.	Name of Chemical	CAS Registry number	HS
3.	O-Alkyl (H or <C10, incl. cycloalkyl) S-2-dialkyl (Me, Et, n-Pr or i-Pr)-aminoethyl alkyl (Me, Et, n-Pr or i-Pr) phosphonothiolates and salt corresponding alkylated or protonated salts e.g. VX: O-Ethyl S-2-diisopropylaminoethyl methyl phosphonothiolate	50782-69-9	2930.90
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	2625-76-5 505-60-2 63869-13-6 3563-36-8 63905-10-2 142868-93-7 142868-94-8 63918-90-1 63918-89-8	2930.90
5.	Lewisites: Lewisite 1: 2-Chlorovinyldichloroarsine (541-25-3) Lewisite 2: Bis(2-chlorovinyl)chloroarsine (40334-69-8) Lewisite 3: Tris(2-chlorovinyl)arsine (40334-70-1)	541-25-3 40334-69-8 40334-70-1	2931.00
6.	Nitrogen mustards: HN1: Bis(2-chloroethyl)ethylamine (538-07-8) HN2: Bis(2-chloroethyl)methylamine (51-75-2) HN3: Tris(2-chloroethyl)amine	538-07-8 51-75-2 555-77-1	2921.19 2921.19 2930.90
7.	Saxitoxin (35523-89-8)(8)	35523-89-8	3002.90
8.	Ricin	9009-86-3	3002.90
Precursors			
9.	Alkyl (Me, Et, n-Pr or i-Pr) phosphonyldifluorides e.g. DF: Methylphosphonyldifluoride	676-99-3	
10.	O-Alkyl (H or <C10, incl. cycloalkyl) O-2-dialkyl (Me, Et, n-Pr or i-Pr)-aminoethyl alkyl (Me, Et, n-Pr or i-Pr) phosphonites and corresponding alkylated or protonated salts e.g. QL: O-Ethyl O-2-diisopropylaminoethyl methylphosphonite	57856-11-8	2931.00
11.	Chlorosarin: O-Isopropyl methylphosphonochloridate	1445-76-7	2931.00
12.	Chlorosoman: O-Pinacolyl methylphosphonochloridate	7040-57-5	2931.00

Note: These products belong to Schedule 1 of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (CWC), to which Viet Nam is a State Party.

Table 13(b): Import Allowed Conditionally
Toxic Chemicals and Products Containing Toxic Chemicals

Toxic Chemicals That Can Be Used In Chemical Weapons SCHEDULE 2			
No.	Name of Chemical	CAS Registry number	HS
1.	Amiton: O,O-Diethyl S-[2-(diethylamino)ethyl]phosphorothiolate and corresponding alkylated or protonated salts	78-53-5	2930.90
2.	PFIB: 1,1,3,3,3-Pentafluoro-2-(trifluoromethyl)-1-propene	382-21-8	2903.30
3.	BZ: 3-Quinuclidinyl benzilate (*)	6581-06-2	2933.90
Precursors			
4.	Chemicals, except for those listed in Schedule 1, containing a phosphorus atorn to which is bonded one methyl, etyl or propyl (normal or iso) group but not further carbon atoms e.g. Methylphosphonyl dichloride Dimethyl methylphosphonate Exemption: O-Ethyl S-phenyl ethylphosphonothiolothionate	 676-97-1 756-79-6 944-22-9	 2931.00
5.	N,N-Dialkyl (Me, Et, n-Pr or i-Pr) phosphoramidic dihalides		2929.90
6.	Dialkyl (Me, Et, n-Pr or i-Pr) N,N-dialkyl (Me, Et, n-Pr hoÆc i-Pr)-phosphoramidates		2929.90
7.	Arsenic trichloride	7784-34-1	2812.10
8.	2,2-Diphenyl-2-hydroxyacetic acid	76-93-7	2918.19
9.	Quinuclidin-3-ol	1619-34-7	2933.39
10.	N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethyl-2-chlorides and corresponding protonated salts		2921.19
11.	N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethane-2-ols and corresponding protonated salts Exemptions: N,N-Dimethylaminoethanol and corresponding protonated salts N,N-Diethylaminoethanol and corresponding protonated salts	 108-01-0 100-37-8	2922.19
12.	N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethane-2-thiols and corresponding protonated salts		2930.90
13.	Thiodiglycol: Bis(2-hydroxyethyl)sulfide	111-48-8	2930.90
14.	Pinacolyl alcohol: 3,3-Dimethylbutan-2-ol	464-07-3	2905.14
SCHEDULE 3			
1.	Phosgene: Carbonyl dichloride	75-44-5	2812.10
2.	Cyanogen chloride	506-77-4	2851.00
3.	Hydrogen cyanide	74-90-8	2811.19
4.	Chloropicrin: Trichloronitromethane	76-06-2	2904.90
Precursors			
5.	Phosphorus oxychloride	10025-87-3	2812.10
6.	Phosphorus trichloride	7719-12-2	2812.10
7.	Phosphorus pentachloride	10026-13-8	2812.10
8.	Trimethyl phosphite	121-45-9	2920.90
9.	Triethyl phosphite	122-52-1	2920.90
10.	Dimethyl phosphite	868-85-9	2921.19
11.	Diethyl phosphite	762-04-9	2920.90
12.	Sulfur monochloride	10025-67-9	2812.10
13.	Sulfur dichloride	10545-99-0	2812.10
14.	Thionyl chloride	7719-09-7	2812.10
15.	Ethyldiethanolamine	139-87-7	2922.19
16.	Methyldiethanolamine	105-59-9	2922.19
17.	Triethanolamine	102-71-6	2922.13

Note: These products are Schedule 2 and 3 chemicals of the CWC, to which Viet Nam is a State Party. They belong to Appendix 2, Circular No. 01/2006/TT-BCN dated 11 April 2006 "Guiding the management of export, import of toxic chemicals and products containing toxic chemicals, drug precursors, and those subject to technical standards under the line management of the Ministry of Industry". According to Part II.2 of the

Circular No. 01/2006/TT-BCN, export and/or import of those chemicals shall be subject regulated by Decree No. 100/2005/NDD-CP dated 3 August 2005 on Implementation of the CWC.

Drug Precursors And Chemicals That Can Be Used In Drug Production		
No.	Name of chemicals	Formula
1	Acetic anhydride	$(CH_3CO)_2O$
2	Acetone	CH_3COCH_3
3	Anthranilic acid	$NH_2C_6H_4COOH$
4	Diethyl ether	$(C_2H_5)_2O$
5	Hydrochloric acid	HC_l
6	Methyl ethyl ketone	C_4H_8O
7	Phenylacetic acid	$C_8H_8O_2$
8	Piperidine	$C_5H_{11}N$
9	Potassium permanganate	$KMnO_4$
10	Sulphuric acid	H_2SO_4
11	Toluene	$C_6H_5CH_3$
12	Methylamine	CH_3NH_2
13	Nitroethane	$CH_3CH_2NO_2$
14	Tartaric acid	$HO_2CCH(OH)CH(OH)CO_2H$
15	Formic acid	HCOOH
16	Formamide	$HCONH_2$
17	Ethylene diacetate	$CH_3CO_2CH_2CH_2O_2CCH_3$
18	Diethylamine	$(C_2H_5)_2NH$
19	Benzyl cyanide	$C_6H_5CH_2CN$
20	Benzaldehyde	C_6H_5CHO
21	Ammonium formate	HCO_2NH_4
22	Acetic acid	CH_3COOH

Note: These products belong to Appendix 1, Circular No. 01/2006/TT-BCN dated 11 April 2006 guiding the management of export, import of toxic chemicals and products containing toxic chemicals, drug precursors, and those subject to technical standards under the line management of the Ministry of Industry. According to Part II.1 of Circular No. 01/2006/TT-BCN, export and/or import of precursors used in industry as listed in Appendix 1 shall be subject to (i) the Law on Prevention and Fight against Drugs dated 9 December 2000; (ii) the Regulations on management of precursors used in industry which was already promulgated as attachment to the Decision No. 134/2003/QD-BCN dated 25 August 2003 and Decision No. 04/2004/QD-BCN dated 7 January 2004 of the Ministry of Industry and the provisions of this Circular.

Other Conditional Toxic Chemical Products		
	Chemical	Chemical formular
1	Acetonitril	CH_3CN
2	Acid pechloric	HC_lO_4
3	Acrolein	CH_2=CHCHO
4	Arsenua hydro	AsH_3
5	Aldehyd acetic	CH_3CHO
6	Asbestos (Row material)	
7	Amoniac; Ammonium hydroxide	NH_3; NH_4OH
8	Anhydrid arsenic (arsen trioxid và arsen pentoxid)	As_2O_3, As_2O_5
9	Anilin	$C_6H_5NH_2$
10	Antimoan	Sb
11	Acid nitric	HNO_3
12	Acid phosphoric	H_3PO_4
13	Acid picric	$C_6H_3O_7N_3$
14	Barium and easily soluble compound of barium	Ba; hợp chất dễ tan
15	Barium oxide containing 10% free SiO2	BaO
16	Benzene	C_6H_6

Other Conditional Toxic Chemical Products		
	Chemical	Chemical formular
17	Benzidine	$C_{12}H_{12}N_2$
18	Bichromat kali	$K_2Cr_2O_7$
19	Brom	Br
20	Bromoform	$CHBr_3$
21	Bromo – methan	CH_3Br
22	Salt based on CN except cyanogen chloride	
23	Calcium chloride	CaC_{l2}
24	Carbon tetrachloride	CC_{l4}
25	Cadmi and the compound od cadmi	
26	Carbon oxide	CO
27	Lead and inorganic compound of lead	
28	Chloroform	CHC_{l3}
29	Chlor	C_{l2}
30	Chlorobenzene	C_6H_5Cl
31	1- Chloronaphthalene	$C_{10}H_7Cl$
32	0-[2-chloro-1-(2,5-dichlorophenyl)-vinyl]-0-0- diethyl phosphorothioat	
33	Chlorid mercury	$HgCl_2$
34	Chloropren	C_4H_5Cl
35	Chlorid copper I and copper II	$CuCl$; $CuCl_2$
36	Dichlorobenzene	$C_6H_4Cl_2$
37	Dioxit carbon	CO_2
38	Dimethylamine	$(CH_3)_2NH$
39	N,N – dimethylformamide	$HCON(CH_3)_2$
40	Dinitrobenzene	$C_6H_4(NO_2)_2$
41	Dinitrochlorbenzene	$C_6H_3(NO_2)_2Cl$
42	Dinitrotoluene	$CH_3C_6H_3(NO_2)_2$
43	Dioxid chlor	ClO_2
44	Ethylene oxide	$(CH_2)_2O$
45	Ethyl chloride	C_2H_5Cl
46	Ethylen glycol	CH_2OH-CH_2OH
47	Ethyl mercuric phosphate	
47	Fluorosilicat kim loại tan và không tan	
49	Fluorin hydrid	HF
50	Formaldehyde	HCHO
51	Furfurol	C_4H_3OCHO
52	Mix of tetra và pentan aphtalin	
53	Hydrazine and its homolog	H_2NNH_2
54	Isopropaline	$C1_5H_{23}N_3O_4$
55	Isopropylnitrate	$C_3H_7NO_3$
56	Oxide iron containg fluor and mangan	FeO, Fe_2O_3
57	Methaldehyde	$(CH_3CHO)n$
58	Methyl alcohol	CH_3OH
59	Salt of acid fluorhydric	
60	n – Hexane	C_6H_{14}
61	n-Butanol	C_4H_9OH
62	Nicotine	$C_{10}H_{14}N_2$

Other Conditional Toxic Chemical Products		
	Chemical	Chemical formular
63	Nitrobenzene	$C_6H_5NO_2$
64	2-Nitro-1-hydroxybenzen-4-arsonic acid	
65	Dioxide nitrogen	NO_2
66	Nitrotoluen	$CH_3C_6H_4NO_2$
67	Nitrid of metals	
68	Oxide nickel	NiO
69	Oxite chrom	CrO_3
70	Oxynitrogen (NOx)	N_2O, NO, NO_2, N_2O_3, N_2O_5
71	Ozone	O3
72	Paranitrophenyl	$C_6H_4(NO_2)_2$
73	PCB (Polychlorinated bisphenyl)	
74	Parathion	$(C_2H_5O)_2PSO\text{-}C_6H_4NO_2$
75	Phenol	C_6H_5OH
76	Phosphor	P
77	Phosphine	PH_3
78	Phosphor (metalic)	
79	Pyridine	C_5H_5N
80	Selen and its compound	Se
81	Sulfur carbon	SC_2
82	Sulfur lead	PbS
83	Hydrosulfur	H_2S
84	Thalium	Tl
85	Tetranitromethane	$C(NO_2)_4$
86	Tetrachloroheptane	$C_7H_{12}Cl_4$
87	Tetraethyl thiuram disulfide	$(C_2H_5)_4N_2S_4$
88	Tetraethyl lead	$Pb(C_2H_5)_4$
89	Mercury	Hg
90	Compound of mercury	
91	Trichlorobenzene	$C_6H_3Cl_3$
92	Trichloroethylene	$CHCl\text{-}CCl_2$
93	Trinitrobenzene	$C_6H_3(NO_2)_3$
94	Trinitro compounds	
95	Xylene	$C_6H_4(CH_3)_2$

Note: These products belong to Appendix 3, Circular No. 01/2006/TT-BCN dated 11 April 2006 guiding the management of export, import of toxic chemicals and products containing toxic chemicals, drug precursors, and those subject to technical standards under the line management of the Ministry of Industry. According to Part II.3 of Circular No. 01/2006/TT-BCN, traders importing toxic and dangerous chemicals and products containing toxic chemicals under the list of imported chemicals subject to conditional trading as stipulated in Appendix 3 must have the Certificate for Environmental Protection issued by the Department of Natural Resources and Environment (DONRE) at provincial or city level under central government in accordance with regulations stipulated by the Ministry of Natural Resources and Environment (MONRE).

Table 14: List of Imported Goods Subject to Line Management

Note: The list is issued in conjunction with Decree No. 12/2006/ND-CP dated 23 January 20006 of the Government guiding the implementation of the Commercial Law of 2005. All line-management measures shall not limit the importation of the products involved in terms of value or quantity.

I. LIST OF GOODS SUBJECT THE LINE MANAGEMENT OF THE MINISTRY OF AGRICULTURE AND RURAL DEVELOPMENT

No.	Goods	HS	Form of management	WTO Justification
1.	Veterinary medicines and materials for making veterinary medicines.	ex 3004; 30062000	TBT/SPS	TBT/SPS Agreement.
2.	Biological products for veterinary use registered for first-time use in Viet Nam.	N.A	TBT/SPS	
3.	Pesticides and materials for making pesticides excluded in the List of pesticides allowed to be used in Viet Nam.	ex 3808	AIL5	
4.	Pesticides and materials for making pesticides included in the List of pesticides subject to restricted use in Viet Nam.	ex 3808	AIL	
5.	Plants and animal strains, and various types of insects not available in Viet Nam.	ex 0106; 06; 07; 08; 09; 12	TBT/SPS	
6.	Animal feeds and materials for producing animal feeds newly used in Viet Nam.	ex 23	TBT/SPS	
7.	Fertilisers newly used in Viet Nam.	3101; 3102; 3103; 3104; 3105	TBT/SPS	
8.	Genetic sources of plants, animals and micro-organs used for scientific purposes.	3001; 3002	TBT/SPS	
9.	Wild animals and plants subject to import control according to CITES Convention.	ex 01	AIL	GATT Article XX.g

II. LIST OF GOODS SUBJECT TO LINE MANAGEMENT OF THE MINISTRY OF FISHERIES (FOR SPS PURPOSES)

The Ministry of Fisheries is to carry out its line management by issuing the following lists of goods:

(a) The list of items subject to automatic export licence;
(b) The list of items used in aquaculture farming subject to automatic import licence;
(c) The list of breeds for aquaculture allowed to be imported ordinarily (without licence); and
(d) The list of drugs, chemicals and materials for producing drugs and chemicals used in aquaculture farming allowed to be imported ordinarily (without licence).

[5] Automatic import licence.

III. LIST OF GOODS SUBJECT TO LINE MANAGEMENT OF THE STATE BANK (i.e., THE CENTRAL BANK) OF VIET NAM

No.	Goods	HS	Form of management	WTO Justification
1.	Money destroying machines.	84793000	AIL	Government procurement and monetary security[6].
2.	Treasury doors.	ex 7308	AIL	
3.	Papers for printing money.	ex 4802	AIL	
4.	Inks for printing money.	ex 3215	AIL	
5.	Machines for printing hard-to-forge money, payment vouchers, certificates and other valuable papers to be issued and managed by the banking industry.	8462; 8477; 4907	AIL	
6.	Money printers (technical specifications announced by the State Bank).	ex 8443	AIL	
7.	Machines for moulding and pressing metal money (technical specifications announced by the State Bank).	ex 8462	AIL	

Management principles:

The State Bank of Viet Nam will designate eligible enterprises to import items indicated in this list, and be responsible for managing their use properly.

IV. LIST OF GOODS SUBJECT TO LINE MANAGEMENT OF THE GENERAL DEPARTMENT OF POSTS AND TELECOMMUNICATIONS7

No.	Goods	HS	Form of management	WTO Justification
1.	Postage stamps, stamp publications and items of postage stamps.	49070020; 49070090; 97040010; 97040090	AIL	Natural monopoly
2.	Radio transceivers of 9 KHz-400 KHz frequency band and 60 mW or more capacity.	852510; 85252092	AIL	GATT Article XXI.b.(ii)
3.	Radar equipment, radio support equipment and radio remote control equipment.	852610; 852691; 85269200	AIL	GATT Article XXI.b.(ii)

[6] According to GATS - Annex on Financial Services, paragraph 1.b(i), importation for the activities solely conducted by the State Bank in pursuit of monetary security policy, which are not considered as services governed by GATS.

[7] The formerly "General Department of Posts and Telecommunications" is now the "Ministry of Posts and Telecommunications".

V. LIST OF GOODS SUBJECT TO LINE MANAGEMENT OF THE MINISTRY OF CULTURE AND INFORMATION

No.	Goods	HS	Form of management	WTO Justification
1.	Publications (books, magazines, newspapers, pictures, photographs, calendars, etc).	4901; 4902; 4903; 4904; 4905; 4906; 4909; 4910; 4911	AIL.	GATT Article XX.a
2.	Cinematic works and other audio-visual products recorded on any materials.	3706; 8524	AIL	
3.	Specialized print proof making systems and type setting systems used in printing industry.	8442	AIL	
4.	Printers of any kinds (Offset printers, flexo printers, bronze drum printers) and color photocopiers.	8440; 8443; 9009	AIL	
5.	Television Receive Only (TVRO) equipment.	8528; 8529; 8543	AIL	
6.	Gambling machines.	9504	AIL	
7.	Children's toys.	9501; 9502; 9503	TBT	

VI. LIST OF GOODS SUBJECT TO LINE MANAGEMENT OF THE MINISTRY OF HEALTH

No.	Goods	HS	Form of management	WTO Justification
1.	Addictive substances, sedative substances, pre-substances (including final medicines).	3004	AIL	GATT Article XX.b
2.	Finally tested medicines for human beings, which have been registered.	3004		
3.	Finally tested medicines for human beings, which have not been registered.	3004	TBT/SPS	
4.	Materials for producing medicines, pharmaceutical materials, excipient, empty hard gelatine and containers directly contacting with medicines, which are newly used in Viet Nam.	ex 28; 29; 30; 19059060; 96020010; ex 3923; ex 4014; ex 4819	TBT/SPS	
5.	Cosmetics directly affecting human health.	3302; 3303; 3304; 3305; 3306; 3307	TBT	
6.	Vaccines and immunized biological products excluded in the List of items allowed to be imported upon demand	3002	AIL	
7.	Medical equipment which may directly affect the health of human beings.	ex 9019; ex 9020	AIL	
8.	Chemicals, pesticides, antiseptic products for medical use	3808	TBT	TBT Agreement

VII. LIST OF GOODS SUBJECT TO LINE MANAGEMENT OF THE MINISTRY OF INDUSTRY

No.	Goods	Form of management	WTO Justification
1.	Toxic chemicals and products with toxic chemicals. Addictive pre-chemicals for use in industry (under the Anti-Drug Law and related legal documents)	AIL	TBT Agreement
2.	Natri hydrocid (liquid)	TBT	TBT Agreement
3.	Acid chlohydric	TBT	TBT Agreement
4.	Acid sulfuric (technical)	TBT	TBT Agreement
5.	Acid sulfuric (pure)	TBT	TBT Agreement
6.	Acid phosphoric (technical)	TBT	TBT Agreement
7.	Aluminum hydrocid	TBT	TBT Agreement
8.	Industrial explosive materials NH4NO3	AIL	GATT Article XX

VIII. LIST OF GOODS SUBJECT TO LINE MANAGEMENT OF THE MINISTRY OF NATURAL RESOURCES AND THE ENVIRONMENT

No.	Goods	HS	Form of management	WTO Justification
1.	Scraps	300680; 3825; 3915; 4017; 4707; 6310; 7112; 7204; 7404; 7503; 7602; 7802; 7902; 8002; 810197; 810297; 810330; 810420; 810530; 8106; 810730; 810830; 810930; 811020; 8111; 811213; 811222; 811252; 811292; 8113	TBT	TBT Agreement

IX. LIST OF GOODS SUBJECT TO LINE MANAGEMENT OF THE MINISTRY OF TRANSPORT

No.	Goods	HS	Form of management	WTO Justification
1.	Lighting flares used in marinetime transport	360490	TBT	TBT Agreement

Table 15: Commitments on the Elimination of Import Prohibitions on Used Motor-Vehicles

1.	Commitment to eliminate quantitative restriction
-	Viet Nam commits to eliminate, upon accession to the WTO, import prohibition on used motor-vehicles of less than 5 years usage (the description of the measure and the products concerned were given in Table 1, Annex 2, Document WT/ACC/VNM/33).
2.	Other measures (measures proposed to be applied internally and in consistence with the WTO Agreements)
-	Applying registration mechanism for first-time registration of used motor-vehicles;
-	Formulating technical standards, and standards on quality, safety and environmental protection;
-	The importing enterprises are required to recondition used motor-vehicles to meet with Viet Nam's technical regulations and standards before they can be imported into Viet Nam.
3.	Import duties on used motor-vehicles
-	Import duties on used motor-vehicles shall be subject to Viet Nam's Schedule of Concessions and Commitments on Tariffs (Chapter 98 – Special classification Provisions).

Table 16: Viet Nam's Export Duty Schedule

(attached to Decision No. 45/2002/QD/BTC dated 10 April 2002 by the Ministry of Finance)

No.	Description	Sub-Heading	Rates (per cent)
1.	Cashew nuts in shell.	08013100	4
2.	Crude petroleum oil.	27090010	4
3.	Raw hides and skins of bovine (including buffalo) or equine animals (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), whether or not de-haired or split.	4101	10
4.	Other raw hides and skins (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), whether or not de-haired or split, other than those excluded by Note 1(b) or Note 1(c) to this Chapter.	4103	10
5.	Trees' Roots and bush of natural wood.	4403	5
6.	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; chip wood and the like of natural wood.	4404	5
7.	Railway or tramway sleepers (cross-ties) of natural wood.	4406	10
8.	Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or end-jointed, of a thickness exceeding 6 mm of natural wood.	4407	10
9.	Sheets for veneering and laminated wood (whether or not assembled), other wood, sawn lengthwise, sliced or peeled, whether or not planed, sanded, spliced or end-jointed, of a thickness not exceeding 6mm of natural wood.	4408	10
10.	Wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rebated, chamfered, V-jointed, beaded, moulded, rounded or the like) along any of its edges, ends or faces, whether or not planed, sanded or end of natural wood.	4409	10
11.	Packing cases, boxes, crates, drums and similar packings, of wood; cable-drums of wood; pallets, box pallets and other load boards, of wood pallet collars of natural wood.	4415	10
12.	Casks, barrels, vats, tubs and other coopers' products and parts thereof, of wood including staves of natural wood.	4416	10
13.	Parquet flooring (parquet flooring wood and semi-processed parquet flooring), shingles and shakes, palet. Shuttering for concrete constructional work of natural wood.	4418	10
14.	Doors and their frames, steps, thresholds, stairs and their parts of natural wood.	4418	5
15.	Precious stones (other than diamonds) and semi-precious stones, whether or not worked or graded but not strung, mounted or set; un-graded precious stones (other than diamonds) and semi-precious stones, temporarily strung for convenience of transport.		
	- Un-worked or simply sawn or roughly shaped.	71031000	5
	- Otherwise worked.		
	-- Rubies, sapphires and emeralds.	71039100	1
	-- Other.	71039900	1
16.	Dust and powder of precious stones of 7103.	71059000	3
17.	Steel and iron wastes (excluding turnings, shavings, milling waste, sawdust, filings, trimmings and stampings of steel, whether or not in bundles).	7204	35

No.	Description	Sub-Heading	Rates (per cent)
18.	Iron and non-alloy steel in ingots or other primary forms (excluding iron of heading 72.03).	7206	2
19.	Semi-finished products of iron or non-alloy steel.	7207	2
20.	Copper waste and scrap (excluding turnings, shavings, milling waste, sawdust, filings, trimmings and stampings of cooper, whether or not in bundles).	74040000	45
21.	Master alloys of copper.	74050000	15
22.	Powders of non-lamellar structure.	74061000	15
23.	Powders of lamellar structure; flakes.	74062000	15
24.	Copper bars, rods and profiles.	7407	5
25.	Nickel waste and scrap (excluding turnings, shavings, milling waste, sawdust, filings, trimmings and stampings of nickel, whether or not in bundles).	75030000	45
26.	Nickel powders and flakes.	75040000	5
27.	Nickel, not alloyed, in bars, rods and profiles.	75051100	5
28.	Alloyed Nickel bars, rods and profiles.	75051200	5
29.	Aluminium waste and scrap (excluding turnings, shavings, milling waste, sawdust, filings, trimmings and stampings of aluminium, whether or not in bundles).	76020000	45
30.	Aluminium powders and flakes.	7603	10
31.	Lead waste and scrap (excluding turnings, shavings, milling waste, sawdust, filings, trimmings and stampings of lead, whether or not in bundles).	78020000	45
32.	Lead bars, rods and profiles.	7803	5
33.	Lead Powders and flakes.	78042000	5
34.	Zinc waste and scrap (excluding turnings, shavings, milling waste, sawdust, filings, trimmings and stampings of zinc, whether or not in bundles).	79020000	40
35.	Zinc powder.	79031000	5
36.	Zinc powder and flakes.	79039000	5
37.	Zinc bars, rods, profiles.	7904	5
38.	Tin waste and scrap (excluding turnings, shavings, milling waste, sawdust, filings, trimmings and stampings of tin, whether or not in bundles).	80020000	45
39.	Tin bars, rods.	80030010	2
40.	Tin profiles.	80030090	2
41.	Tin powder and flakes.	8005	2
42.	Waste and scraps of metal and metallic ceramics and their products (excluding turnings, shavings, milling waste, sawdust, filings, trimmings and stampings, whether or not in bundles).	8101 to 8113	45
43.	Semi-products of metal and metallic ceramics and Products of metal and metallic ceramics.	8101 to 8113	5

Table 17: Commitment on Export Duties

Product Description	HS Tariff sub-heading	Current Applied Rates	Upon Accession	Accession plus 1 yr.	Accession plus 2 yrs.	Accession plus 3 yrs.	Accession plus 4 yrs.	Accession plus 5 yrs
Steel and iron wastes (excluding turnings, shavings, milling waste, sawdust, filings, trimmings and stampings of steel, whether or not in bundles).	7204	35	33	30	27.5	25	22.5	17
Copper waste and scrap (excluding turnings, shavings, milling waste, sawdust, filings, trimmings and stampings of cooper, whether or not in bundles).	74040000	45	43	40	37	33	29	22
Nickel waste and scrap (excluding turnings, shavings, milling waste, sawdust, filings, trimmings and stampings of nickel, whether or not in bundles).	75030000	45	45	40	37	33	29	22
Aluminium waste and scrap (excluding turnings, shavings, milling waste, sawdust, filings, trimmings and stampings of aluminium, whether or not in bundles).	76020000	45	45	40	37	33	29	22
Lead waste and scrap (excluding turnings, shavings, milling waste, sawdust, filings, trimmings and stampings of lead, whether or not in bundles).	78020000	45	45	40	37	33	29	22
Zinc waste and scrap (excluding turnings, shavings, milling waste, sawdust, filings, trimmings and stampings of zinc, whether or not in bundles).	79020000	40	40	37	34	31	28	22
Tin waste and scrap (excluding turnings, shavings, milling waste, sawdust, filings, trimmings and stampings of tin, whether or not in bundles).	80020000	45	45	40	37	33	29	22
Waste and scraps of metal and metallic ceramics and their products (excluding turnings, shavings, milling waste, sawdust, filings, trimmings and stampings, whether or not in bundles).	8101 to 8113	45	45	40	37	33	29	22

Table 18: Goods Subject to Export Restriction
(except as indicated in the investment licenses of FDI enterprises)

<table>
<tr><td colspan="3">Export prohibition</td></tr>
<tr><td colspan="3">- 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 preciously natural animals and plans</td></tr>
<tr><td colspan="3">Products subject to export quota</td></tr>
<tr><td colspan="3">Rice
Textile and garment exported to European Union, Canada, Norway and Turkey markets</td></tr>
<tr><td colspan="3">Export subject to specific control</td></tr>
<tr><td colspan="3">- 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/QD-TTg dated 31 July 1998)
- Minerals</td></tr>
<tr><td colspan="3">Notice</td></tr>
<tr><td>Group IA</td><td colspan="2">Group IIA</td></tr>
<tr><td>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</td><td>Dalbergia oliverrii 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
Erythophloeum fordii
Padocarpus fleuryi
Rauwolfia verticillata</td><td>Morinda officinalis
Lilium brownii
Panax Viet Nammensis
Amomum longfiligulare
Amomum tsaoko</td></tr>
</table>

Items Classified as Narcotics[8]

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-piperidinyl]-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-benzimidazolinyl)- 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-pyrrolidinyl)- 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)
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

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

Narcotics in the Form of Mixtures[9]

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

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

Table 19: List of Precious Aquatic Creatures Requiring Export Approval by the Ministry of Aqua-culture

Names	Scientific Names
Red coral	Carallium Japonieus
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 20(a): The Structure of Investment Incentives According to the Types of Enterprises Granted by Local Authorities From 1996-2003

Types of Enterprises	Number of projects	
	Number	Percentage (%)
State-owned Enterprises	2,584	22.8
Limited Liabilities Companies (Co., Ltd)	3,992	35.2
Joint-stock Companies	903	8.0
Sole proprietor Enterprise	2,776	24.4
Co-operatives	481	4.2
Private Individuals, Households	598	5.3
Overseas Vietnamese	23	0.2
Total	11,357	100

Table 20(b): The Number of Investment Projects According to the Areas of Investment Incentives in the Period of 2001-2003

Areas of investment incentives	Number of projects
Areas with difficult socio-economic conditions (List B)	1,863
Areas with specially socio-economic conditions (List C)	550
Total	2,413

Table 20(c): The Structure of Investment Fields According to the List of Sectors with Investment Incentives in the Period of 2001-2003

The investment fields	Number of projects
I. Afforestation or forest regeneration zones; planting of perennial trees on unused land or barren hills; land reclamation, salt-making, cultivation of marine products in unexploited waters	188
II. Construction of infrastructure; development of public transportation; development of education, training, healthcare and ethnic cultures	371
III. Production and trading of exported goods	862
IV. Offshore fishing of marine wildlife; processing of agricultural, forestry, and marine products; provision of technical services which directly cater for agriculture, forestry and fishing activities	1,050
V. Scientific and technology research and development; scientific and technology services; legal consultancy, investment consultancy; business consultancy, management consultancy, protection of intellectual property rights and technology transfer	161
VI. Investment in construction of new production lines, investment in expansion of scale, investment in technology renovation, investment in environmental and ecological improvement and urban sanitation improvement; relocation of production establishments to non-urban areas; diversification of industries, trades and products	2,415
VII. Other industries	1,449
Total	6,496

Table 21: Industrial Zones in Viet Nam (as per end July 2005)

No.	Name of industrial zones and export processing zones	Location (province/city)	Date of granting licence	Infrastructure investors
I.	Industrial zones which have been established and are in operation			
1	AMATA (Phases 1&2)	Dong Nai	1994	Thailand – Viet Nam
2	Nhon Trach I	Dong Nai	1995	Viet Nam
3	Nhon Trach II	Dong Nai	1997	Viet Nam
4	Nhon Trach III (Phase 1)	Dong Nai	1997	Viet Nam
5	Go Dau	Dong Nai	1995	Viet Nam
6	LOTECO	Dong Nai	1996	Japan – Viet Nam
7	Bien Hoa II	Dong Nai	1995	Viet Nam
8	Bien Hoa I	Dong Nai	2000	Viet Nam
9	Song May	Dong Nai	1998	Viet Nam
10	Ho Nai	Dong Nai	1998	Viet Nam
11	Tam Phuoc	Dong Nai	2003	Viet Nam
12	My Xuan A	Ba Ria – Vung Tau	1996 2002	Viet Nam
13	My Xuan A2	Ba Ria – Vung Tau	2001	Chinese Taipei – Viet Nam
14	Dong Xuyen	Ba Ria – Vung Tau	1996	Viet Nam
15	My Xuan B1	Ba Ria – Vung Tau	1998	Viet Nam
16	Phu My I	Ba Ria – Vung Tau	1998	Viet Nam
17	Cai Mep	Ba Ria – Vung Tau	2002	Viet Nam
18	Viet-Sing	Binh Duong	1996 2004	Singapore – Viet Nam
19	Binh Duong	Binh Duong	1997	Viet Nam
20	Song Than I	Binh Duong	1995	Viet Nam
21	Song Than II	Binh Duong	1996	Viet Nam
22	Dong An	Binh Duong	1996	Viet Nam
23	Tan Dong Hiep A	Binh Duong	2001	Viet Nam
24	Tan Dong Hiep B	Binh Duong	2002	Viet Nam
25	Viet Huong	Binh Duong	1996	Viet Nam
26	My Phuoc	Binh Duong	2002	Viet Nam
27	Tan Thuan	Ho Chi Minh City	2001	Chinese Taipei – Viet Nam
28	Linh Trung 1	Ho Chi Minh City	1992	China – Viet Nam
29	Linh Trung 2	Ho Chi Minh City	1997	China – Viet Nam
30	Binh Chieu	Ho Chi Minh City	1996	Viet Nam
31	Tan Tao	Ho Chi Minh City	1996	Viet Nam
32	Vinh Loc	Ho Chi Minh City	1997	Viet Nam
33	Hiep Phuoc	Ho Chi Minh City	1996	Viet Nam
34	Tan Binh	Ho Chi Minh City	1997	Viet Nam
35	Tan Thoi Hiep	Ho Chi Minh City	1997	Viet Nam
36	Le Minh Xuan	Ho Chi Minh City	1997	Viet Nam
37	Tay Bac Cu Chi	Ho Chi Minh City	1997	Viet Nam
38	Cat Lai	Ho Chi Minh City	2003	Viet Nam
39	Trang Bang	Tay Ninh	1999 2003	Viet Nam
40	Da Nang	Da Nang	1994	Malaysia – Viet Nam
41	Lien Chieu	Da Nang	1998	Viet Nam
42	Hoa Khanh (Phase 1 and extension)	Da Nang	1997 2004	Viet Nam

No.	Name of industrial zones and export processing zones	Location (province/city)	Date of granting licence	Infrastructure investors
43	Dien Nam- Dien Ngoc (Phase 1 and extension)	Quang Nam	1996 2005	Viet Nam
44	Tinh Phong	Quang Ngai	1997	Viet Nam
45	Quang Phu	Quang Ngai	1998	Viet Nam
46	Phu Bai (PHASE1+2)	Thua Thien - Hue	1998 2004	Viet Nam
47	Suoi Dau	Khanh Hoa	1997	Viet Nam
48	Phan Thiet (Phases 1&2)	Binh Thuan	1998	Viet Nam
49	Hoa Hiep	Phu Yen	1998	Viet Nam
50	Phu Tai (Phases 1, 2,3 and Extention)	Binh Dinh	1998 2003	Viet Nam
51	Le Mon	Thanh Hoa	1998	Viet Nam
52	Bac Vinh	Nghe An	1998	Viet Nam
53	Noi Bai	Ha Noi	1994	Malaysia – Viet Nam
54	Sai Dong B	Ha Noi	1996	Viet Nam
55	Bac Thang Long (Phase 1 and extension)	Ha Noi	1997 2002	Japan-Viet Nam
56	Nomura-HP	Hai Phong	1994	Japan-Viet Nam
57	Cai Lan	Quang Ninh	1997	Viet Nam
58	Tien son	Bac Ninh	1998 2004	Viet Nam
59	Que Vo	Bac Ninh	2002	Viet Nam
60	Duc Hoa 1 (Phase 1)	Long An	1997	Chinese Taipei- Viet Nam
61	Thuan Dao - Ben Luc	Long An	2003	Chinese Taipei- Viet Nam
62	My Tho	Tien Giang	1997	Viet Nam
63	Tra Noc 1	Can Tho	1995	Viet Nam
64	Sa Dec	Dong Thap	1998	Viet Nam
65	Song Cong 1	Thai Nguyen	1999	Viet Nam
66	Thuy Van (Phases 1, 2 and 3)	Phu Tho	1997 2003 2004	Viet Nam
67	Tam Thang	Dac Nong	2002	Viet Nam
68	Dong Van	Ha Nam	2003	Viet Nam
69	Quang Minh	Vinh Phuc	2004	Viet Nam
70	Nam Sach	Hai Duong	2003	Viet Nam
71	Dinh Tram (Phases 1 and 2)	Bac Giang	2003 2005	Viet Nam
II.	Industrial zones which have been established and are in the process of basic construction			
1	Nhon Trach Textile and Clothing	Dong Nai	2003	Viet Nam
2	An Phuoc	Dong Nai	2003	Viet Nam
3	Long Thanh	Dong Nai	2003	Viet Nam
4	Nhon Trach V	Dong Nai	2003	Viet Nam
5	Dinh Quan	Dong Nai	2004	Viet Nam
6	Nhon Trach 6	Dong Nai	2005	Viet Nam
7	Cat Lai IV	Ho Chi Minh City	1997	Viet Nam
8	Phong Phu	Ho Chi Minh City	2002	Viet Nam
9	Linh Trung III Industrial and Export processing zone	Tay Ninh	2002	China - Viet Nam
10	Tron Thanh	Binh Phuoc	2003	Viet Nam
11	Hoa Cam	Da Nang	2003	Viet Nam
12	Nam Cam (Phase 1)	Nghe An	2003	Viet Nam

No.	Name of industrial zones and export processing zones	Location (province/city)	Date of granting licence	Infrastructure investors
13	Vung Ang I	Ha Tinh	2002	Viet Nam
14	Dai T- Ha Noi	Ha Noi	1995	Dai Loan
15	Deawoo Hanel (SDR)	Ha Noi	1996	Korea - Viet Nam
16	Nam Thang Long (Phase 1)	Ha Noi	2001	Viet Nam
17	Dinh Vu (Phase 1)	Hai Phong	1997	The US, Belgium and Thailand
18	Hai Phong 96 Export processing zone	Hai Phong	1997	Hong Kong –Viet Nam
19	Dai An	Hai Duong	2003	Viet Nam
20	Phuc Dien	Hai Duong	2003	Viet Nam
21	Tan Truong	Hai Duong	2005	Viet Nam
22	Pho Noi B (Phase 1 and 2)	Hung Yen	2003	Viet Nam
23	Pho Noi A	Hung Yen	2004	Viet Nam
24	Bac Phu Cat	Ha Tay	2002	Viet Nam
25	Kim Hoa	Vinh Phuc	1998	Viet Nam
26	Phuc Khanh	Thai Binh	2002	Chinese Taipei
27	Xuyen A	Long An	1997	Viet Nam
28	Tan Kim	Long An	2003	Viet Nam
29	Hoa Xa	Nam Dinh	2003	Viet Nam
30	Hoa Phu	Vinh Long	2004	Viet Nam
31	Ninh Phuc (Phase 1 and Extention phase 1)	Ninh Binh	2003	Viet Nam
32	Viet Huong II	Binh Duong	2004	Viet Nam
33	Binh An Textile and Apperal	Binh Duong	2004	Viet Nam
34	Mai Trung	Binh Duong	2004	Viet Nam
35	My Phuoc II	Binh Duong	2005	Viet Nam
36	Tra Noc	Can Tho	1998	Viet Nam
37	Hung Phu I (Phases 1 and 2)	Can Tho	2004	Viet Nam
38	Tan Duc (Phase 1)	Long An	2004	Viet Nam
39	Long My (Phase 1)	Binh Dinh	2004	Viet Nam
40	Loc Son	Lam Dong	2003	Viet Nam
41	Tan Huong (Phase 1)	Tien Giang	2004	Viet Nam
42	Tan Phu Trung	Ho Chi Minh City	2004	Viet Nam
43	Tra Da	Gia Lai	2003	Viet Nam
44	Nam Dong Ha	Quang Tri	2004	Viet Nam
45	Khanh An (Phase 1)	Ca Mau	2004	Viet Nam
46	An Nghiep	Soc Trang	2005	Viet Nam
47	Phu My II	Ba Ria – Vung Tau	2004	Viet Nam
48	Hon La (Phase 1)	Quang Binh	2005	Viet Nam
49	Tay Bac Dong Hoi	Quang Binh	2005	Viet Nam
50	Giao Long	Ben Tre	2005	Viet Nam
51	Sao Mai (Phase 1)	Kon Tum	2005	Viet Nam
52	Ninh Thuy	Khanh Hoa	2004	Viet Nam
53	Vinh Loc 2	Long An	2005	Viet Nam

Table 22(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 22(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

Table 23: List of the WTO-Related Laws and Regulations Publication Journals and Websites

The Official Gazette: all legal normative documents issued by the central State agencies.

No	Name of State agencies	Website address	Types of published laws and regulations
1	Office of the National Assembly	www.na.gov.vn	Legal normative documents passed by the National Assembly and its Standing Committee
2	The Government Office	www.chinhphu.vn	Legal normative documents issued by the Government agencies
3	Ministry of Planning and Investment	www.mpi.gov.vn	Legal normative documents relating to investment
4	Ministry of Finance	www.mof.gov.vn	Legal normative documents relating to financial and tax matters
5	Ministry of Trade	www.mot.gov.vn	Legal normative documents relating to trade and commerce
6	Ministry of Justice	www.moj.gov.vn	Legal normative documents relating to different topics
7	Ministry of Post and Telecom	www.mpt.gov.vn	Legal normative documents relating to post and telecom matters
8	State Bank of Viet Nam	www.sbv.gov.vn	Legal normative documents relating to banking services
9	Ministry of Science and Technology	www.most.gov.vn	Legal normative documents relating to IPRs and TBT
10	Ministry of Industry	www.moi.gov.vn	Legal normative documents relating to industrial policies and measures
11	Ministry of Agriculture and Rural Development	www.mard.gov.vn	Legal normative documents relating to agricultural policies and SPS