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**Working Party on the  
Accession of Vietnam**

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## ACCESSION OF VIETNAM

### Questions and Replies to the Memorandum on the Foreign Trade Regime (Document WT/ACC/VNM/2)

In a communication dated 12 January 1995, circulated as WT/L/1, the Government of the Socialist Republic of Vietnam applied for accession to the World Trade Organization (WTO) under the provisions of Article XII of the WTO Agreement. The terms of reference of the Working Party are reproduced in document WT/ACC/VNM/1. In document WT/ACC/VNM/2, Members had been invited to submit questions in writing concerning the foreign trade regime of Vietnam. The questions submitted by Members and the replies thereto provided by the authorities of the Socialist Republic of Vietnam are reproduced hereunder.<sup>1</sup> The Annexes and Appendices referred to in this document will be circulated as document WT/ACC/VNM/3/Add.1.

Delegations wishing to raise additional questions concerning the foreign trade regime of Vietnam might inform the delegation of Vietnam (with a copy to the Secretariat) of such questions in advance of the meeting of the Working Party, so that considered replies can be made available by Vietnam to Members at the time of the Working Party meeting.

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<sup>1</sup> This document contains replies to questions relating to the foreign trade regime on goods. Replies to services questions will be circulated subsequently.



TABLE OF CONTENTS

	Page No.	Question No.
I. INTRODUCTION	1	1
II. ECONOMY, ECONOMIC POLICIES AND FOREIGN TRADE		
2. Economic Policies		
(a) Main directions	1	2-73
(b) Monetary and fiscal policies		
Monetary, credit and foreign exchange policies	36	74-84
Tax policy	43	85-87
Turnover Tax and Value Added Tax	44	88-93
Excise Tax (special sales tax)	46	94-104
Profit Tax	50	105-107
Import-Export Tax	52	108-112
Agricultural Land Use Tax	55	113
The Tax on Transfer of Land Use Rights	55	114-115
Natural Resources Tax	56	116
Income Tax	56	117-120
(d) Investment policy	58	121-159
(e) Competition policy	79	160-164
III. FRAMEWORK FOR MAKING AND ENFORCING POLICIES AFFECTING FOREIGN TRADE IN GOODS AND TRADE IN SERVICES		
1. Powers of Executive, Legislative and Juridical Branches of Government		
(a) National Assembly	81	165
(b) The State President	82	166-167
(d) The Supreme People's Court and the Supreme People's Office for Supervision and Control	82	168-169
2. Government Entities Responsible for Making and Implementing Policies Affecting Foreign Trade	83	170-172
3. Powers of the Local Government and Administrative Committees	85	173-177
4. Regulations on Policy Planning Approval and Ratification	87	178-183
5. Laws and Subordinate Legislation	90	184-190
6. Description of Judicial, Arbitral or Administrative Tribunals or Procedures	93	191-199
IV. POLICIES AFFECTING TRADE IN GOODS		
1. Import Regulations		

(a)	Registration requirements for engaging in importing	99	200-210
(b)	Characteristics of the national tariff	103	211-224
(c)	Tariff quotas and tariff exemptions	111	225-226
(d)	Other duties and charges	112	227-235
(e)	Quantitative import restrictions, including prohibitions, quotas and licensing systems	119	236-285
(f)	Import licensing procedures	133	286-302
(g)	Other border measures	138	303-311
(h)	Customs valuation	143	312-327
(i)	Other customs formalities	150	328-330
(j)	Pre-shipment inspection	150	331-334
(k)	Domestic taxes levied on imported goods	151	335-341
(l)	Rules of origin	153	342-345
(m-o)	Anti-dumping, countervailing duties and safeguards regime	154	346-348
2.	Export Regulations		
(b)	Customs tariff nomenclature, types of duties, duty rates, weighted averages of rates, etc.	155	349-351
(c)	Quantitative export restrictions	156	352-359
	Export quotas	158	360-364
	Line management	159	365
(d)	Export licensing procedures	160	366-367
(e)	Other measures	160	368-373
(f)	Export financing, subsidy and promotion policies	162	374-379
(g)	Export performance requirements	164	380
(h)	Import duty drawback schemes	164	381-382
3.	Internal Policies Affecting Trade in Goods		
(a)	Industrial policies and subsidies	165	383-392
(b)	Technical specifications and standards	169	393-415
(c)	Sanitary and phytosanitary measures	177	416-422
(d)	Trade-related investment measures (TRIMs)	180	423-431
(e)	State-owned enterprises	184	432-442
(f-g)	Free zones and free economic zones	189	443-447
(h)	Trade-related environmental policies	191	448-450
(l)	Government procurement	192	451-478
(m)	Regulation of trade in transit	201	479
4.	Policies Affecting Foreign Trade in Agricultural Products		
(a)	Imports	201	480
(b)	Exports	201	481-489

(c)	Export prohibitions and restrictions	205	490
(d)	Export credits, export credit guarantees and export insurance programmes	205	491-492
VII. INSTITUTIONAL BASE FOR TRADE AND ECONOMIC RELATIONS WITH THIRD COUNTRIES			
1.	Bilateral or Plurilateral Agreements	205	609
2.	Economic Integration, Customs Union and Free Trade Area Agreements	206	610-615
	Other related issues	209	616-618
	Legal documents	210	619-655

Note: Unless otherwise indicated, the information contained in these Answers is valid as of 1 November 1997.



## I. INTRODUCTION

### Question 1

**Please indicate whereabouts in the Memorandum (WT/ACC/VNM/2) information on the three major economic programmes mentioned in this section - export production, food production and consumer goods production - can be found.**

#### Answer

In the Memorandum, these programmes were mentioned as a reference to the shift in economic structure of the period 1986-1990. These programmes have since been adjusted for the 1996-2000 period in line with the new circumstances. A description of these programmes can be found in section 2(a)(i), pages 5 and 6 of the Memorandum (document WT/ACC/VNM/2).

## II. ECONOMY, ECONOMIC POLICIES AND FOREIGN TRADE

### 2. Economic Policies

#### (a) Main directions

### Question 2

**Paragraph 3, page 5 states that "Non-nationalisation is granted by laws to enterprises operating legally in Vietnam". Can Vietnam please explain what this statement means and provide more specific detail on the means by which Vietnam ensures national treatment for foreign enterprises in accordance with the requirements of Article III of the GATT?**

#### Answer

Article 21 of the Law on Foreign Investment in Vietnam (1996) provides: "...during the course of investment in Vietnam, capital and assets of foreign investors shall not be requisitioned or expropriated by administrative measures and enterprises with foreign owned capital shall not be nationalized".

Vietnam is reviewing its trade regime vis-à-vis the requirements of national treatment for foreign goods as provided for in Article III of the GATT, e.g., the discriminatory Turnover Tax shall be replaced by VAT.

### Question 3

**According to the Memorandum, State-owned enterprises have been restructured under the Law on State-Owned Enterprises. Should a State-owned enterprise go bankrupt, would it be handled under the Law on Bankruptcy, as any other enterprise?**

#### Answer

Article 1 of the Law on Business Bankruptcy dated 30 December 1993, provides: "This Law shall apply to all forms of business ownership which are established and operated under the laws of the Socialist Republic of Vietnam at the time of bankruptcy".

**Question 4**

- (a) **How many State-owned enterprises have gone bankrupt since the enactment of the Law on State-Owned Enterprises? In what business sectors did they operate? How are the assets of the State-owned enterprises distributed in bankruptcy?**
- (b) **Does the Law on Bankruptcy allow bankrupt State-owned enterprises to continue operation through governmental forgiveness of debt or by governmental grants to cover operating losses?**

**Answer**

(a) Since the promulgation of the Law on Business Bankruptcy, the provincial People's Courts in Vietnam have received 40 applications for bankruptcy proceedings; the Economic Court has made bankruptcy orders for 7 cases upon hearing the petitions, out of the 7 bankrupt enterprises, 2 are State-owned and engaged in tourism.

Among the 40 companies subject to bankruptcy, State-owned enterprises are engaged in various sectors: production, import-export, tourism and multi-sectoral business.

State-owned enterprises are limited liability legal entities. They thus are liable for their debts within the amount of assets capitalized by the State. There exists no difference in the liquidation procedures between State-owned and other forms of enterprises.

The Law on Bankruptcy stipulates in detail procedures of distribution of assets as follows:

- (i) during the process of a bankruptcy proceeding, the judge shall order that the pledged or mortgaged property of the business to be protected and shall organize the valuation of such property. When the value of the pledged or mortgaged property is insufficient to pay the debts of secured creditors, such creditors shall be permitted to participate in the distribution process of the remaining assets of the bankrupt business together with other unsecured creditors. Where the value of the pledged or mortgaged property is greater than the amount of debt owed to secured creditors, the difference in value shall be deemed to be part of the remaining assets of the bankrupt business;
- (ii) the distribution of the assets of the bankrupt business amongst the creditors shall be carried out in the following order of priority:
- fees and costs of the bankruptcy proceeding as determined by the provisions of the law;
  - unpaid wages, allowances for termination of employment and social insurance in accordance with the provisions of the law and other rights pursuant to a signed collective or individual labour agreement;
  - tax liabilities;
  - payment of debts owed to the creditors whose names appear on the list of creditors;



- if the value of the remaining assets of the bankrupt business is sufficient to cover the debts of all creditors, then each creditor shall be paid in full the amount owed to him or her;
- if the value of the remaining assets of the bankrupt business is insufficient to cover the debts of all creditors, then each creditor shall be paid a portion of the amount owed in accordance with an appropriate ratio.
- if the value of the remaining assets of the bankrupt business exceeds the total amount of debts owed to all creditors, then the difference in value shall belong to:
  - the owner of the business in the case of private businesses;
  - the members of the company in the case where the business is a company;
  - the State treasury in the case of State-owned businesses.

(b) The Government may, based on its financial capacity and the consideration of the enterprise's role, provide assistance in the form of grants and debt forgiveness. Governmental assistance to bankrupt enterprises may be provided to State-owned as well as non-State-owned enterprises.

Pursuant to the Law on State-Owned Enterprises (SOEs), SOEs are limited liabilities legal entities for business within their assets. This means that the Government's liabilities as the owner in a bankrupt SOE are limited to the assets, capitalized by the Government to that SOE. Furthermore, the Government has certain regulations on implementation of this Law in regard to businesses operating in security, defence industries or important public services. Pursuant to these regulations in conformity with the Law on Bankruptcy, the following enterprises, including SOEs and private businesses subject to overdue debts might be considered by the Government for supporting measures to recover creditability if necessary:

- manufacturing and maintenance of weapons, military equipment, businesses operating in economic and defence activities in strategic areas;
- trading in finances, currencies and insurance;
- power generating and supplying;
- transport and public urban services;
- railways and airways transport;
- information and telecommunications;
- management and exploitation of water irrigation works;
- management and exploitation of specialized and national preserved forests.

In practice, labour intensive businesses are taken into consideration by the Government supporting measures.

## **Question 5**

**When did the Law on State-Owned Enterprises and the Law on Bankruptcy enter into force?**

**Answer**

The Law on State-Owned Enterprises entered into force on 30 April 1995.

The Law on Business Bankruptcy entered into force on 1 July 1994.

**Question 6**

**The Memorandum states that the co-operative economic sector is recognized and protected under the Law on Cooperatives dated 20 March 1996. During the present economic transitional period, in order to restrict massive changes in ownership and management, the State has extended guidance and assistance for the stable development of this kind of economic sector.**

**Please indicate what economic sectors Vietnam is protecting through its guidance and assistance to cooperatives. Please describe the assistance that is being provided to the cooperatives.**

**Answer**

Cooperatives, which are mainly found in rural areas, are autonomous economic organizations uniting labourers. Cooperatives mainly engage in agricultural production, handicrafts manufacturing, rural transportation and credit fund activities.

Under the Law on Cooperatives issued on 30 March 1996 and Degree No. 15/CP dated 21 February 1997 on "Incentive Development Policies for Cooperatives", measures of support and assistance provided by the Government for cooperatives are as follows:

- exemption from land-use fees for agricultural, forestry, agro-, aqua-forestry and salt-production cooperatives if land is allocated by the State;
- tax exemptions or reductions as stipulated by laws; and
- reduced tuition fees for managers and directors of the cooperative when they are sent to public training institutions for study.

**Question 7**

**In Section II.2(a)(i) of WT/ACC/VNM/2, it is stated that State-owned enterprises are treated in the same way as any other enterprises, that the Government has been removing the direct monitoring and administration of enterprises by government agencies, and that State-owned enterprises have been audited and are being restructured under the Law on State-Owned Enterprises.**

- (a) **Could Vietnam outline in detail its plan for withdrawing the preferential treatment currently being given to State-owned enterprises?**
- (b) **Has the direct monitoring and administration of enterprises by government agencies been removed in all areas? If not, could Vietnam provide details of the areas of the economy that are still subject to direct monitoring and administration by the government agencies and of what that monitoring and administration involves? Could Vietnam provide details of when monitoring and administration by government agencies will cease in each of these areas?**

- (c) **Is the audit of Vietnam's State-owned enterprises complete? If not, could Vietnam provide details of when it will be completed?**
- (d) **Could Vietnam provide details of the sectors where State-owned enterprises restructuring has begun? What restructuring measures are being implemented in each of those areas? When will the process of restructuring in each of those areas be completed?**
- (e) **Could Vietnam provide details of the sectors of the State-owned enterprises where restructuring has not begun? Which of these areas are not to be restructured, and which areas are? What restructuring measures are to be implemented in each area? When will the process of restructuring in each area be complete?**

### **Answer**

In the course of the economic reform, Vietnam has been gradually creating equal environment to enterprises in any form of ownership.

The privileges given to each type of enterprises shall be abolished as soon as laws on taxation, banking and financing, and the Commercial Law take effect; the Laws on Companies, on Private Enterprise, on Encouragement of Domestic Investment and on Land are amended or supplemented; and a common law on enterprise applicable to all kinds of enterprises, foreign-invested and domestic, is formulated. All enterprises are thus given the same treatment under the same regulations.

Vietnam is in the process of administrative reform. The linkages between governmental agencies and State-owned enterprises have been renewed through the decentralization of the State control. Governmental agencies and provincial People's Committees no longer have the direct administration and monitoring over State-owned enterprises. The line management has been removed. The mechanism under which capital and assets are controlled by the State shifted to business mechanism on commercial basis. State-owned enterprises have been transferred to limited liability companies or joint-stock companies. The subsidization and "asking and giving" mechanism is eliminated.

Yet, in order to strengthen the role and the right of the State ownership, the Law on State-Owned Enterprise provides that the Government shall uniformly execute its ownership over SOEs, i.e.:

- to establish, dissolve, reorganize and transfer the ownership of SOEs; to make decisions on objectives and strategic tasks and direction of development of SOEs;
- to issue a SOE's Charter; to provide and allocate capital to SOEs;
- to approve, transfer, lease and mortgage important machinery and warehouses, to capitalize and/or to make capital contributions to joint-ventures with other enterprises;
- to appoint, dismiss, commend and discipline on key positions of a SOEs, to supervise the operation.

The Government authorizes the ministries and provincial people's committees to execute some ownership rights on SOEs, determining relationship between the relevant ministry, provincial People's Committees and Ministry of Finance in State ownership execution over SOEs. The SOEs operating in public services are subject to the stricter control than those operating in the business sectors. The latter are entitled to more autonomy than the former in respect of transferring, leasing or mortgaging of enterprises' assets or making the best use of the resources allocated. The SOEs

engaged in the business are required to use the allocated capital and resources to do business. The SOEs in the public service sector are obliged to supply public goods and services at the cost-price frame fixed by the Government

The restructuring of all SOEs places an emphasis on the permanent process of economic reform. It will be successfully completed if the business SOEs obtain the economic efficiency and the public service SOEs achieve the targets that other enterprises are unwilling or unable to do.

The restructuring methods are as follows:

- adjusting investment and setting up new SOEs: investing in infrastructure, public service and high technology projects, investing for effective SOEs, strictly controlling the newly established SOEs in accordance with sectoral, territorial, high technological and environmental requirements;
- reorganizing the existing SOEs, qualifying SOEs into business SOEs and public service SOEs, SOEs required or not 100 per cent State ownership, profitable or loss making SOEs and insolvent SOEs, unrecoverable SOEs;
- strictly proceeding dissolution, merging or bankrupting the SOEs in losses and unrecoverable;
- equitizing, diversifying ownership in SOEs in which 100 per cent State ownership is not necessary.

The Law on SOEs dated 20 April 1995 stipulates that SOEs are subject to financial report and auditing. From 1997 on, SOEs' financial reports are audited by independent and internal auditing.

#### **Question 8**

**We are aware of a draft report of the Eighth Communist Party Congress which sets a target of 60 per cent government control of the economy. We understand that this target was deleted from the final version of the report.**

- (a) Could Vietnam provide information on the institutional structure of its economy and the policies and practices of the Government which are to give effect to this intention?**
- (b) Could Vietnam provide more precise detail of its intention to preserve the dominant economic role of the State?**
- (c) Could Vietnam provide an assurance that the institutional structures and the Government's policies and practices will not in any way impair its ability to meet the range of obligations that it will assume as a WTO Member, including under Article XVII of the GATT?**

#### **Answer**

Vietnam is streamlining and re-structuring State-owned enterprises with a view to assuring their economic efficiency so as to stabilize the national economy. The number of State-owned enterprises has decreased and in 1996 they accounted for 41 per cent of GDP.

Please refer to the answers to questions 7 and 14 and section 2(a)(i) of WT/ACC/VNM/2 on the restructuring of the State-owned enterprises to preserve the dominant economic role of SOEs.

**Question 9**

**Paragraph 1, page 7 notes policies and regulations on "equitisation of State enterprises" are under consideration. Could Vietnam please explain what is meant by this term and provide an update on the current situation with regard to consideration of such policies?**

**Answer**

Equitization of State-owned enterprises means the transfer, in part or in whole, of State-ownership in 100 per cent State-owned enterprises to the other business sectors by issuing stocks and/or mobilizing additional equity capital from the other business sectors. In so doing, the enterprise is re-registered pursuant to the Law on Company.

The pilot equitization programme of Vietnam was started in 1992 with the aim that the results of this experimental stage would be used for larger scale equitization. At the end of 1995, five State-owned enterprises were equitized. Following this first stage, in May 1995 the Government of Vietnam promulgated the Decree No. 28/CP on Transferring Some State Enterprises to Joint-stock Companies. So far, 20 State-owned enterprises have been equitized.

The new features of policies and regulations on equitization of State enterprises are as follows:

- other forms of equitization are added. They are: selling shares to outsiders in order to mobilize capital, selling part of the enterprise (reduction or divertissement of State capital holding in the enterprise), establishing joint-stock companies(s) by splitting certain divisions from the enterprise(s);
- the decision-making competence of equitization is delegated. The Prime Minister decides on the equitization of enterprises with capital value more than 10 billion Dong. Minister, Chief of ministerial level bodies, Chairman of People's Committee of Provinces or Cities under central authority decide on the equitization of enterprise of capitalized value less than 10 billion Dong;
- incentives are given to the equitized enterprise and their employees. The incentives are: reduction of or exemption from profit-tax, extension soft loans for buying stocks, provision of interest earning stock.

Other policies and regulations are under consideration such as assigning annual equitization target to ministries and People's Committees, giving priority to equitization in certain localities, extending more incentives and supporting poor employees in buying shares. One-hundred and fifty State-owned enterprises are planned to be equitized in 1998.

**Question 10**

**The section entitled Economic Programmes of the Government (page 9 of WT/ACC/VNM/2) sets out the objectives that should contribute to promoting Vietnam's economic development. No mention is made of the specific measures that will have to be taken to achieve those goals. Would it be possible to have detailed information on the types of measures envisaged and the dates on which they could take effect?**

**Answer**

Main policies and measures of Vietnam relating to the objectives of economic development are presented in sections II.2(a)(iv) and (v), II.2(b), II.2(c), II.2(d), II.2(e) of the Memorandum (WT/ACC/VNM/2).

**Question 11**

**Are there any circumstances under which parties other than the Government are allowed to invest in capital construction? If not, why not? If yes, please provide more details.**

**Answer**

There is no legal restriction on investment in capital construction of non-government sectors.

Foreign investors may invest in BOT, BTO or BT projects and participate in bidding for construction projects in Vietnam.

Foreign investors are governed by the Law on Foreign Investment of Vietnam, dated 12 November 1996. They are not permitted to invest in some sectors which are specified in the answer to question 121.

Vietnam also restricts foreign investment in projects which will adversely affect national security, social order and security, historical heritage and culture, fine custom and tradition, or the ecological environment.

**Question 12**

**It is stated on page 6 (WT/ACC/VNM/2) that one of the targets underlying economic policies for 1996-2000 is "securing proper protection to domestic production". How does Vietnam intend to achieve this objective while respecting WTO rules?**

**Answer**

The Government of Vietnam is undertaking measures, which are similar to that of other countries, such as tariff and some non-tariff measures in a time-limited fashion. At present, these measures are reviewed and systematized. In the accession process, these measures may be adjusted in conformity with the obligations as set forth in the WTO Agreements. Vietnam will properly observe its obligations and commitments made upon accession to the WTO.

**Question 13**

**The Memorandum identifies several economic objectives for the years 1996-2000, including "securing the proper protection for domestic protection" and "building up the leading role of the State-owned economic sector".**

**Which economic policies are Vietnam applying to "secure the proper protection for domestic production"? Which economic sectors does Vietnam most want to protect? Could Vietnam provide further details on its future plans to provide this domestic support, particularly as it relates to domestic agricultural production?**

**Answer**

Economic policies during this period place emphasis on stabilizing macro-economic environment and curbing inflation and encouraging economic development based on domestic and foreign trade and foreign investment.

Proper protection of domestic production, selective protection, conditional protection and protection in the time-limited fashion are applied.

The tariff is used as a major means to ensure domestic production protection.

Quantitative restrictions are used to regulate supply-demand and to protect the domestic production of potential and infant industries (i.e., electronic, cement, steel and iron and paper industries or labour or agricultural products intensive industries).

The future plans relating to protection of domestic production mentioned in the question are under consideration to ensure the decrease in the number of goods subject to quantitative restrictions. Vietnam will inform the Working Party of new evolution in its programmes and measure for economic development as soon as it is able to do so.

**Question 14**

**Please explain in what way Vietnam will focus on the building up of the leading role of the State-owned economic sector?**

**Answer**

The following policies are adopted to achieve that goal:

- building and publishing a list of the economic sectors where the State retains 100 per cent ownership;
- setting up State-owned enterprises operating in the key sectors and public services;
- reforming State control with the distinction between capital owners and users;
- gradually creating competitive environment that will force State-owned enterprises to improve their competitiveness and efficiency.

**Question 15**

**The Memorandum states that all enterprises, whether State-owned, private, partnership or foreign-owned, are recognized and protected under the law.**

**What differences, if any, are there in recognition and protection of State-owned, private, partnership and foreign-owned enterprises? Please describe any differences in the recognition and protection provided to each of these forms of enterprise. What differences exist between foreign and domestic enterprises in terms of recognition and protection?**

**Answer**

All enterprises, including State-owned enterprises, private companies, joint-ventures or wholly foreign-owned enterprises, are recognized and protected by the law, provided that they are legally established. Each type of enterprise is subject to a specific law:

- State-owned enterprises are subject to Law on State-Owned Enterprises, dated 20 April 1990;
- private companies are subject to the Law on Companies and the Law on Private Enterprises, dated 21 December 1990;
- foreign-invested enterprises are subject to the Law on Foreign Investment in Vietnam.

However, each type of enterprises subject to a specific law is a phenomena in the transitional period to a market economy. For the time being, the formulation of a common law governing all types of enterprises regardless of ownership is under consideration.

**Question 16**

**Please describe all instances in which State-owned enterprises receive more favourable treatment than private-sector or foreign-owned enterprises with respect to the right to engage in trade, the right to establish in certain sectors, equal access to land, utilities, and access to factors of production. Please include reference to any designated right to conduct international trade in certain products, to any exclusive domestic distribution rights, and to any other benefits granted only to State-owned enterprises in terms of access to capital, energy, transportation, raw materials or other inputs for the production process.**

**Answer**

The Commercial Law provides that: "The State has the exclusive right to conduct commercial activities in certain fields and regions with respect to certain types of goods and services as stipulated in lists to be published by the Government".

The lists referred to in the preceding paragraph are not yet formulated. Vietnam will provide the Working Party with these lists when they are available.

In addition, the State shall invest in terms of finance, physical technical facilities and human resources for the development of State-owned enterprises which deal in essential goods in order to ensure the leading role of State-owned enterprises in commercial activities as one of the mechanisms used by the State to regulate supply and demand and to stabilize prices and thereby contribute to the implementation of national socio-economic policies.

The information relating to the right to conduct international trading activities is provided in detail in Annex 3 (WT/ACC/VNM/3/Add.1).

The right to establish and to engage in trade are stipulated in Article 11 of the Law on Companies, Articles 5 and 22 of the Law on Private Enterprises and Article 3 of the Law on Foreign Investment. Under the above provisions, except for the sectors which are prohibited by laws or subject to prior approval of the Prime Minister, Vietnamese enterprises and foreign-owned enterprises have the right to establish and engage in business activities in any sector of the economy. Article 6 of the Commercial Law which was approved by the National Assembly in May 1997 and comes into force on 1 January 1998 provides that "...individuals, legal entities, co-operative groups and family households satisfying all conditions stipulated by law have the right to conduct commercial activities in the fields and regions which are not prohibited by laws". The State, through State-owned



enterprises, conducts business activities in the fields relating to national defence, security, national secrets and in the military and security regions. The State, through its State-owned enterprises, also retains monopoly in respect of import/export of the essential goods such as petroleum and other fields such as: postal service, telecommunications, radio and television broadcasting, newspapers publishing, aviation transport, explosives. In order to ensure the equilibrium of the economy, some import/export items are subject to quotas which are allocated to well-established enterprises (the majority of them are State-owned). For reasons of security and preservation of national resources, certain fields (exploitation of scarce minerals, sea cargo shipment and international tourism) are subject to prescribed requirements and the Prime Minister's prior approval. The State-owned enterprises have an advantage over other enterprises in satisfying these requirements as they are more capable and well-established.

Regarding exclusive domestic distribution rights and access to capital, energy, transportation, raw materials, or other inputs for the production process, the State-owned National Corporations control the distribution network in some important fields such as petroleum, post and telecommunications, cement, electricity, clean water supply, etc. and thus has the advantage in these sectors. Other than that favourable treatment, State-owned enterprises have no preferential treatment in respect of exclusive distribution right as well as subsidies (for example, the Law on Promotion of Domestic Investment provides equal treatment for State-owned and private enterprises). On the one hand, foreign-owned enterprises are subject to lower profit tax rate and import duty exemption for equipment, machinery, parts, means of transport and materials imported for the purpose of capital construction to establish the enterprise. On the other hand, they are subject to higher costs of utilities (electricity and water) and land use right.

As far as the land use right is concerned, as stipulated in the Law on Land issued in July 1993 and the Law on Foreign Investment, State-owned enterprises, private enterprises and wholly foreign-owned are all entitled to lease land from the State and land use rights can be used by wholly State-owned enterprises as capital contribution to joint-ventures. As a legacy of the past, the land used by State-owned enterprises has been assigned to them for a long time. They thus can obtain quicker procedures relating to land valuation for their contribution to the joint-ventures.

Unless otherwise indicated in paragraphs 3 and 4 of the answer to question 78, there is no favourable treatment for State-owned enterprises in terms of access to capital resource, energy, transport, raw material and other inputs for production process.

### Question 17

**It is stated that "it is required to construct the common and compatible regime giving equitable treatment to both foreign and domestic investment with a view to offsetting the currently available privileges offered to foreign investors" in section 2(a)(i) of WT/ACC/VNM/2. What sort of privileges are given to foreign investors?**

### Answer

The preferential treatment provided by Vietnam to foreign investors in comparison with domestic investors is illustrated by the following measures:

- Profit tax:
  - domestic investment: 3 profit tax rates: 25 per cent for heavy industry, 35 per cent for light industry and 45 per cent for the service industry. In addition, a surtax of

25 per cent for non-government business entities or households and 30 - 40 per cent for State-owned enterprises may be applied in case revenues exceed specified ceilings;

- foreign investment: 4 profit tax rates: 10 per cent, 15 per cent, 20 per cent, and 25 per cent shall be applied on the basis of business type and geographical location of the enterprise.
- Exemption from or reduction of profit tax:
  - domestic investment:
    - maximum possible preference: exemption from profit tax for 2 years commencing from the first profit making year and a further possible reduction of 50 per cent for the following 4 years,
    - minimum possible preference: a reduction of 50 per cent in the period of 2 years commencing from the first profit making year;

Domestic enterprises are allowed to carry forward for not exceeding 2 years.

- foreign investment:
  - maximum possible preference: exemption from profit tax for 4 years from the first profit making year and a reduction of 50 per cent in the following 4 years; 8 year-exemption in special cases,
  - minimum possible preference: exemption from profit tax for 2 years from the first profit making year and a reduction of 50 per cent for the following 2 years;

Foreign-invested enterprises are allowed to carry forward their losses in the following 5 years.

- Import duties:
  - domestic investment: duty exemption only applies to infrastructure construction projects, educational development projects and investments in mountainous regions and offshore islands;
  - foreign investment: before the Law on Foreign Investment was amended in 1996, machinery, equipment and materials for capital construction under foreign investment projects were exempted from import duty. After the amendment of the new Law on Foreign Investment in Vietnam dated 12 November 1996, materials are no longer qualified for the exemption, except those materials imported for implementation of BOT, BTO, BT or specially encouraged projects.
- Individual income tax:
  - Vietnamese citizens: initial threshold for taxation is 2 million Dong; the highest marginal tax rate is 60 per cent,

- foreigners: initial threshold for taxation is 5 million Dong; the highest marginal tax rate is 50 per cent.

Please refer to the answer to question 105.

### **Question 18**

**According to the Memorandum (WT/ACC/VNM/2), Vietnam is required to construct the common and compatible regime giving equitable treatment to both foreign and domestic investment, with a view to offsetting the currently available privileges offered to foreign investors.**

**What further steps does Vietnam plan to take to harmonize the Law on Private Businesses, the Law on Companies and the Law on Foreign Investment, to effect the policy of treating all foreign and domestic businesses equally?**

#### **Answer**

Please refer to the answers to questions 7 and 17 herein which describe the differences in treatment. The common tendency is to remove all discriminations.

### **Question 19**

**Could Vietnam provide information on the "important lines of activities"? Will the industry sectors in which "large national corporations" operate include Vietnam's foreign trade activities involving the importation of like-products?**

#### **Answer**

The full and detailed list of important lines of activities has not yet been finalized.

Large national corporations do operate in sectors involving importation of like-products but operate in accordance with commercial considerations in those areas unless they possess monopoly and privileges as presented in the answer to question 14 and Annex 3 to document WT/ACC/VNM/3/Add.1. They must apply for the right to carry out import and export activities as would any other enterprise in Vietnam.

### **Question 20**

**According to the Memorandum (WT/ACC/VNM/2), the State has been abolishing the so-called "line administration" mechanism, meaning to remove the direct monitoring and administration of certain governmental agencies imposed on enterprises and the distinction between central and local economic units.**

**What is the current relationship between former "line" ministries and the enterprises they monitored or administered, now that "line administration" has been abolished? Do any contracts, projects, expenditures, promotions, or hiring decisions of these enterprises continue to require ministry approval? Please describe the line ministries participation and voting rights on the management boards of the enterprises.**

**Answer**

The line ministries will partly do State-owner function in the enterprises. The enterprises are empowered to make all decisions in respect of their business activities.

Please refer to the answers to questions 7 and 14.

**Question 21**

**Please list all products, including HS numbers, and services that are subject to price controls in Vietnam, at the central and local levels. How does Vietnam determine which products and services will be subject to price controls?**

**Answer**

The following products are subject to price control (HS numbers are currently not available):

- ceiling prices are set for products which have a great effect on the national economy such as: petroleum, iron and steel, cement, etc.; and
- minimum prices (which act as guidance prices for a particular period) are set for buying and exporting some products such as paddy, rice, etc.).

Please refer to Annex 9 on price policies (WT/ACC/VNM/3/Add.1) and the answers to questions 162, 214 and 215.

The information on services subject to price controls will be sent to WTO Secretariat at an appropriate time.

**Question 22**

**Paragraph 7, page 7 refers. Could Vietnam please provide a full list of those products (by HS tariff line) on which price intervention is still maintained, together with a description of how the price intervention mechanism operates in each case? Please provide details on plans for the review and eventual elimination of such price intervention.**

**Answer**

The price control mechanism is presented in Annex 9 of document WT/ACC/VNM/3/Add.1 and the answer to question 42.

**Question 23**

**Please describe how and at what point of sale price controls are applied to domestic articles and to imports.**

**Answer**

Unless otherwise indicated in Annex 9 on price controls, price control measures, if applied, are applied at export point (f.o.b. price), at import point (c.i.f. price) and retail points of goods or services.

#### Question 24

**Paragraph 2, page 8. Could Vietnam please provide information on how regularly price settings for products subject to price intervention are reviewed and the criteria which are used to determine the levels of any minimum, maximum or controlled prices set?**

#### Answer

Reviewing the price, if necessary, is usually done at the beginning of the year or in case of significant price fluctuation in the market. The price in international and domestic market, current and forecast, supply-demand relationship are major basis for reviewing.

#### Question 25

**Please confirm that all other prices for goods and services in every sector in Vietnam are determined by market forces.**

#### Answer

Apart from sectors and specific periods of time as mentioned in the answer to question 21, where the administration exerts price control, market forces determine prices for goods and services in Vietnam.

#### Question 26

**Are services under any sort of price control? If so, please provide details of (a) the services which are subject to price controls and (b) the form of the price control applied.**

#### Answer

Yes. Please refer to the answer to question 21 herein and Annex 9 (WT/ACC/VNM/3/Add.1).

Details on services subject to price controls will be presented in the service section which will be submitted to the WTO Secretariat in due course.

#### Question 27

**Please identify all price controlled products and services for which foreign customers are charged higher prices than domestic customers.**

#### Answer

Prices of products and services for which foreign customers are charged higher prices than domestic customers are: electricity, airways and railways, water supply and sea-port charges.

#### Question 28

**Describe and cite the domestic legal authority to apply the controls, the reasons these controls are applied, and the conditions under which Vietnam expects to use controls in the future, such as critical situations, monopolies, protection of consumers or abuse of dominant market position by firms.**

**Answer**

The Government Pricing Committee is the government agency which is responsible for the management of prices policy in the domestic market.

At the provincial or city level, the Department of Finance and Pricing of the provincial or city People's Committee undertakes the price management function.

The price control is aimed at monitoring monopoly and stabilizing the prices of products having great inter-ministerial effects.

Several matters referred to in the question are under consideration. Vietnam will notify the Secretariat in detail as soon as possible.

Please refer to Annex 9 on price control (WT/ACC/VNM/3/Add.1) and the answer to question 29 herein.

**Question 29**

**Please confirm that after accession, price controls will be applied in a WTO-consistent fashion, taking account of the interests of exporting WTO Members, as provided for by paragraph 9 of Article III of the GATT.**

**Answer**

Although goods and services subject to the price control are not numerous, the system of price controls will undergo continuous reform with a view to reducing the direct intervention of the Government in market prices and increasing an enterprise's self-determination in pricing practices in the future.

After accession to the WTO, price controls will be applied consistently with Vietnam's WTO obligations.

**Question 30**

**Does Vietnam have a regular schedule for reviewing the price levels set for products and services? Does Vietnam publish a list of all goods and services subject to price controls, and the price levels, in an official journal, such as a public gazette? How far in advance of implementation are new price levels published?**

**Answer**

Goods and services subject to price controls are set out in a list of products and services subject to price control in Vietnam. The prices are reviewed and adjusted in light of production and distribution costs and domestic and international prices. When price adjustments are made in respect of goods and services of significance to public consumption, the Government organizes a press conference and makes a public announcement depending on the significance of the adjustment before implementation.

Prices controlled by the Government are not published in the Official Gazette but can be found in the daily Market and Price Bulletin.

**Question 31**

**Is Vietnam concerned about black market activity resulting from the use of controlled prices? What is the estimated value of black market attributable to the price control system?**

**Answer**

Generally, black market activities in Vietnam do not exist, or if they exist, are only on a temporary and negligible scale.

**Question 32**

**Please describe the process for the setting of prices or ceiling prices, for products such as petroleum and fertilizer. What factors does Vietnam consider in setting the prices?**

**Answer**

The setting of prices or indicative ceiling prices for petroleum and fertilizers, are made on the basis of import prices and domestic production and distribution costs.

Please refer to the answers to questions 21 and 42.

**Question 33**

**According to the Memorandum (WT/ACC/VNM/2), the State maintains some price intervention modalities applicable to some very selective items, which are considered sensitive to price shocks and fluctuations in the market, and may cause undesirable effects to production and social life.**

**Please identify all items, including HS tariff numbers, for which the Government maintains price intervention modalities, whether or not controls are currently applied. For which of these items has the Government made any price interventions in the past three years? Could Vietnam specify the agricultural products which fall into this category and provide more specific details on the modalities employed for each commodity?**

**Answer**

Please refer to the answers to questions 21 and 42 and also Annex 9 (WT/ACC/VNM/3/Add.1).

The list in HS code is not available yet.

**Question 34**

**Does the Government of Vietnam impose any restrictions on the importation or exportation of these products and services in order to control the prices? Please describe any such import and export restrictions that are used.**

**Answer**

Yes. Please refer to the answers to questions 21 and 43 herein and Annex 9 (WT/ACC/VNM/3/Add.1).

### Question 35

**What modalities are available for the Government to use in making price interventions? Please describe any modalities that apply to imported products.**

#### Answer

The price stabilization fund applies to selected items. The fund mobilizes part of the price difference resulting from abrupt and wide fluctuation of prices in international and domestic markets.

Please refer to the answer to question 21 and Annex 9 (WT/ACC/VNM/3/Add.1).

### Question 36

**Prices Policies of WT/ACC/VNM/2. Even though the State has limited its intervention in price setting, it is still free to take certain measures designed "to reconcile the supply-demand relationship, to secure price stability, and to protect interests of producers and consumers". How does Vietnam propose to achieve this goal while abiding by the WTO rules? How much longer does Vietnam intend to take this type of measure?**

#### Answer

Direction to reform the price control mechanism:

Vietnam shall implement the above-mentioned price mechanism until the year 2000. Then, it shall gradually reduce the number of items whose prices are directly determined by the Government. The likely first candidates for the reduction of price control will be iron, steel, cement, paper, etc. At the same time, the price supervision shall be strengthened. The differential pricing applied to domestic and foreign customers (for air fares, train fares, utilities (electricity and clean water costs)) will be gradually reduced and eliminated.

Please refer to Annex 9 (WT/ACC/VNM/3/Add.1).

### Question 37

**Please provide some examples of how the Government of Vietnam has used regulations on the use of land, natural resources and the State's property to control prices. How are these regulations applied to foreign-owned businesses which have invested in Vietnam?**

#### Answer

The Government authorities set the list of rent-rates applicable to different categories of land. On the basis of the guidelines stipulated therein, the provincial-level administration determines the specific rate of rent for the purpose of collection of rental fees, land use right transfer tax calculation and compensation for land redemption. Natural resources are subject to natural resources royalties. Foreign-invested enterprises in Vietnam pay rentals for using land and water surfaces.

### Question 38

**The Memorandum (WT/ACC/VNM/2) describes three forms of measures and modalities that may be used to control prices at the macro-level. These forms include regulations on the use of**



**land, natural resources and State property; minimum prices on certain export products and maximum prices on selected import products; and control on price movements of some major and key items which might have a great impact on production and social life.**

**How are imports subject to the these three forms of price control valued for customs purposes? Does the customs valuation of these products conform to the price control applied, or is valuation for customs purposes applied independently from the controlled price at which the goods circulate in Vietnam's market?**

**Answer**

The customs valuation on export-import goods is carried out in accordance with the Law on Export-Import Taxation of Vietnam.

Pursuant to this Law, the customs value of export-import goods is the contract price, which is legal and in conformity with other relevant documents.

In practice, many trading fraudulent cases detected in prices such as contract declared prices are much lower than the actual payment to the supplier, especially for the goods subject to high export/import duties and in huge volume, avoiding full duties, causing big losses to the State budget or declared price much higher than actual price for goods contributed to joint-venture on purpose of increasing shares in investment capital in joint-ventures. Therefore, in order to fight against trading fraudulent practice in prices, the Government determines control over some commodity groups for taxation purposes (mainly for goods with high duty, huge volume), based on average c.i.f. price and valid for a certain period of time, adjusted in accordance with the international average f.o.b. price.

The Ministry of Finance and the General Department on Customs and the Ministry of Trade together determine the list of commodities subject to government controlled prices and issue the list of minimum check prices on these commodities. The list of government price controlled commodities to be adjusted time by time in order to meet management objectives set forth. Previously, 9 groups of goods were included in the list, then 18 groups, 34 groups and currently reduced to 21 groups (please refer to the answer to question 313). For the import commodities under government controlled prices, the customs valuation is carried out as follows:

- in principle, the contract price (c.i.f.) is applicable if it is formulated in legal contract and equal or higher than the minimum import check price in the list;
- the list of minimum check prices issued by the Ministry of Finance will be applicable in case goods imported without contract, payment made not through the banks or contract price is lower than fixed in the list of minimum import check prices;
- contract prices of the materials imported for local production, meeting government regulations can be accepted for taxation purpose.

Valuation for customs purposes is independently applied from the controlled prices at which the goods are circulated in Vietnam' market.

**Question 39**

**How does "maximum import pricing" differ from the application of price controls on imports discussed above?**

**Answer**

According to Article II of the Decree of the Vietnamese Government No. 33/CP On Government Management of Import-Export Activities dated 19 April 1994, the Ministry of Trade shall only establish the prices or modalities for setting the minimum price for exported goods and the maximum prices for imported goods which are of prime importance to the Vietnamese economy or are of large import-export turnover within a certain period such as fertilizer, petroleum, steel and iron or certain machinery and equipment of great value. This mechanism of price controls applies just temporarily on the above-mentioned items, not on all export-import goods of Vietnam.

**Question 40**

**Does the Government of Vietnam impose any restrictions on the importation or exportation of these products and services in order to control the prices? Please describe any such import and export restrictions that are used.**

**Answer**

No, Vietnam does not use import restrictions in order to control the prices.

**Question 41**

**Please identify, including HS tariff numbers, all import products that may be subject to maximum import pricing? Please identify all import products that have been subjected to maximum import pricing in the past five years. For each item, please describe the circumstances that precipitated the use of maximum import pricing and the period of time that the products were subject to maximum import pricing. Please provide the same information for all export products that may be subject to minimum export pricing.**

**Answer**

Maximum import pricing is stipulated in Decree No. 33/CP of the Government dated 19 April 1994. However, the list of products in HS code was not issued therewith. Please refer to the answer to question 42 for more details of actual implementation.

Please refer to Annex 9 of WT/ACC/VNM/3/Add.1.

**Question 42**

**We refer to price controls under which maximum prices are placed in imports (page 8 of the Memorandum, document WT/ACC/VNM/2). We would appreciate details of:**

- **the mechanism for setting maximum import prices; and**
- **what these maximum prices are related to?**

**Answer**

According to Article II of Decree of the Vietnamese Government No. 33/CP On Government Management of Import-Export Activities, dated 19 April 1994, the Ministry of Trade shall establish the prices or modalities for setting the maximum price for certain imported goods which are of prime

importance to the Vietnamese economy within a certain period. This purely temporary mechanism of price control does not regularly apply to Vietnam's import-export trade.

The maximum import prices are imposed on large volume imports of certain products such as fertilizer, petroleum, iron and steel and certain machinery and equipment.

The maximum import price for urea is based on the international prices and is applied in a certain period of time (between the low and average international prices) in order to supply farmers with the necessary urea quantity at reasonable prices.

Please refer to the answer to question 21.

### **Question 43**

**Please identify those "major and key items", including HS tariff numbers, that may be subject to control on price movements. Are imported and domestically-produced goods subject to price movement controls on the same terms?**

#### **Answer**

As a general rule, imported and domestically-produced goods are subject to the same price control mechanism. The HS tariff numbers for these items are currently not available.

Please refer to the answer to question 21 and Annex 9 of WT/ACC/VNM/3/Add.1.

### **Question 44**

**According to the Memorandum (WT/ACC/VNM/2), the Government may establish price stabilization funds from charges on export/import prices with a view to partly balancing the differences between international and domestic prices during price fluctuation periods. The funds are used to cover interest on bank loans or to subsidize prices.**

**Other than coffee, please identify all products, including HS tariff numbers, that may be subject to import/export charges for the establishment of price stabilization schemes. Under what circumstances can the Government establish the funds and assess import/export charges?**

#### **Answer**

The price stabilization fund is triggered by abrupt and wide fluctuation of prices. Therefore, the surcharge is only collected when wide price fluctuation results in abrupt price differences relating to important goods.

During the last 3 years, the surcharge has been applied on a time-limited basis to:

- imported products: petroleum, some types of iron and steel and fertilizer; and
- exported products: coffee, unprocessed cashew nut, rubber.

At the beginning of May 1997, the surcharge only applies to imported iron and steel and exported unprocessed cashew nuts.

**Question 45**

**Please describe the mechanism for imposing the import and export charges. How is the amount of these charges determined?**

**Answer**

The Government decides or authorizes the Head of the Government Pricing Committee to decide the items subject to surcharge and the amount of the surcharge. The applied rate of the surcharge is normally between 30 to 70 per cent of the price differences.

**Question 46**

**Please describe how the price stabilization schemes cover interest on bank loans. How does the Government determine which loans will benefit from the interest subsidy? Are foreign investors eligible for these interest subsidies?**

**Answer**

The price stabilization fund finances part of the interest on bank loans for enterprises when appointed to buy for national reserves with a view to stabilising certain items' prices. In the last two years, this fund has been applied to rice, urea and sugar. Currently, financing from the fund is only provided to rice trading companies which borrow money from the commercial banks to purchase rice for reserves and price stabilization purposes. The determination of enterprise enjoying interest support shall be based on the actual requirements of a particular period of time and region.

Any enterprise engaged in the products concerned can be eligible for interest support on bank loans.

**Question 47**

**How does the Government use the proceeds of the price stabilization funds to subsidize prices? Does the Government make payments directly to producers? What terms apply to the grant of the price subsidies? Are any of the subsidies provided to producers of export products? Are there any conditions linking export production to receipt of the subsidies?**

**Answer**

So far, the Fund has been used to grant bank-interest support in a certain period to enterprises appointed to increase paddy reserves over normal circulating time with a view to stabilising the market.

Coffee-exporting enterprises, which have contributed surcharges to the fund upon exporting during the period of international high pricing, could be covered part of the losses resulting from the decrease in world market price. However the total amount to be covered is not in excess of the pre-contributed amount.

There is no condition linking export production to receiving support from the fund.

#### **Question 48**

**How are the import and export charges applied to coffee? Can the stabilization fund proceeds derived from the coffee import/export charges be used for loan interest and price subsidies for products other than coffee? Please provide specific details on the operation of this system. Does Vietnam have plans to limit the coverage of this fund to coffee?**

#### **Answer**

Currently, the surcharge is not applied to coffee as there is no abrupt or wide price fluctuation.

Please refer to the answer to question 24 and Annex 9 (WT/ACC/VNM/3/Add.1).

Up to now, the amount of disbursement for a particular commodity has been limited to the surcharge revenues collected from the same commodity. In theory, it is allowed that surcharge revenues from one commodity can be used to subsidize for another commodity.

#### **Question 49**

**Does the Government of Vietnam make recommendations to the enterprises listed in Appendix 5 of the Memorandum (A-Category National Corporations) with respect to the pricing of their products and services? To what extent are the prices of goods produced and distributed by these corporations controlled?**

#### **Answer**

Enterprises of all economic sectors (including category A corporations) operating in Vietnam are free to set the prices for their goods and services, except goods or services which are subject to a pricing control mechanism. Please see further details in Annex 9 (WT/ACC/VNM/3/Add.1).

#### **Question 50**

**We note that Vietnam intends to introduce a price stabilization fund and reserves the right to use such devices as price control mechanisms (section II.2(a)(iii) of WT/ACC/VNM/2).**

- (a) Could Vietnam provide a complete list of the imports and exports on which price controls are currently imposed?**
- (b) Could Vietnam provide details of any plans it may have to phase out these price controls?**
- (c) Could Vietnam provide details of any plans it may have to impose price controls where price controls currently do not exist?**

#### **Answer**

Vietnam currently has no plans to expand the scope of products subject to price controls.

Please refer to the answer to question 21 and Annex 9 (WT/ACC/VNM/3/Add.1).

### **Question 51**

**Please describe the operation of the price setting mechanism for foodstuffs.**

#### **Answer**

Please refer to the answer to question 52 and also Annex 9 (WT/ACC/VNM/3/Add.1).

### **Question 52**

**Could Vietnam provide details of the regulations applying to markets for rice and sugar (page 8 of the Memorandum, document WT/ACC/VNM/2)?**

#### **Answer**

In respect of rice, Vietnam applies the following measures:

- allocating rice export quota;
- applying tariff;
- allowing all economic sectors to engage in domestic rice trading and to eliminating wholesale taxes;
- introducing the indicative price frame applied to rice in the time when price fluctuation occurs;
- providing preferential credits to some companies in order to purchase paddy rice from farmers when the market price is lower than the minimum price or in the harvest season when supply exceeds demand;
- selling certain quantity of paddy rice in State's stock in case of price upsurge resulting from natural disasters, loss of crops, etc.

In respect of sugar: In order to protect the interest of the farmers who engage in sugarcane production, Vietnam maintains a policy encouraging domestic sugar production. Accordingly, import quotas and tariffs of up to 35 per cent on imported sugar are imposed.

### **Question 53**

**What forms of price controls are being used?**

#### **Answer**

For imports, exports and services, the following measures are being used:

- setting maximum prices for petroleum, cement, iron, steel and newsprint;
- approving the price of goods financed from State budget (currently the bidding mechanism is applied);
- setting minimum prices for some agricultural products in certain periods of time.

The price control mechanism includes fixed prices, price ranges, maximum and minimum price. Please refer to Annex 9 (WT/ACC/VNM/3/Add.1).

### **Question 54**

**Please provide detailed information on the timetable foreseen for the elimination of price controls.**

**Answer**

Direction to reform the price control mechanism:

Vietnam shall implement the above-mentioned price mechanism until the year 2000. However, it shall gradually reduce the number of items under price control. The likely first candidates for the reduction of price control will be iron, steel, cement, paper, etc. At the same time the price evaluation shall be reinforced. The price difference between domestic and foreign customers (air fares, train fares, utilities charges) will be gradually eliminated.

**Question 55**

**Paragraph 6, page 36 refers to the operation of the Price Stabilisation Fund under which a "non-tax surcharge" is applied to selective imports and exports. Can Vietnam provide a full list of the products affected by this measure (by HS tariff line) and comment on the compatibility of this measure with Article VIII of the GATT?**

**Answer**

The list of products to which a surcharge has been applied during the last 3 years has been indicated in the answer to question 228. Please see the information regarding the surcharge mechanism in Annex 9 (WT/ACC/VNM/3/Add.1). However, the list of these products by HS tariff lines has not been collected.

**Question 56**

- (a) **What incentives and other measures is the Government of Vietnam using to stimulate a shift of some agricultural production from food crops to cash crops and fruit crops?**
- (b) **Please describe the investments that the Government is using to promote intensive farming, crop restructuring and application of new technologies.**

**Answer**

- (a) The Government encourages to maintain firmly rice cultivation areas. Fruit and industrial crops are only cultivated in the areas where the rice productivity is unstable and low.
- (b) To promote the restructuring of agricultural production, the Vietnamese Government is applying the following measures:
- determining particular areas where crops other than rice can be cultivated, providing farmers with guidance on methods and models for upgrading fields for new crops;
  - investing in researches on transfer of modern technology;
  - providing new seed varieties and breeding stock for experiment before mass production;
  - providing credits to farmers to buy new seed varieties and to upgrade their fields;
  - investing in infrastructures (roads, irrigation works, etc.);

- providing credits for promoting the development of food processing industry;
- ensuring the availability of production materials;
- investing in pest preventing research; and
- using supporting measures to stimulate the distribution of the surplus harvested products when it is necessary.

#### **Question 57**

**What measures are being used by the Government of Vietnam to develop aquaculture, fish catching and processing facilities? Is Vietnam using the import and export licensing requirements for aqua-cultural breeds, medicines, vaccines, activating substances, lobsters and sea cods as measures to foster development of the fish industry?**

#### **Answer**

The Government of Vietnam has put in place a comprehensive programme to promote the development of the domestic and aqua-culture industries. The programmes rely to a large extent on the provision of technical assistance by government experts to the above sectors, including a fisheries extension system to provide training and to introduce new technology and management methods to the fisheries sector. The Government has also promoted the development of infrastructure for the fisheries industry including the construction of refrigerated facilities and facilities for the construction and repair of fishing boats. The Government has encouraged as well the introduction of new technologies through the promotion of inward investment from both domestic and foreign sources. It has also implemented new programmes aimed at improving sanitation and quality controls for Vietnamese fish products in order to increase their marketability in international markets. In recent two years, the Government has offered long-term loans to fishermen to build firm fishing boats for the increased fishing capability.

Vietnamese fishery is very much directed to the development of the fishing industry at the local and artisanal level and the Government has concentrated its efforts in the area of support and encouragement to fishermen and cooperatives engaged in the fishery and aqua-culture sectors.

The Government of Vietnam imposes import and export licences for aqua-cultural breeds, medicines, vaccines, activating substances, lobsters and sea cods. These licensing requirements have been put in place for health protection reasons to prevent the spread of infectious diseases in the aqua-culture industry.

#### **Question 58**

**Please describe the measures the Government is using to develop manufacturing, consumer goods industries and export production industries. What role do export subsidies, tax exemptions, interest-free loans and subsidized land and equipment play in this initiative?**

#### **Answer**

The Vietnamese Government is using preferential tax measures to develop consumer manufacturing industries and export production industries. In the current Vietnamese tax schedules, there are provisions providing for reduction of and exemption from tax for a certain period of time



commencing from the first operating day in respect of consumer goods manufacturing industries and export production industries:

Law on Turnover Tax dated 30 June 1990:

- Article 2, paragraph 3: products for exports are subject to tax exemption,
- Article 18, paragraph 3: import substitution products are subject to a reduction of 50 per cent of turnover tax for the period not exceeding 2 years.

Tariff rates usually applied to consumption products are in between 0 - 4 per cent.

Law on Excise tax dated 28 October 1995:

- Article 3: products subject to excise tax but are used for exports shall enjoy excise tax exemption.

Law on Export-Import Tax, dated 5 July 1995:

- Article 10, paragraph 5: materials imported for the purpose of processing for re-export are subject to tax exemption,
- Article 14, paragraph 4: materials imported for production of exports are subject to tax refunds.

Law on Profit Tax dated 30 June 1990:

- Article 22: enterprises and industries where investment is encouraged are subject to a tax reduction of 50 per cent;
- Article 25: newly established enterprises are subject to exemption from profit tax for the first 2 years and a reduction of 50 per cent of profit tax for the following 2 years.

Law on Encouragement of Domestic Investment.

List of industries in sectors subject to investment incentives (preferential tax as stipulated in Article 10 of the Law (Part IV: production for exports, Part V: production of products for consumption).

The Commercial Law also stipulates that the Government shall determine restriction measures applied to imported products which could be produced domestically with a view to saving foreign currency for importation of advanced equipment and technology.

### **Question 59**

**According to the Memorandum (WT/ACC/VNM/2), Vietnam has been taking certain measures to accelerate the privatization of certain State-owned enterprises. However, Appendix 4 to the Memorandum indicates that the percentage share of total GDP coming from State-owned enterprises actually increased from 1990 (32.5 per cent) to 1994 (42.2 per cent).**

**Please describe generally the enterprises and sectors that have already been privatized. Which sectors and enterprises does Vietnam expect to privatize in the near future?**

**Answer**

Due to inappropriate statistical methods, output of joint-ventures between foreign companies and State-owned enterprises is accounted for that of State-owned enterprises.

The Vietnamese Government is implementing a programme of "equitization" of State-owned enterprises. The programme is in an early phase, 20 State-owned enterprises have been equitized so far.

The above equitized enterprises are small in activity scale, but their businesses are run with profits and they have positive development potential in term of capital scope and net income after being equitized. In the near future the subjects of the equitization are small and medium enterprises.

The list of State-owned enterprises which have been equitized (up to 31 December 1997) is as follows:

- United Joint-Stock Company - Transport Agency;
- Dong Giao Stone Exploitation Joint-Stock Company;
- Hai Phong Bus Joint-Stock Company;
- Hiep An Footwear Joint-Stock Company;
- Refrigeration Equipment Joint-Stock Company;
- Honey Products Joint-Stock Company;
- Binh Dinh Shipyard Joint-Stock Company;
- Long An Export-Processing Joint-Stock Company;
- Cattle Feed-Processing Joint-Stock Company;
- Ha Noi Wooden Products Joint-Stock Company;
- Nam Mo Joint-Stock Company (cosmetics);
- Hai Duong Joint-Stock Trading Company;
- Cable and Communications Materials Factory (SACOM);
- Bach Tuyet Paint Company;
- Traditional Medicines Factory of District 5;
- Seaprodux Danang;
- Saigon Cosmetics Company;
- Bach Tuyet Cotton Company;
- Saigon Joint-Stock Hotel Company;
- Minh Hai Seafood Joint-Stock Company.

The number of the State-owned enterprises slated for equitization is 78.

In the past, for experiment, equitization of State-owned enterprises was carried out on a voluntary basis. From May 1996 with the Degree No. 28CP on equitization, the equitization is carried out on a selective basis. In order to speed up the equitization process some additional measures are under consideration.

At present, the economic sectors or types of enterprises that will undergo equitization have not yet been defined. Vietnam is planning to classify State-owned enterprises into different categories including enterprises that can be equitized.

**Question 60**

**What measures have been taken or will be taken to privatize certain State-owned enterprises?**

**Answer**

Prior to 1996, the course of equitization had been carried out for experiment and on a voluntary basis. From 1996, Decree No. 28/CP has directed to undertake the course on selective basis, concentrating on small and medium enterprises. Many detailed measures are under consideration.

In March 1997, the ministries, provincial people's committees and cities under the Central Government allowed by the Government to decide on equitization of the enterprises with capital less than 10 billion Dong (previous figure was 3 billion Dong).

On 1 December 1997, the Government set up two working teams led by one deputy Prime-Minister for assisting the Government to direct the Master Plan on reorganisation of SOEs in Hanoi and Ho Chi Minh city, including equitization.

Please refer to the answer to question 59.

**Question 61**

**Privatization plans (WT/ACC/VNM/2). Please supply details concerning the specific measures that the Government intends to take to speed up the privatization of certain State-owned enterprises.**

**Answer**

Vietnam is shifting from voluntary equitization to compulsory equitization by defining equitizing sectors, strengthening the leadership of equitization management boards, offering incentives to equitized enterprises and their employees.

Please refer to the answers to questions 59 and 60 herein.

**Question 62**

**Please describe the procedures used by Vietnam to implement its programme of privatization. Are foreigners allowed to participate in this privatization under the same terms and conditions available to domestic investors?**

**Answer**

The procedure to equitize a State-owned enterprise:

- Step 1: Preparatory phase (selecting an enterprise, establishing equitization management board).
- Step 2: Project development.
- Step 3: Approval and implementation of the project.
- Step 4: Shareholders meeting for approval, business registration.

The Government is currently considering publishing a pilot regulation on the sale of shares in equitized enterprises to foreign parties. However, there is no specific regulation on the same terms and conditions available to domestic investors and foreigners participating in these equitization.

**Question 63**

**Will foreign investors be able to participate in these privatization on an equal footing with national investors?**

**Answer**

The Government is currently considering publishing a pilot regulation on the sale of shares in equitized enterprises to foreign parties.

For the time-being, there's no decision or certain plan on this issue.

**Question 64**

**We would appreciate more details on Vietnam's privatization plans.**

**Answer**

The list of equitized companies is provided in the answer to question 59.

Vietnam is shifting from voluntary to compulsory equitization applicable to profitable SOEs on a selective basis. One-hundred and fifty enterprises are to be equitized in 1998.

Please refer to the answers to questions 59, 60 and 61.

**Question 65**

**When State enterprises are privatized, are foreign investors accorded national treatment?**

**Answer**

National treatment for foreign investment does not depend on equitization and it is under consideration.

Privatized shares are being sold to foreign parties on trial basis only; no official legal regulation has been issued yet.

**Question 66**

**Does Vietnam have plans to privatize the Vietnam Southern Food Corporation, the Vietnam Northern Food Corporation, the Vietnam National Coffee Export-Import Corporation or the Vietnam National Tobacco Corporation?**

**Answer**

At present, the Government is promoting equitization of small- and medium-size State-owned enterprises on an experimental basis. As the above enterprises are large national corporations, there is a plan to privatize some enterprises - members of the Large National Corporations.

**Question 67**

**Paragraph 6, page 11 refers to State interest in constructing large "...national corporations specialising in certain important lines of activities". Can Vietnam explain what sectors would be affected by such plans and what policies would be involved?**

**Answer**

The main principle pursued by the Government in establishing major national corporations is to consolidate resources and at the same time to avoid a monopoly.

In general, the creation of these large national corporations will be achieved through mergers of corporations which have the same interests and technology. They have great market shares and trade volume but not all of them operate in the important lines of activities. Major national corporations are established under Decision No. 91TTg and their members shall be decided by the Government.

Other corporations operating in different sectors of economy and stabilised on a voluntary basis by relevant ministries or provincial people's committees are smaller in term of business scale.

Major national corporations operate in the same footing with enterprises of other forms of ownership except for the sectors which are formulated.

**Question 68**

**We would be grateful if Vietnam could explain the passage in the Memorandum (section II.2(a)(v), page 11 of document WT/ACC/VNM/2) stating "...the Government advocates to construct some large national corporations specializing in certain important lines of activities".**

- (a) **Is this a reference to privatization of State-owned enterprises?**
- (b) **Could Vietnam provide information on the "important lines of activities"?**
- (c) **Will the industry sectors in which "large national corporations" operate include Vietnam's foreign trade activities involving the importation of like-products?**
- (d) **Will these "large national corporations" be government monopolies in their designated areas of activities or will they be private monopolies?**
- (e) **What means will be used to construct these "large national corporations" in each area of activity?**
- (f) **Could Vietnam provide an assurance that the means used to construct these "large national corporations" will be fully consistent with the obligations Vietnam will assume as a future WTO Member under GATT Article XVII?**

**Answer**

(a) The establishment of Large National Corporations (LNC) is a part of the reorganisation of State-owned enterprises. The equitization of enterprise members of LNC is under consideration. The sectors of important lines of activities LNC operate are the driving force of national economy and require huge investment.

The important lines of activities decided by the Government include infrastructure such as electricity, post and telecommunication, petroleum, energy, railways, maritime transport, cement production and trading, steel and iron, etc.

The full list of important lines of activities has not been formulated. No privilege on foreign trade is given to these sectors unless otherwise indicated in the Memorandum or answers to other questions.

(b) Some national corporations operate in areas where State monopolies are maintained such as electricity supply and postal and telecommunication services. Others operate in areas with competition with enterprises of other types. The names of these enterprises are listed in Appendix 5 of document WT/ACC/VNM/3/Add.1.

(c) The main principle pursued by the Government in establishing large national corporations is to consolidate resources and at the same time to avoid monopolies. The number of LNCs has been reduced by 60 per cent compared with that in 1990.

(d) In general, the creation of these large national corporations will be achieved through mergers of corporations which have similar interests, technology, encouraging traditional and diversifying business activity. Major national corporations are established under Decision No. 91/TTg and their members shall be decided by the Government. Other corporations operating in different sectors of economy and stabilised on voluntary basis by relevant ministries or provincial people's committees are smaller in terms of business scale.

Large National Corporations operate in the same footing as other enterprises except for the published sectors where a monopoly is retained.

Up to now, there are 18 LNCs only in the following fields:

- electricity;
- coal;
- cement;
- marine transport;
- aviation;
- petroleum;
- post and telecommunications;
- rubber;
- steel;
- coffee;
- cigarettes;
- paper;
- textiles and garments;
- food (2 LNCs);
- chemicals;
- gold and precious stones;
- shipbuilding industry.

(e) The Government of Vietnam intends to fully comply with all of its obligations once it becomes a Member of the WTO.

#### **Question 69**

**According to the Memorandum (WT/ACC/VNM/2), the Government is planning to construct some large national corporations specializing in certain important lines of activities.**

**In what sectors will the new large national corporations do business? Has the Government yet determined any of the lines of activities in which these corporations will be engaged? Have any of the corporations already been created? What ownership interest will the Government retain in these corporations? Will the Government provide any concessionary financing to these corporations? Will foreign firms be allowed to compete in the same sectors as the large national corporations?**

**Answer**

Large national corporations (LNCs) of Group A are listed in Appendix 5 of WT/ACC/VNM/2.

Large national corporations become not 100 per cent State capital as they also comprise of joint-ventures and equitized members.

Acting as the owner, the Government could allocate capital or additional capital to the LNCs. All SOEs using State capital shall pay "capital use tax" annually with tax rate in between 3.6 - 6 per cent per year, depending on industries (the proportion of capital contribution to a joint-venture is excluded).

On the same footing as other enterprises, large national corporations may receive subsidies, price subsidies or other State preferential schemes if they carry out production and/or supply services for remote mountainous regions, natural disasters fighting and for the purpose of national defence, security, public welfare activities, etc. Preference is given also if LNCs face losses in supplying goods or services at prices fixed by the Government lower than production costs.

**Question 70**

**It is stated that "the State of Vietnam also recognizes the ownership to fixed assets (except land ownership) of non-resident foreigners in Vietnam". Do resident foreigners have the right of ownership of fixed assets?**

**Answer**

As stated in the Memorandum (WT/ACC/VNM/2), in principle, the State of Vietnam recognizes the ownership of fixed assets of foreigners during their residency in Vietnam. These rights are entailed in the Law on Land dated 14 July 1993.

**Question 71**

**Vietnam has officially recognized the long-term land use right of farmers, including the transfer of land use rights as provided by law.**

**Please describe the long term land use rights. What conditions must be satisfied in order to obtain the long term use rights? Are long term use rights available to foreigners, under the same terms and conditions as apply to Vietnamese nationals? Are long term land use rights available for investors not engaged in farming?**

**Answer**

Unlike other countries maintaining private land ownership, Vietnamese Law provides that land belongs to the people and is uniformly managed by the State. The Government allocates land use rights to family units, individuals and enterprises. Subject to land use tax, Vietnamese nationals

may acquire long term land-use rights. Land use right is not allocated to foreigners. They are permitted to lease the land only. The Land Law which was adopted on 14 July 1993 and entered into force from 15 October 1993 provided as follows:

Article 73:

"Land users shall have the following rights:

1. To be issued with a certificate of the right to use land;
2. To benefit from the results of their labour and their investment on the land allocated;
3. To transfer the right to use the land in accordance with the provisions of the law;
4. To enjoy the benefits derived from public projects of land protection and improvement;
5. To receive government guidance and assistance in the process of land improvement and replenishment;
6. To enjoy State protection against the infringement of their legitimate land use rights; to be indemnified for actual losses incurred in the event that the land currently used by them is claimed back;
7. To contribute their land use right for production and business cooperation in accordance with the law and the purposes their land use right; and
8. To make complaints in respect of, or to denounce conducts which violate their legitimate land use rights and other conducts which violate the Land Law."

Land users enforce their rights during the period when they enjoy the use of the land allocated to them and they must strictly comply with the purposes for which the land is allocated to them in accordance with provisions of the Law on Land and other related regulations.

Article 79:

"The land users shall have the following obligations:

1. To ensure that land is used strictly in accordance with its intended purpose, that its use is confined within its allocated boundaries and complies with all other conditions stipulated at the time of allocation;
2. To ensure land protection and to take necessary measures to increase the benefit capability of the land;
3. To comply with the regulations relating to environment protection and protect the legitimate interests of users of adjacent land;
4. To pay taxes for the land use right and for the transfer of the land use right; and to pay cadastral fees as required by the laws;
5. To pay fees for land use when the land is allocated as provided by the law;
6. To compensate previous users from whom land is withdrawn for reallocation; and



7. To return the land when there is a decision of the State to claim it back."

Long term land use rights are not applied to foreigners. Allocation of land for rent to foreign organizations and individuals, international organizations (herein after shall be referred to as foreigners) and Vietnamese nationals residing abroad is decided by the Government.

Foreign organizations and individuals lease the land in Vietnam through land lease contracts.

Foreign organizations permitted by the Government of Vietnam to lease land shall have the following rights:

1. To use the land in accordance with the purpose of lease and for the duration of the lease;
2. To construct projects on leased land in accordance with permits issued by competent State bodies of Vietnam;
3. To own the constructed project on the leased land during the lease period. The ownership for such projects upon the expiry of the lease period shall be determined by the provisions of the land leasing contract;
4. To have their lawful rights to use the land protected by the State of Vietnam; and
5. To lodge complaints, or to notify authorities in respect of any breach or violation of their lawful rights to use land.

In addition to the rights referred to above, foreign organizations shall enjoy other rights conferred to them in international treaties to which the Government of Vietnam and the government of the relevant country of origin are signatories, or any other rights provided for in the land leasing contract pursuant to the laws of Vietnam.

#### Article 7:

"Foreign individuals, organizations and Vietnamese people residing abroad investing in Vietnam pursuant to the Law on Foreign Investment in Vietnam and permitted by the Government of Vietnam to lease land for agriculture or non-agriculture purpose shall have the following rights:

1. To enjoy the fruits of their investment on the leased land;
2. To mortgage at a Vietnamese bank the right to use the leased land and the value of any asset on that land which they themselves have invested in or constructed during the lease period, in accordance with the laws of Vietnam;
3. In cases where foreign organizations or individuals are permitted to invest in the construction of infrastructure in export processing zones and industrial zones, such organizations or individuals shall have the right to sublease the land on which the completed infrastructure is constructed in accordance with regulations of the Government of Vietnam;
4. To be entitled to the benefits of public works in respect of land protection and improvement;
5. To enjoy protection of their legal rights to use land by the State of Vietnam;

6. To lodge complaints or to notify authorities in respect of any breach or violations of their lawful rights to use land; and
7. To be given priority upon review of continuation of the lease when the lease period expires (if they so request)."

Article 8:

"Foreign individuals and organizations leasing land in Vietnam shall have the following obligations:

1. To use the land in accordance with the purpose stated in the land leasing contract and other relevant provisions;
2. To carry out all financial obligations related to the leasing of the land in accordance with the provisions of the law of Vietnam;
3. To comply with all provisions of the laws of Vietnam in respect of construction and environmental protection, and to avoid carrying out any activity against the interests of the State of Vietnam and which has adverse effects on surrounding land users, to comply with all inspections of land usage carried out by competent State bodies of Vietnam;
4. To not damage the land or devalue the land;
5. To return to the Government of Vietnam any unused land in accordance with the provisions of the laws of Vietnam and any agreement reached between the Government of Vietnam and the lessee."

Please refer to the answer to question 113.

**Question 72**

**Vietnam does not recognize the ownership to land and forestry. Does Vietnam have any plans to modify this policy in the near future?**

**Answer**

At present, the Vietnamese Government is in the process of considering possible additions and amendments to the Law on Land dated 14 July 1993. Details of additions and amendments are not available.

**Question 73**

**Does Vietnam have plan to upgrade its road transportation?**

**Answer**

Vietnam has plan a to upgrade its road transportation according to the economic development level, particularly as follows:

During the period from 1996 to 2000: Vietnam will concentrate on improving and upgrading existing national road networks, specially those in urban and industrial areas. In addition, investment is made partly to expand asphalt roads networks to all districts throughout the country.

**(b) Monetary and fiscal policies**

**Monetary, credit and foreign exchange policies**

**Question 74**

**Please describe how the Government uses its monetary policy to direct funds to sectors where production and service activities bring high return, generate more employment and contribute to better economic growth?**

**Answer**

The Government uses monetary policy as a tool to provide capital in the manufacturing and services industries which bring a high return, generate more employment and contribute to better economic growth, particularly as follows:

- credit policy is published annually, in order to clearly indicate priority industries which require greater amounts of capital or other forms of credits along with obligatory provisions of credit by commercial banks and borrowers in order to impose strict credit conditions with a view to ensuring more efficient and secure use of bank credits;
- the Government controls credit flows to the economy in order to control inflation. However, credit limitations are not applied to sectors which are efficient and essential to the economy, i.e., production, purchasing, processing of foodstuffs, production for exports and medium- and long-term credits;
- for large-scale projects in the field of infrastructure which contribute to faster economic growth, the Government may provide guarantees or give preferences on lending conditions, for example, less restrictions on loan amount and security requirements for loans.

Interest rate policy is also flexible in application in terms of interest rate with reasonable ceiling limitation. Loans are provided to encourage enterprises to borrow for investment in approved feasible projects; preferential interest rates for loans from Government budget resources (0.3 per cent lower than the market rate/month) are provided for investment projects under the Government's investment plans or under investment programmes under the Law on Encouragement of Domestic Investment; the ceiling interest rate for rural areas is higher than for urban areas in order to provide incentives for the commercial banks to increase the lending for these areas; loan rates for the poor are lower than the market rates in order to contribute to the eradication of hunger and reduction of poverty.

**Question 75**

**Please describe the system of foreign currency exchange controls that is being used in Vietnam. How does the Government intend to use the foreign currency exchange controls to encourage exports?**

**Answer**

Measures of foreign exchange controls are as follows:

- Vietnamese organizations and individuals can transfer convertible currencies abroad to pay for imports of goods and services;
- organizations can buy foreign currencies when there is a requirement for payment of current account transaction, with the exceptions for certain foreign-invested enterprises which must balance their foreign currency needs pursuant to the Law on Foreign Investment in Vietnam dated 12 November 1996;
- enterprises possessing foreign currency can open and maintain foreign currency accounts in banks for overseas payments or sales to the bank according to the enterprise's requirements.

**Question 76**

**How much debt do government-sector enterprises owe to commercial banks in Vietnam? Please provide annual statistics for new lending and for debt servicing. Are financial institutions including insurance companies, required to provide certain minimum amounts of the products to government-sector enterprises?**

**Answer**

The debts which State-owned enterprises owe to the commercial banks are as follows:

- 1995: 24,078 billion Dong, accounting for 57 per cent of total outstanding debt;
- 1996: 26,809 billion Dong, accounting for 52 per cent of total outstanding debt.

Financial organizations, including insurance companies, are not required to provide loans to State-owned enterprises. Borrowing and lending to enterprises in all sectors is conducted, *de facto* and *de jure*, on the same footing.

**Question 77**

**How does the Government of Vietnam or the State Bank of Vietnam enforce the prohibition on commercial lending to enterprises other than "profit-making enterprises"? Do commercial banks have to obtain approvals of loan applications from the Government or State Bank of Vietnam?**

**Answer**

According to credit rules promulgated by the State Bank of Vietnam, a borrower shall be a profit-making enterprise, an enterprise receiving subsidies or an enterprise without overdue debts. Commercial banks, however, may consider rescheduling when a borrower could not make scheduled payments due to objective difficulties.

Lending is based on commercial principles and the law does not require approval by the Government or the State Bank of Vietnam.

### Question 78

**Why are foreign-invested enterprises required to be self-sufficient for their foreign currency needs and domestic enterprises are not? What process must foreign investment enterprises follow to purchase foreign currency and what documentation are they required to produce? What deregulation in this area is the Government of Vietnam considering?**

#### Answer

These provisions originate from:

- weak foreign currencies reserve of Vietnam;
- objectives of attracting foreign investment for the export oriented production in order to generate foreign currencies, increase foreign currency reserve and assure better debt payment ability.

Therefore, when the investment licence is granted, based on the type of business of the enterprise with foreign-invested capital, the Ministry of Planning and Investment determines in detail the obligation of self-sufficient in foreign currencies of enterprises with foreign-invested capital in their investment licences.

Some incentive policies under the provisions of Article 33 of the Law on Foreign Investment in Vietnam, dated 12 November 1996 and particular cases shall be outlined below.

Procedures for buying foreign currencies of the enterprises with foreign-invested capital:

According to existing regulations of the State Bank on the sales of foreign currency to enterprises with foreign investment, the obligation of self-sufficient in foreign currencies shall be applied to two categories:

1. Enterprises which specialize in the production of products under import substitution programmes and products for infrastructure that are on prescribed lists of the Ministry of Planning and Investment, purchase foreign currency at commercial banks to meet reasonable commercial requirements.
2. Enterprises with foreign investment, other than those under paragraph 1 above, who are not meeting their foreign currency requirements may also apply, when facing difficulties, to the State Bank for foreign exchange sufficient to meet their actual needs. Such applications are considered on a case-by-case basis and are subject to foreign currency availability.

The file applied for buying foreign currencies shall consist of:

- an application to buy foreign currency;
- a copy of the investment licence;
- a notarized copy of the export/import licence issued by the Ministry of Trade;
- a report on foreign currency requirements during the current year; and
- a report on the implementation of the licensed invested capital.

Based on approval of the State Bank, the commercial banks are permitted to trade in foreign currency under existing regulations on foreign exchange control.

Banks selling foreign currency to enterprises must directly transfer the currency to the foreign bank account of the transferee.

Banks are not permitted to transfer money into domestic foreign currency accounts.

Along with implementation of the policy of gradual liberalization of foreign exchange restrictions on current account, the Vietnamese Government plans to narrow down gradually and then eliminate the requirement of self-sufficiency in foreign currencies for enterprises with foreign-invested capital

#### **Question 79**

**Under section II.2(b)(i) of document WT/ACC/VNM/2, Vietnam states that it intends to accelerate the establishment of markets where financial investments can be traded. The competitive conditions created by well-functioning capital market should help to efficiently direct finance to where it is needed in Vietnam' s economy and also complement efforts to mobilize saving for development.**

**Could Vietnam be more precise about realistic frames for setting up capital markets?**

#### **Answer**

Interbank markets for domestic and foreign currency were established in 1993 and 1994, and the activities of these have now been expanded.

A State Securities Commission was established in November 1996. This Commission is responsible for the establishment and development of stock markets in Vietnam. It shall also perform the function of State management and supervision of the activities of stock markets in Vietnam. A draft Ordinance on Securities and Securities Market has been drafted and is planned to be issued.

Additionally, Vietnam is promoting the establishment of securities companies and accelerating the equitization process.

#### **Question 80**

**Please give a more detailed overview on which foreign exchange transactions on the balance of current account (export, import of goods or services) are freely permitted, to residents and/or to foreigners, or permitted under which conditions.**

#### **Answer**

Foreign exchange transactions on current account for export-import transactions of goods or services are freely carried out except certain enterprises with foreign-invested capital which have the obligation of self-sufficiency in their foreign currencies needs under the Law on Foreign Investment in Vietnam. Please refer to the answer to question 78 for additional information.

Direct foreign investment transactions shall be carried out after the investment licence from the Ministry of Planning and Investment is granted.

Capital borrowing transactions shall be carried out after the document of the State Bank which confirms the borrowing terms and conditions for the resident is issued.

Residents (Vietnamese nationals and foreigners resident for more than 6 months) are allowed to open and maintain deposit accounts, payment accounts in Vietnamese Dong and foreign currencies at banks operating in Vietnam.

### Question 81

**Do investors face restrictions on cross-border capital movements?**

#### Answer

Under Article 22 of the Law on Foreign Investment in Vietnam foreign investors are permitted to transfer abroad their investment capital. When the enterprise with foreign-invested capital is terminated or dissolved, foreign organisation and individuals are allowed to transfer their invested and re-invested capital after all debts are liquidated. In case the transferring amount is higher than the initial invested and re-invested capital, the different amount shall be transferred only after approved by the issuing investment licence authority.

### Question 82

**Please give a more detailed overview on which capital transactions (foreign direct investment, portfolio investment, granting of loans, deposit-making, etc.) are freely permitted, to residents and/or to foreigners, or permitted under which conditions.**

#### Answer

In accordance with the existing Law on Foreign Investment in Vietnam, only foreign direct investment is permitted. No form of portfolio investment is allowed.

(a) Direct investment:

Non-residents are encouraged to invest directly in Vietnam under the Law on Foreign Investment. Foreign-invested capital is divided into two parts:

- legal capital: To be contributed by an investor in accordance with investment licence.
- loans: Foreign loans shall be registered by an enterprise with the State Bank of Vietnam.

Foreign-invested enterprises shall report to the State Bank of Vietnam on disbursement of invested capital.

Direct investment by residents abroad shall be approved by the Government.

(b) Portfolio investment:

Portfolio investment by non-residents into Vietnam shall be approved by the State Bank of Vietnam on case-by-case basis.

So far no regulations on overseas portfolio investments by residents have been issued.

(c) Foreign borrowing:

1. Enterprises owned by all economic sectors are allowed to contract foreign loans, provided that they satisfy conditions and are responsible for debt service. A foreign loan contracted by an enterprise shall be certified by the State Bank of Vietnam that it is under the approved ceiling of total foreign borrowing.

2. An enterprise contracting a foreign loan shall satisfy the following conditions:

- it is a legal entity under Vietnam's Laws;
- it is in a sound financial conditions (without tax arrears or overdue debt to banks);
- having feasible project approved by relevant authorities;
- obtaining a bank guarantee (if required by creditor);
- having draft loan contract with acceptable terms and conditions.

3. So far no regulations on lending by residents to non-residents have been issued.

(d) Account opening:

Residents and non-residents are allowed to open accounts in foreign currency with foreign-exchange authorized banks in Vietnam.

Opening of account abroad by residents requires approval from the State Bank of Vietnam.

Regarding direct investment, the Law on for foreign investment and Decree No. 12/CP provides for transfer of invested capital and banking services as follows:

(e) Transfer of invested capital:

The transfer of invested capital of the enterprises with foreign investment is stipulated in details as follows:

Parties to the joint-venture are entitled to transfer their share in the joint-venture, but the preferences should be given to the other parties in the joint-venture. In case of transferring to parties other than those in the joint-venture, the conditions on this transfer shall not be more favourable than those on the transfer to parties in the joint-venture. The transfer shall be approved by other parties in the joint-venture.

These regulations are also applied on the transfer of rights and obligations of parties to BCC.

1. Conditions on transfer of invested capital only takes effect when the state agency in charge of foreign investment approves the contract on transfer of invested capital.

2. If there is a profit arisen from transfer, the transferor is subject to profit tax rate of 25 per cent. If the transferee is a Vietnamese enterprise, the transferor may enjoy tax exemption or reduction.

(f) Loaned capital and other banking transaction:

The enterprises with foreign-invested capital are entitled to conduct banking transaction at Vietnamese bank, joint-venture bank or branches of foreign bank located in Vietnam. In some circumstances, if the State bank approves, the transaction may be conducted on the loan account at a foreign bank for the purpose of receiving loaned capital.

(g) Remittance:

Foreign investors in Vietnam are permitted to transfer aboard the profits derived from business activities, payment received from the provision technology services, the principal and



interest on any foreign loan obtained during the course of operation; invested capital and other assets lawfully owned after fulfilling tax obligation.

Upon termination of enterprises, the foreign organization or individuals may remit invested capital and re-invested capital after paying all tax.

In case that the amount of remitted capital is higher than the initial invested and re-invested capital, the difference is only permitted to be transferred if approved by the origination issuing investment licence.

### **Question 83**

**Can all transfers relating to foreign investments be made in a freely convertible currency (including remittance of profits)?**

#### **Answer**

Yes.

### **Question 84**

**Page 13 refers. What plans does Vietnam have in respect of international convertibility of the Vietnamese Dong? Paragraph 12, page 46 refers to consideration being given to making enterprises "self-responsible" for covering their foreign currency needs. Can Vietnam explain what is meant by this and comment on the compatibility of such a policy with the TRIMs Agreement and Article XI of the GATS?**

#### **Answer**

Making the Vietnamese Dong convertible for current account transactions is Vietnam's goal. However, no specific timetable has been finalized.

Article 33 of the Law on Foreign Investment in Vietnam provides "Foreign-invested enterprises and foreign partners in business cooperation contract are responsible for foreign currency needs in their operations".

The Vietnamese Government, however, guarantees supply of foreign exchange for infrastructure projects, projects producing essential import-substitution goods and some other important projects.

For other foreign-invested enterprises, the State Bank of Vietnam may consider partial support in terms of foreign exchange if they face difficulties in meeting their foreign exchange needs.

The following is the plan to make the Vietnamese Dong convertible:

- to increase production, maintain high and stable economic growth rate;
- in order to reach such goal that only Vietnamese currency to be used for transaction in the territory of Vietnam, the State bank is promulgating regulations reducing scope of transactions where foreign currency to be used. In the meantime, increase the foreign exchange reserves of the Government;

- to decrease the current account deficit;
- the State bank gradually enters and trades in international monetary markets;
- to consolidate inter-bank foreign exchange market with a view to collect necessary information for the purpose of market-based exchange rate;
- to manage the rate of exchange in the line with market situation;
- Vietnam is considering to ease current regulations on self-sufficiency for foreign currency, taking into account of the country's hard currency reserves.

### **Tax policy**

#### **Question 85**

**Could Vietnam provide information on the areas of the economy where it is considered necessary or desirable to impose State control and taxation of foreign trade, including through tariff and non-tariff measures?**

#### **Answer**

The trade policy of Vietnam including tariff and non-tariff measures have been adjusted. Vietnam will provide the required information to Working party as soon as it is able to do so.

#### **Question 86**

**What steps does Vietnam intend to take to improve the transparency of the tax system?**

#### **Answer**

Vietnam had carried out the first phase of tax reform process from 1990 and recently has moved to the second phase. One of the most important objectives of the current phase is to make the tax system clear, simple, easy for understanding, implementing and supervising in order to enhance the transparency of the tax system. The making of new tax regulations to the public in national scale shall improve the consciousness of the tax payers.

The second phase of tax reform process commenced at the beginning of 1995.

On 5 October 1995 the Vietnamese National Assembly issued:

- the Law on Value-Added Tax (VAT) which shall replace the existing Law on Turnover Tax issued on 30 June 1990;
- the Law on Corporate Income Tax which shall replace the existing Law on Profit Tax issued on 30 June 1990.

These two new laws shall come into effect on 1 January 1999. The following works are proceeded:

- to submit to the National Assembly certain amendments to other tax laws in order to make them compatible with the Law on Value-Added Tax and the Law on Corporate Income Tax;
- to prepare to submit to the National Assembly a Law on Personal Income Tax which shall replace the Ordinance on Income Tax for High Income Earners dated 19 May 1994; and
- to modify the existing Ordinance on Natural Resources Tax and thereafter replace it by a law on natural resources tax.

#### **Question 87**

**Will Vietnam commit to not apply the retroactive principle in the application of new tax rulings?**

#### **Answer**

As usual, when a new tax law is issued and replaces a previous tax law the tax payers shall be subject to the newly issued law from the date of its coming into force.

Retroactive principle is not applied when new tax rulings enter into force.

#### **Turnover Tax and Value Added Tax**

#### **Question 88**

**What is the current status of the shift from a turnover tax system to a value-added tax system? When does Vietnam expect to implement the value-added tax system? Will the turnover tax system remain in place after implementation of VAT during a transition period?**

#### **Answer**

The Law on VAT was adopted by the National Assembly on 10 May 1997 and is planned to come into force on 1 January 1999. Once the Law on VAT is in force, the turnover tax will no longer be applied.

#### **Question 89**

**Does the turnover tax apply to imported products? Are imported agricultural products subject to the turnover tax? Does the turnover tax apply to imported products subject to excise taxes?**

#### **Answer**

Under the provisions of the Law on Turnover Tax, imported products distributing in the domestic market for commercial purposes shall be subject to turnover tax.

Imported agricultural products distributing in the domestic market for commercial purposes shall also be subject to turnover tax.

Imported products which are subject to excise tax shall be imposed excise tax at the border and shall be imposed turnover tax when they are distributed in the domestic market for commercial purposes.

**Question 90**

**Please describe the procedures used by the tax authorities to exempt the production of export goods from the turnover tax. Which products are eligible for the turnover tax exemption? Are refunds made of turnover tax collected on the production of component parts incorporated into export goods?**

**Answer**

The Law on Turnover Tax will be replaced by the VAT as from 1 January 1999.

**Question 91**

**Do all exported goods qualify for the refund of value added tax? Does the VAT refund for exported goods apply without regard to the country of destination?**

**Answer**

All exported products are qualified for the refund of VAT regardless of the country of destination.

**Question 92**

**Please describe any differences in the rates or coverage of the VAT with respect to imported and domestically-produced products.**

**Answer**

There are four rates of VAT which are applied equally to both imported and domestically-produced products in a range of 0 to 20 per cent.

**Question 93**

**We welcome Vietnam's plans to replace the turnover tax by value added tax (VAT). We hope that the introduction of a VAT will produce a stronger and more transparent tax system and help generate and mobilize public savings. We also hope that the VAT will alleviate pressures to have recourse to trade taxes, particularly in view of the fact that, in accordance with the obligation Vietnam will assume as a future WTO Member under GATT Articles II and III, there will be no trade taxes other than customs duties at rates not exceeding Vietnam's bound rates of duty (other than the exception allowable in extreme circumstances strictly in accordance with the relevant provisions of the WTO Agreement).**

- (a) Given that Vietnam's VAT has been long anticipated and that delays in its introduction have already experienced in the National Assembly, how realistic is the Memorandum's forecast that the VAT will be enacted and implemented by 1 January 1998?**
- (b) Could Vietnam provide more details of its list of proposed exemption for VAT?**
- (c) Given that the exemptions are temporary, when will VAT be applied to each of the areas on that list?**
- (d) What is Vietnam meant by "small households with low average turnover"?**

**Answer**

The VAT shall be implemented from 1 January 1999.

VAT exemptions: There are 22 types of goods and services which are not subject to VAT as follows:

- agricultural production, sales of unprocessed agricultural products by the farmers themselves;
- salt production and trading;
- production, import of products which are subject to the excise tax;
- activities involving transfers of land use rights which are subject to the tax for transfer of land use rights, and sales of State-owned houses to the existing lessees;
- credit, banking and financial services;
- health services;
- education and training services;
- printing, publishing newspapers, magazines and periodicals;
- public sanitary and street drainage services;
- public passengers transportation by bus;
- transportation of goods in transit, goods temporarily imported for re-export; and
- importation of aided goods, gifts to social or religious organizations or government agencies; movable assets of the social or religious organization or government agencies, movable assets of foreign or organizations and individuals who enjoy diplomatic immunities or immunities pursuant to international treaties to which Vietnam is a signatory; non-dutiable personal belongings.

The VAT law specifies the date it shall enter into force but not its expiry date. The law does not refer to “small-households with low average turnover”, but does refer to “individual family business” which are business on family scale and do not hire employees.

**Excise Tax (special sales tax)<sup>2</sup>**

**Question 94**

**Is the excise tax applied to both domestic and imported goods in the covered categories? Are the rates applied to similar items equal? If not, please illustrate.**

**Answer**

The excise tax is applied equally to both domestic and imported goods in the covered categories except for domestically manufactured automobiles.

**Question 95**

**Please identify each item, including tariff line number, the applicable rates, for which the special consumption tax rate for imported products differs from the rate applicable to domestically-produced goods or services.**

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<sup>2</sup> In these answers, the terms "special sales tax", "special excise tax", "special consumption tax" can be understood as "excise tax".

**Answer**

For referring to the list of items applied excise tax, please see Circular No. 98 TC/TCP dated 30 December 1995 issued by Ministry of Finance. The translated Circular is available in the WTO Secretariat (Accessions Division, Room 1126) for consultation.

The excise tax is applied equally to both domestic and imported goods in the covered categories except for domestically manufactured automobiles.

**Question 96**

**Please describe all the tax exemptions and reductions available to enterprises using new technology, to enterprises operating in mountainous areas, offshore islands, or to newly established enterprises. Are foreign-owned enterprises eligible for these tax exemptions and reductions?**

**Answer**

Excise tax exemptions and reductions shall be applied in the following cases:

- newly-established production units entering into operation from 1993 and which have paid the excise tax but suffered losses shall be considered for tax reduction on year-by-year basis. The amount of the reduction shall be in proportion to the losses but the total amount of the reduction shall not exceed 30 per cent of the amount of the excise tax due for that year. The period of reduction shall not exceed two years following the commencement of production operation;
- enterprises investing and expanding production or applying new technology, and which have paid the excise tax but suffered losses, shall be considered for tax reduction. The amount of the reduction shall be in proportion to the losses but the total amount of the reduction shall not exceed 30 per cent of the amount of the excise tax due to the increased production resulting from the expansion of production or application of new technology.

The Law on Excise Tax does not provide separate tax exemptions and reductions for enterprises operating in mountainous areas or offshore islands. Under this law enterprises with foreign-invested capital may be considered for tax exemptions or reductions.

**Question 97**

**Please identify, including tariff line number, each item subject to the excise tax and the applicable tax rate for each item. For each item subject to the special excise tax, please provide the value of domestic production of the item.**

**Answer**

For referring the list of items applied excise tax, please refer to Circular No. 98 TC/TCP dated 30 December 1995 issued by Ministry of Finance. The translated Circular is available in the WTO Secretariat (Accessions Division, Room 1126) for consultation. The other statistics are not available at present.

### Question 98

**Please explain why the excise tax rates for certain products, such as tobacco, are shown as a range (32-70 per cent). Are different tax rates applied to the products at different times or under different conditions? The automotive tax rate ranges from 30-100 per cent. What determines the applicable tax rate for automobiles?**

#### Answer

The National assembly shall determine the range of tax rate. Based on the range of tax rate approved by National Assembly, the demand, supply and purchasing power, the Government will set forth the specific tax rate. The Law on Excise Tax specifies a range of excise tax rates for each group of goods. These rates are stipulated in details for each category of taxable goods in Circular No. 98 TC/TCP dated 30 December 1995 of the Ministry of Finance. The English version of this Circular is available in the WTO Secretariat (Accessions Division, Room 1126) for consultation.

### Question 99

**Please describe the provisions of the Law on Excise Tax which allow a reduction in excise taxes for production enterprises which face difficulties arising from an expansion of production capacity. According to the Foreign Trade Memorandum (WT/ACC/VNM/2), the excise tax is to be amended by special excise tax.**

#### Answer

Please refer to the answer to question 96 herein.

The special sale taxes of Vietnam can be compared with the commodities excise taxes applying, for example, to alcohol beverage or cigarette in other countries.

### Question 100

**Please provide the Working Party with a translated copy of the Law on Special Excise Tax and proposed amendments. When does the Government of Vietnam expect the special excise tax amendments to be enacted and come into effect?**

#### Answer

Vietnam is gradually reforming its tax system and is in the process of studying the possible amendments of the Excise Tax Law. Currently, the amendments plan for the Excise Tax Law has not been available. The English version of the Excise Tax Law is available in the WTO Secretariat (Accessions Division, Room 1126) for consultation.

### Question 101

**Please provide a schedule of the products subject to the special excise tax, including HS tariff numbers, and the excise tax rates that are applied. Please identify the "special services with high accumulation" that are subject to excise taxation.**

**Answer**

Currently a schedule of the products subject to the excise tax have been determined by group of goods. The HS tariff numbers of products which are subject to the excise tax have not been available and there are no services subject to the excise tax. Please refer to Circular No. 98 TC/TCP dated 30 December 1995 issued by Ministry of Finance for consultation. The translation of this Circular is available in the WTO Secretariat (Accessions Division, Room 1126) for consultation.

**Question 102**

**Are the special excise tax rates applied to the products the same for imported and domestically-produced goods? For purposes of levying the special excise tax, is VAT included in the ex-factory price for domestically-produced goods? Is VAT included in the customs-duty-cleared price for imported goods?**

**Answer**

The excise tax is applied equally to both domestic and imported goods in the covered categories except for domestically manufactured automobiles. The value added tax is calculated on the basis of the customs value of the imported goods plus the import tax.

According to the VAT law, that will come into force from 1 January 1999. Production and import of products subject to excise tax shall be exempted from VAT tax.

The VAT tax is scheduled to be applied from 1 January 1999, therefore, there are no detailed regulations on aspects mentioned in the question.

**Question 103**

**According to the Memorandum (WT/ACC/VNM/2), the excise taxes on the import of tobacco, alcohol and beer are imposed on the dutiable value of the product, including import duty. However, the excise taxes on domestically produced products are assessed only on the sales price.**

**Please indicate specifically how Vietnam plans to bring its excise tax provisions into conformity with the national treatment requirements of GATT Article III prior to accession to the WTO?**

**Answer**

Vietnam is gradually reforming its tax system and is studying special excise tax amendments. The national treatment outlined in Article III of GATT is under consideration process.

**Question 104**

**What is the basis for the domestic taxation of imported goods? We note, for example, that the special sales tax on automobiles was increased when import duties were lowered?**

**Answer**

The domestic tax is applied to locally-produced goods as well as imported goods. The excise tax is imposed on those products that require the orientation and guidance in consumption, i.e.,



restraint of consumption of luxury goods. For instance, passenger vehicles with less than 24 seats are subject to the excise tax. Excise tax is calculated on the basis of the customs value plus import duty.

## **Profit Tax**

### **Question 105**

**Please describe any differences between the treatment of enterprises with foreign-invested capital and domestically-owned enterprises under the corporate income tax. What business areas are likely to receive preferential tax rates?**

### **Answer**

The taxable profits of domestic enterprises are governed by the Law on Profit Tax. The taxable profits of enterprises with foreign-invested capital are governed by the Law on Foreign Investment of Vietnam of 12 November 1996. Some details are as follows:

1. Enterprises with foreign investment:

Four tax rates are applied: 10 per cent, 15 per cent, 20 per cent and 25 per cent.

Tax exemptions are granted in the following cases:

- manufacturing, trade and service enterprises enjoy profit tax exemption from the profit tax for 1, 2, 4 or 8 years from the date when the business first declares a profit, and profit tax reduction for 2, 3 or 4 years that followed, depending on type of business activities;
- profit tax refunds may be made in part or in full when profits are re-invested.

2. Domestic enterprises:

Three tax rates are applied: 25 per cent, 35 per cent and 45 per cent.

Tax exemptions are granted in the following cases:

- manufacturing, trade and service enterprises shall enjoy profit tax exemption for 2 years after they first declare a profit, and profit tax reduction of 50 per cent of the total profit tax due for the following 2 years;
- enterprises located in mountainous and offshore islands areas shall be exempted from profit tax for 3 years and 50 per cent profit tax reduction for the following 4 years;
- for investment projects expanding the production scale, enhancing production capacity and innovating technology, the profit tax shall be reduced in proportion to the amount of the invested capital, but not exceeding 50 per cent of the profit tax due.

The new Law on Corporate Income Tax shall be applied to both enterprises with foreign investment and domestic enterprises as from 1 January 1999.

However, enterprises with foreign-invested capital are still subject to profit as stipulated by Article 38 of the Law on Foreign Investment.

Please refer to the answer to question 107.

#### **Question 106**

**What are the profit tax rates applicable to enterprises engaged in the exploitation of scarce, precious natural resources and oil exploration? Are the same rates applied to foreign-owned and domestic-owned enterprises?**

#### **Answer**

Under the Law on Petroleum the profit tax rate applicable to petroleum exploitation is 50 per cent. This rate shall equally be applied to foreign-invested enterprises as well as domestic enterprises.

In the scarce and precious natural resources exploitation area profit tax rates of domestic enterprises are governed by the Law on Profit Tax dated 30 June 1990, and those of foreign-invested enterprises are governed by the Law on Foreign Investment in Vietnam dated 12 November 1996. For further information please refer to the answer to question 105.

#### **Question 107**

**What types of projects currently qualify for the preferential tax rates of 20, 15 and 10 per cent?**

#### **Answer**

According to Decree No. 12/CP dated 18 December 1997, Article 54, the preferential tax rates are applied to the following projects:

1. 20 per cent applied to the projects with at least one of the following indications:
  - animal husbandry, farming and processing of agricultural produce, forestry and aquaculture;
  - to export of at least 50 per cent of products;
  - to employ from 500 persons and up;
  - to apply advanced technology, invest in research and development;
  - to utilize most of materials and supply available in Vietnam; to explore and process effectively Vietnam natural resources; to produce goods at high content of localisation, meeting requirements in certain industry.

This rate is applied during 10 years from the commencing of business.

2. 15 per cent applied to the projects with at least one of the following indications:
  - to export of at least 80 per cent of products;
  - to invest in metallurgy, basic chemicals, mechanical engineering, petrochemicals, fertilizers, electronic, auto-vehicles and motorcycles parts production;
  - to construct, explore the infrastructure projects such as bridge, water supply, electricity, ports, etc.;

- to invest in perennial industrial crops;
- to invest in natural, socio-economically difficult regions (including hotel projects);
- to assignment of assets to the State of Vietnam after the expiration of the duration of operation without any compensation (including hotel project).

This rate is applied during 12 years from the beginning of business.

3. 10 per cent applied to the projects with at least one of the following indications:

- to construct, explore the infrastructure projects in regions with difficult natural, economic, and social conditions;
- to invest in mountainous and remote regions;
- those in the list of projects in which investment is specially encouraged.

This rate is applied during 15 years from the beginning of business.

## **Import-Export Tax**

### **Question 108**

**Please list by HS tariff numbers, all products subject to export duties and the rates applied. Why does Vietnam apply export tariffs?**

#### **Answer**

The current export duties of Vietnam are imposed on raw and simply-processed materials and some types of aquaculture products in order to protect the national resources, environment and adjust partially the source of State budget, encouraging enterprises to export finished or higher level processing products, minimizing export of raw materials, natural resources. Currently, the export-import tariff nomenclature is under consideration for adjustment. Some items shall be eliminated from the tariff nomenclature.

The list by HS tariff numbers of export dutiable products is not available.

### **Question 109**

**If appropriate, please identify, including HS tariff numbers, those products that receive import duty reductions or exemptions if they are used in export production. Please describe the procedures that must be followed to obtain the import duty reductions or exemptions and the criteria used in determining whether the duty reductions or exemptions will be granted.**

#### **Answer**

This regulation are being applied to all materials and products imported for producing export products.

The procedure for import tax reduction is outlined in the Law on Import-Export Tax dated 26 December 1991 and its implementing Degree No. 54/CP dated 28 August 1993.

It is stipulated that the import duty of materials imported for the production of export products shall be refunded in proportion to their percentage in export products.

The procedures for import duty refund for imported materials used for export products are as follows:

- a request for the refund of paid import duty or suspension of import duty in case the related products shall be exported within the period when import duty must be paid;
- the export contract signed with the foreign party in which the quantity, standard, quality and type of exported products are clearly indicated, and the import contract for the materials that are used for the production of export products;
- customs declaration proving the customs clearance of imported materials has been made at the Customs Office;
- customs declaration proving the customs clearance of the exported products, and certificate of export of actual products of the Customs Office;
- receipt of the paid import duty or import duty notice of the Customs Office on the amount of the import duty due if the relevant products are exported within the period when import duty must be paid;
- export and import assignment contract, if import and export are carried out by assignment.

If the imported materials used for the production of export products are the capital contribution of the foreign partner in a enterprise with foreign-invested capital established under the Law on Foreign Investment in Vietnam, the following additional documents shall be required:

- agreement on capital contribution between the enterprise with foreign-invested capital and foreign partner which has been duly approved;
- certifying by the authorized local tax office that the imported materials being capital contribution of foreign partner have been recorded in the accounting books of the enterprise and used for the production of export products;
- enterprises (Vietnamese and foreign-invested) won't pay import duty for materials imported for producing export products within 90 days after customs clearance of the 100 per cent prior import materials the enterprises export products in proportion with material imported. In case of delayed export out of 90 days, they have to pay just penalty at 0.2 per cent/delayed day for import duty amount for the remaining quantity of imported materials (after deducting the actual export within 90 days) or to pay that import duty and then will be refunded until full export.

#### **Question 110**

**Paragraph 6, page 16 and paragraph 24 refer to a "profit remittance tax" which applies to foreign investors seeking to repatriate profits from their investments. Can Vietnam provide more detail on the operation of this tax, the methods used to determine the precise percentage tax levied and the criteria used to grant exemptions from this tax?**

**Answer**

Profits remittance tax is set forth in Article 42 of the Law on Foreign Investment in Vietnam 1996 and Article 57 of Decree No. 12/CP of the Government as follows:

1. Profits remitting abroad mean profits earned by investment in Vietnam, including profit tax refunded in respect of any reinvestment and profits earned from assignment of capital to be remitted or kept abroad.
2. Profits remittance tax shall be applied at the following rates:
  - 5 per cent of profits remitted abroad in respect of foreign investors contributing no less than US\$10 million to the legal capital or capital of a business co-operation;
  - 7 per cent of profits remitted abroad in respect of foreign investors contributing from US\$5 million to less than US\$10 million to the legal capital or capital of a business co-operation;
  - 10 per cent of profits remitted abroad in respect of foreign investors contributing less than US\$5 million to the legal capital or capital of a business co-operation.
3. Profits remittance tax shall be collected each time profits are remitted.
4. There is no exemption from or reduction of profits remittance tax in any circumstance.

**Question 111**

**Paragraph 11, page 20 refer to recent amendments to Vietnam's import duty regime. Can Vietnam please provide full details on specific plans for restructuring its tariff regime and the timetable for implementing these?**

**Answer**

Restructuring tariff regime has just been started in order to apply the VAT on 1 January 1999 and estimated to finish prior to the second session of the Working Party.

Law on export duty and import duty are amended by:

- including 3 duty rates: non-MFN, MFN and preferential rates;
- including provisions providing for temporary duties applying to particular cases (anti-dumping, countervailing duty, etc.);
- building tariff nomenclature based on the Harmonized System Code (HS 96);
- determination of customs valuation based on the WTO's provisions.

**Question 112**

**On page 35, average tariff rates on certain major imports are provided. Could Vietnam provide details of the average tariff rates applied to imports of agricultural products?**

**Answer**

The average tariff rate applied to imports of agricultural products is 17.7 per cent (including agricultural products in Chapters 4, 6, 12, 18, 20 of on-going export and import tariff nomenclature). This average tariff rate is simple average tariff by tariff line (the average tariff rate referred to in paragraph 298, page 51 of the Memorandum on the foreign trade regime of Vietnam is simple average tariff rate by tariff line; the average tariff rate referred to in paragraph 299 is trade weighted average tariff rate).

**Agricultural Land Use Tax**

**Question 113**

**There appears to be a garble in the Memorandum paragraph describing the application of the agricultural land use tax to enterprises operating under the Law on Foreign Investment. Please describe again how enterprises under the Law on Foreign Investment are taxed on the use of land for agricultural production.**

**Answer**

Article 4 of Decree No. 74/CP dated 25 October 1993 on Providing Regulations in Detail on the Implementation of the Law on Taxation of the Use of Agricultural Land provides that enterprises with foreign-invested capital and foreign parties to business cooperation contracts and Vietnamese parties allowed to make capital contributions in the form of agricultural land use rights do not have to pay tax on agriculture land use rights but have to pay the land lease fee as provided in Article 79 of Degree No. 18/CP dated 16 April 1993.

**The Tax on Transfer of Land Use Rights**

**Question 114**

**Please describe the six cases of exemption from the tax on transfer of land use rights.**

**Answer**

Article 13 and 14 of Degree No. 114/CP dated 5 September 1994 provide the cases of exemptions and reductions as follows:

1. Exemption:

- exemption shall be granted to households and individuals transferring land use rights for settlement in new economic zones, mountainous regions and offshore islands in accordance with the decisions of the authorized State agencies;
- exemption shall be granted to government employees who move for settlement to new economic zones, mountainous regions and offshore islands in accordance with the job transfer decision of the authorized agencies;
- exemption shall be granted to government employees who change place of residence resulting from the fulfilment of their jobs and tasks in new economic zones, mountainous regions and offshore islands, and their retirement.

2. Reduction of 50 per cent of the tax on transfer of the land use rights for the following cases:
- the head of the household is a war invalid falling within certain categories;
  - the head of the household is the relative of a deceased veteran (MIA) who enjoyed a State subsidy;
  - disabled persons without working ability, minority, old persons in loneliness;
  - government employees who move for settlement to the areas other than new economic zones, mountainous, offshore islands in case of job transfer or retirement.

#### **Question 115**

**Do the foreign investors have to pay tax on transfer land use rights with similar terms and conditions as domestic investors do?**

#### **Answer**

Foreign investors are permitted to rent land for a given period of time. The Government of Vietnam does not grant land use rights to foreign investors. They are thus permitted to transfer land use rights. Therefore, they are not subject to the Law on Tax on Transfer of Land Use Rights.

#### **Natural Resources Tax**

#### **Question 116**

**Are foreign natural resource taxpayers subject to the natural resource tax under the same terms and conditions as domestic natural resource taxpayers?**

#### **Answer**

All foreign and Vietnamese organizations or individuals exploiting natural resources in Vietnam are subject to the natural resources tax under the Ordinance on Natural Resources Tax dated 30 March 1990. Enterprises with foreign-invested capital and foreign parties to business cooperation contracts signed before the date when the Ordinance was issued who exploit natural resources and make the payment for them under the provisions of the Law on Foreign Investment shall proceed with this payment and shall not have to pay the tax on natural resources.

#### **Income Tax**

#### **Question 117**

**Please describe the differences in income and profit taxation between Vietnamese and foreign residents in Vietnam. What is the rationale for taxing foreign residents in Vietnam differently from Vietnamese citizens?**

**Answer**

1. Individual income tax:

The differences in the Progressive Tax Schedule are as follows:

(millions of VND)

Threshold	Taxable Income (Vietnamese)	Taxable Income (Foreigners)	Rate (%)
1	up to 2	up to 5	0
2	from more than 2 to 3	from more than 5 to 12	10
3	from more than 3 to 4	from more than 12 to 30	20
4	from more than 4 to 6	from more than 30 to 50	30
5	from more than 6 to 8	from more than 50 to 70	40
6	from more than 8 to 10	from more than 70	50
7	from more than 10		60

The basis for imposing tax on foreigners residing in Vietnam and Vietnamese citizens is the incomes occurred in Vietnam and incomes occurred outside Vietnam.

2. Profit tax:

- foreign individuals doing business in Vietnam under the Law on Foreign Investment in Vietnam shall have to pay the profit tax provided in the Law on Foreign Investment in Vietnam dated 12 November 1996 and Degree No. 12/CP dated 18 February 1997;
- others individuals not falling within the above category doing business in Vietnam shall be subject to income tax provided in the Law on Profit Tax dated 30 June 1990 and Law on its amendments dated 6 July 1993.

**Question 118**

**What items constitute regular income and what items constitute irregular income?**

**Answer**

Regular incomes are incomes occurred regularly under the following forms:

- wages, salary and remuneration;
- bonuses in cash and in kind from different sources;
- other income arising from participation in business associations, Management Board; and
- individual income arising from participation of production, business and service activities which are not subject to profit tax such as long-term consultancy contracts, training, teaching, training for exams, art and culture performances.



Irregular incomes include:

- gifts and presents from overseas organizations or individuals to Vietnamese individuals in whatever form;
- income from contractual technology transfer including technology transfer through sale-purchase transactions, provision of know-how, technological method, trade marks, etc.;
- performing technology consulting and supporting services, transferring the utilization or right to use of scientific, trade or industrial equipment;
- income in the form of royalties of literature or art works, and income arising from construction engineering designs, industrial designs and other services and lottery winnings.

#### **Question 119**

**On individual income tax: what is the rate of the flat rate to be applied on income from investment and other income?**

**Answer**

Income tax for irregular income:

- currently income tax is not applied to interest from bank investments and deposits, and interest on any type of bonds, shares, or money sent from other countries;
- income tax rate for each technology transfer transactions in excess of 2 million Dong is 5 per cent;
- a tax rate of 10 per cent applies to each lottery win in excess of 12.5 million Dong;
- a rate of 5 per cent applies to each gift or present from other countries in excess of 2 million Dong.

#### **Question 120**

**Has Vietnam moved to Article 8 IMF membership and full current account convertibility?**

**Answer**

Vietnam is progressively abolishing restrictions on transactions on current account in order to eventually adopt Article 8, IMF. Currently the only restriction on transactions on current account is the requirement to balance foreign currency flows for certain enterprises with foreign-invested capital under the provisions of the Law on Foreign Investment in Vietnam dated 12 November 1996.

**(d) Investment policy**

#### **Question 121**

**We understand that the National Assembly has just adopted a new Foreign Investment Law. Vietnam is requested to submit this document to the Working Party in a WTO language.**

**It appears that in this new Foreign Investment Law certain sectors will be off limits to 100 per cent foreign-owned enterprises, which will be listed in a Government Decree to be approved in December 1996. Does Vietnam intend to change this? Please provide the Working Party this upcoming Government Decree.**

**Answer**

As in the preceding Law, the new Law on Foreign Investment provides for some limitations on 100 per cent foreign-owned enterprises. A translated version of this Law as well as the Government Decree implementing the Law is available in the WTO Secretariat (Accessions Division, Room 1126) for consultation. At the moment, Vietnam has no plans to amend the Law.

Prohibited and limited activities for foreign investment:

- construction, trading in international and domestic telecommunication (only permitted in the form of BC);
- exploitation and processing of Petroleum products, natural resources;
- air transportation, railway, sea transportation, public transportation; seaport construction, airport construction (BOT, BTO, BT project are subject to separate regulation);
- steel and cement production;
- industrial dynamic production;
- afforestation, perennial tree plantation;
- group tourism;
- culture, sport, entertainment.

**Question 122**

**The new Foreign Investment Law in Vietnam appears to be restrictive with regard to the application of income tax exemption on the profits re-invested in Vietnam.**

- (a) **Does Vietnam intend to change this in the future?**
- (b) **We understand that in the new Foreign Investment Law a capital transfer of value higher than the initial capital attracts a tax equal to 25 per cent of the difference arising from the capital transfer except when capital is transferred to a Vietnamese company. Please comment.**
- (c) **Can Vietnam confirm that, in the new Foreign Investment Law, it is considering merging the Domestic and Foreign Investment Codes? If so, what is the timetable foreseen?**

**Answer**

As in the preceding Law, all re-invested profits are exempted from paying tax. Under Article 42 of the new Law on Foreign Investment and Article 59 of Decree No. 12/CP, re-invested profits may be exempted partly or wholly as follows:

- if the profit tax rate applicable is 20 per cent, 50 per cent of the amount of tax due shall be exempted;
- if the profit tax rate applicable is 15 per cent, 75 per cent of the amount of tax due shall be exempted;
- if the profit tax rate applicable is 10 per cent, 100 per cent of the amount of tax due shall be exempted.

As provided for in Article 34 of the Law on Foreign Investment, a profit tax rate of 25 per cent shall be levied on the profits obtained from transfer of shares to other foreign party/ies. If the shares are transferred to the Vietnamese enterprises, the profit tax shall, if eligible, be exempted partly or wholly. This regulation is aimed to gradually increase the share of Vietnamese party/ies in joint-ventures to 100 per cent.

In the drafting of the new Law on Foreign Investment, the harmonization of the Law on Foreign Investment and the Law on the Encouragement of Domestic Investment was taken into consideration so as to create a level playing field for domestic and foreign-invested enterprises. The harmonization process will be gradually implemented

### **Question 123**

**Please describe the exact legal requirements for foreign investments to be approved.**

#### **Answer**

The approval of foreign-invested projects are mainly based on the following criteria:

- the legal status and financial capability of the foreign and Vietnamese partners;
- consistency of projects' objectives with the national economic and social development directions and plans;
- benefits to the State of Vietnam and Vietnamese partners of the joint-ventures (such benefits include: new production capacity, new sectors and new products, expansion of the market; employment generation; financial inflows of the projects, etc.);
- technology applied, reasonable use and protection of natural resources and ecological environment;
- rational use of land, compensation and floor clearing plan, evaluation of assets to be contributed to the joint-ventures (if any).

The approval procedures for foreign-invested projects is stipulated in the Law on Foreign Investment dated 12 November 1996 and Decree No. 12/CP dated 18 February 1997 providing detailed regulations for the implementation of the Law on Foreign Investment.

### **Question 124**

**What are the requirements for an authorization to invest in Vietnam, either in form of a new company or in form of a participation in existing one?**

**Answer**

Foreign investors are allowed to invest in Vietnam in the following investment forms:

- business cooperation on the basis of business cooperation contract;
- joint-venture enterprise; and
- 100 per cent foreign-invested enterprise.

For joint-ventures between Vietnamese and foreign partners, there is no ceiling limit on the share of foreign parties in a joint-venture. However, the foreign share in a joint-venture should not be less than 30 per cent of the total legal capital, unless it is otherwise approved by the Government. In principle, the legal capital shall account for at least 30 per cent of the total invested capital, except for special cases approved by the authority in charge.

The transfer of invested capital of the enterprises with foreign investment is stipulated in detail as follows: Parties to the joint-venture are entitled to transfer their share in the joint-venture, but the preferences should be given to the other parties in the joint-venture. In case of transferring to parties other than those in the joint-venture, the conditions on this transfer shall not be more favourable than those on the transfer to parties in the joint-venture. The transfer shall be approved by other parties in the joint-venture.

These regulations are also applied on the transfer of rights and obligations of parties to BC.

100 per cent foreign investment enterprises are entitled to transfer their invested capital, but the preferences should be given to Vietnamese enterprises.

The transfer of invested capital shall take effect upon the approval by State agency in charge of foreign investment

If there is a profit arisen from transfer, the transferor is subject to profit tax rate of 25 per cent. If the transferee is Vietnamese enterprises, the transferor may enjoy tax exemption or reduction.

**Question 125**

**The Foreign Trade Memorandum (WT/ACC/VNM/2) mentions that the Government's investment policy has several goals, among them generating employment and promoting exports.**

**What measures is the Government of Vietnam using to encourage investment that generates employment and promotes exports? Please describe any direct or indirect subsidies that are being provided to investors whose projects generate employment or promote exports.**

**Answer**

Article II.1 of the Law on Foreign Investment in Vietnam confirms Vietnam's policy to encourage foreign investment in certain sectors, including labour-intensive and export-oriented projects. The encouragement policy is implemented through preferential profit tax rate as stipulated in Article 54 of Decree No. 12/CP dated 18 February 1997. Details are as follows:

- tax rate of 20 per cent is applied to the projects which:
  - export at least 50 per cent of their products,
  - employ 500 or more workers;

- tax rate of 15 per cent applied to the projects which:
  - export at least 80 per cent of their products.

However, other elements are also taken into consideration. For example, an application of a project may be rejected if the technology is substantially outdated, though it can generate a great deal of job opportunities. Or in other case, if a project is initially committed to export 80 per cent of its output and thus eligible for profit tax rate of 15 per cent, but in fact it is able to export only 60 per cent of its output, the authority is entitled to adjust the applied profit tax rate to 20 per cent.

### **Question 126**

**Please provide a detailed list of investment incentives and what investors must do to qualify for them.**

### **Answer**

The investment incentive policies include:

1. The preferential treatment on tariff: Depending on the sector, region, and types of investment, the enterprises with foreign owned capital shall be subject to:

- Profit tax:
  - at a rate of 25 per cent, and no exemption or reduction of profit tax,
  - at a rate of 20 per cent where the foreign investment is encouraged, and in addition may be exempted from profit tax for a maximum period of two years commencing from the first profit making year, and may be entitled to a 50 per cent reduction of profit tax for a maximum period of the two succeeding years,
  - at a rate of 15 per cent where the investment satisfies a high number of investment promotion criteria. In addition may be exempted from profit tax for a maximum period of four years commencing from the first profit making year and may be entitled to a 50 per cent reduction of profit tax for a maximum period of the four succeeding years,
  - at the rate of 10 per cent where the investment is specially encouraged and exemption from profit tax may be allowed for a maximum period of eight years.

- Tax on Profit Remittance

Foreign investors were allowed to remit their legal profit abroad received from implementation of investment in Vietnam after withholding tax at rate of 5 per cent, 7 per cent and 10 per cent depending on level of capital contribution of foreign investors in the legal capital of the enterprise with foreign-owned capital.

- Import duties: The enterprises with foreign owned capital shall be entitled to exemption from export-import duties with respect of following:

- equipment, machinery and specialised means of transportation imported into Vietnam as part of fixed assets of an enterprises or as part of fixed assets for the

implementation of the business co-operation contract, or specialised means of transportation used to transport workers,

- components, parts, spare parts, moulds, accessories of the above equipment, machinery, specialised means of transport,
- raw materials, supplies imported for implementation of BOT, BTO, BT,
- species of lands and animals or specialised agricultural permitted to be imported for implementation of agricultural, forestry, fishery projects,
- other goods and materials used for projects in which investment is specially encouraged as stipulated by the Prime Minister,
- raw materials, supplies imported for exported goods,
- refunding a profits tax paid for profits reinvested: Depending on the sector, region, form and duration of reinvestment, a foreign investor can be refunded a total or part of profits tax paid for profits reinvested.

The foreign investor should have preferences when investing in the following sectors and regions:

- sectors:
  - export oriented production,
  - livestock, farming agricultural processing, forestry and aquaculture,
  - utilization of advanced and modern technology, protection of ecological environment and research and development,
  - labour intensive activities, processing raw material and effective exploitation of nature resources located in Vietnam,
  - construction of infrastructure facilities and important industry and production establishments;
- regions:
  - mountainous and remote regions,
  - regions with unfavourable economic, social conditions.

Please refer to Decree No. 12/CD dated 18 February 1997 Articles 54, 55, 56 for guiding the implementation of the Law on Foreign Investment. The translated Decree is available in the WTO Secretariat (Accessions Division, Room 1126) for consultation.

Meeting these above criteria (in an investment project and in the implementation of a business co-operation contract), a foreign investor should be entitled to a co-relative preferences stipulated in their foreign investment licence.

**Question 127**

**For each of the past three years, please provide the number and value of foreign investments that were licensed and the number and value of licensed foreign investment that were actually executed. For each of the past three years, please provide information on the foreign investment projects that were subject to performance requirements, such as domestic content or export performance.**

**Answer**

Total number of licensed projects:

	1995	1996	the first 10 months of 1997
Number of projects	404	367	336
Total value of investment capital (mil. US\$)	6616	8528	4453

Total value of disbursement capital of licensed projects:

1995	2652 mil US\$
1996	2200 mil US\$
the first 10 months of 1997	2950 mil US\$

Requirement for localization ratio:

Regarding to production and assembly of electronics appliance, the localization ratio is at least 20 per cent for the first 2 years and must be increased annually.

Regarding to the production and assembly of automobile, the required localization ratio is 5 per cent after the first 5 years and must be increased to reach the level of 30 per cent after the first 10 years.

Regarding to production and assembly of motorcycle and spare parts, the required localization ratio is 5-10 per cent after the first 2 years and must be increased to reach the level of 60 per cent after the first 5 years.

In fact, when applying for investment licence, many companies commit to realize this required ratio. However, many companies have failed to comply with the commitments.

The legal capital of a joint-venture must not be less than 30 per cent of invested capital and the contributed capital of foreign partners must not less than 30 per cent of legal capital.

In fact in most joint-ventures, the contributed capital of foreign partners makes up more than 50 per cent of joint venture legal capital.

### **Question 128**

**For each of the past three years, please provide the number and value of foreign investment projects that were financed by external loans made to Vietnamese joint ventures or Vietnamese national joint ventures.**

#### **Answer**

The invested capital of joint-ventures consists of legal capital and loaned capital. For each certain project, the investors can motivate loaned capital from different capital resources. The Government of Vietnam supervises loaned capital of enterprises with foreign owned capital just only in the legal aspects of the loan activities.

The required statistics are not presently collected.

### **Question 129**

**How does Vietnam explain the low execution rate for licensed foreign investments? Are foreign investors frustrated in their efforts to obtain other governmental approvals, such as approvals to import and pay for capital goods and raw materials?**

#### **Answer**

Vietnam often reviews and seeks more measures in order to attract foreign investments.

Since the promulgation of the Law on Foreign Investment in Vietnam, the execution rate of licensed foreign investment is 38 per cent. This rate is equivalent to that of other countries in region.

### **Question 130**

**What are "investment areas"?**

#### **Answer**

"Investment areas" should be understood as investment sector.

"Sector of the economy" should be understood as areas of the economy.

Article 13 of Law on Foreign Investment of Vietnam stipulates that:

Foreign investors may invest in Vietnam in sectors of its national economy. The State of Vietnam encourages foreign investors to invest in the following sectors and regions:

1. Sectors:
  - (a) export oriented production;
  - (b) livestock, farming, agricultural processing, forestry, and aquaculture;
  - (c) utilization of advanced and modern technology, protection of ecological environment and research and development;



- (d) labour intensive activities, processing of raw materials and efficient exploitation of natural resources located in Vietnam;
- (e) construction of infrastructure facilities and important industrial and production establishments.

2. Regions:

- (a) mountainous and remote regions;
- (b) regions with unfavourable economic and social conditions.

The State of Vietnam will not license any foreign investment project which will adversely affect national security, social order and security, historical heritage and culture, fine custom and tradition, or the ecological environment.

Based upon the planning and development strategy for each period, the Government shall stipulate regions in which investment is encouraged and shall issue a list of endorsed projects and specially endorsed investments, a list of sectors in which investment is conditional, and a list of sectors in which investment is prohibited.

Private Vietnamese economic organizations shall be permitted to co-operate with foreign investors in economic sectors, subject to conditions provided for by the Government.

**Question 131**

**If sectors of the economy are meant, what are the precise investment opportunities in each of the sectors? Are there restrictions on investment in certain sectors?**

**Answer**

There are 3 different kinds of sectors of the economy:

- sectors of the economy subject to general regulations;
- the encouraged sectors subject to encouraging regulations;
- the restriction sectors subject to particular conditions, named in the list of sectors in which investment is conditional, and the list of sectors in which investment is prohibited.

These lists to be stipulated by the Government for each period. These restrictions are generally applied.

Please refer to the answer to question 130.

**Question 132**

**How is priority given to investments matching development programmes (incentives)?**

**Answer**

Please refer to the answers to questions 125 and 135.

**Question 133**

**How are investments generating employment, etc. encouraged?**

**Answer**

Please refer to the answer to question 125.

**Question 134**

**What is a large scale investment?**

**Answer**

The Law on Foreign investment of Vietnam does not have any formal concept of large scale investment. However, it defines projects of Group A which are subject to licensing approval of the Prime Minister and could be considered as large and important projects, including:

- construction of infrastructure facilities and important industrial zones, export processing zones, BOT, BTO and BT projects;
- projects with investments of no less than US\$40 million in fields such as electricity, natural exploitation, petroleum, metallurgy, cement production, petrochemical, seaports construction, airport construction, culture and tourism area, real estate business;
- sea transportation and aviation projects;
- telecommunication projects;
- projects in insurance, finance, auditing and inspection;
- projects in exploitation of precious and scarce resources;
- projects in national defence and security;
- projects using no less than 5 ha (for urban land) and 50 ha (for other land categories).

**Question 135**

**What special incentives are given for investments into disadvantageous areas?**

**Answer**

Special incentives which are given to infrastructure construction projects in economically and socially disadvantaged areas, forestation projects, projects in mountainous and remote areas and projects subject to special investment encouragement include profit tax rate of 10 per cent, an exemption from profit tax for a period of four years, a reduction of 50 per cent of profit tax for a period of 4 years afterward. The list of encouraged projects to be issued by the Government for specific period of time.

**Question 136**

**Are all the incentives and tax breaks given on a non-discriminatory basis to national and foreign investors?**

**Answer**

There is difference in some policies, but they are not discrimination among investors.

Please refer to the answer to question 17, 105 and 109.

**Question 137**

**Is the treatment in general given to foreign investors as favourable or more favourable than the treatment of national investors? If not, what differences exist?**

**Answer**

Generally, foreign investors receive the same or more favourable treatment than domestic investors. In the Law on Foreign Investment and Law on Encouragement of Domestic investment there are some differences in methods, levels and timing.

Please refer to the answers to questions 105 and 108.

**Question 138**

**Please provide details of the Public Investment Programme 1996-2000, which we understand commits Vietnam to invest heavily in upgrading the production capacity in the steel, fertilizer and cement industries.**

**Answer**

The Public Investment Programme 1996-2000 of Vietnam sets indicators for steel, fertilizer and cement industries as follows:

- steel industry: coal or gas-fuelled steel complex with estimated capacity of 1.5-2 million tons is planned. Foreign investment has also been called upon to exploit iron ores in Thach Khe mine with the annual capacity of 10 million tons;
- cement industry: total cement output is expected to triple from 6 million tons per year to 18-20 million tons by the year 2000. At present, several joint venture cement factories with the capacity of 1-2 million tons are under construction. Vietnam has been seeking foreign investment for new cement joint venture projects;
- chemical and fertilizer industry: Vietnam is planning to promote petrochemical industry. There will be an increase in fertilizer output thanks to the expansion of some super phosphate factories and the establishment of a new DAP fertilizer factory and a new fertilizer factory using gas.

**Question 139**

**Are foreign investors permitted to hire and fire employees when they wish? If so, are there any penalties imposed on companies when they let workers go? Are there any special incentives for**

**companies to hire large numbers of workers? Does the Government of Vietnam require foreign investors to pay employees compensation at levels higher than domestic enterprises for comparable jobs?**

**Answer**

Foreign investors are permitted to hire and dismiss employees when they wish, subject to the provisions of the labour laws, particularly the regulations on the grounds for dismissal.

- if the dismissal is made in compliance with the law, employers are not required to pay the employees compensation. Otherwise, depending on the seriousness of their violation, employers are required to pay compensation;
- if the dismissal is not legally justified, employers shall have to withdraw the decision on dismissal, make public apology and restore the honour and all material interests of the employee concerned;
- if dismissal is due to mistreatment of employees, self-interest or personal motivations, the employer may be subject to penalties under the Criminal Code.

Enterprises established under the Law on Encouragement of Domestic Investment dated 22 June 1994 and generating large-scale employment are granted preferential tax treatment. Enterprises which hire large number of female and disabled employees are also granted preferences on tax and capital borrowing.

In principle, enterprises with foreign investment and domestic enterprises are equally treated in relation to all matters including those related to compensation. The Vietnamese Government determines the minimum wage in foreign-invested enterprise higher than in other enterprises. Besides this indicator, labour contract will regulate the relationship between employers and employees.

Please refer to the answer to question 125.

**Question 140**

**To what extent are any such requirements applied only to foreign-invested firms?**

**Answer**

Beside general matters applied equally to domestic enterprises and enterprises with foreign-invested capital, employment of the latter is still subject to the provisions of the Law on Foreign Investment of Vietnam dated 12 November 1993, the Decree of the Government of Vietnam No. 12/CP For Guidance on Implementing the Law on Foreign Investment dated 18 February 1997 and the Decree of the Government of Vietnam No. 72/CP On the Guidance on Some Articles of the Labour Law Concerning Employment dated 31 October 1995. These documents regulate in detail the employment procedures for enterprises with foreign-invested capital. The minimum salary applied to enterprises with foreign-invested capital is higher than that applied to other enterprises.

**Question 141**

**What exactly does "priority given to investment matching development programmes" and "encouraging investments generating employment..." mean?**

**Answer**

In order to make investment activities more efficient, based upon the planning and development indication for each period, the Government shall stipulate regions and projects which are encouraged and especially encouraged projects. These lists to be conducted on the basis of socio-economic master plan as well as plans of regions and sectors under the general development programme of the Government. The encouraged and especially encouraged projects will receive priority consideration and incentives as provided by the Laws.

Encouraging investments generating employment means number of Vietnamese employees to be employed will be one condition for receiving incentives, especially those enterprises undertake training courses for Vietnamese employees. All enterprises use no less than 500 workers could enjoy the profit tax of 20 per cent or less.

**Question 142**

**Does the Vietnamese Government intend to change the difference between the height of the minimum wages applied to Vietnamese enterprises? This action refers to an investment "policy".**

**Answer**

Up to now, the Government of Vietnam has no intention to change the difference between the height of the minimum wages applied to State enterprises as set forth in Decree No. 28/CP dated 28 March 1997 of the President of the Socialist Republic of Vietnam. Currently, the minimum wages applicable to State-owned enterprises are provided differently from those applicable to foreign-invested enterprises.

**Question 143**

**What additional incentives are available for the export processing zones (EPZs) and industrial areas? Please describe the criteria applied to firms wishing to locate in these zones and areas? Please define "industrial area" and describe how industrial areas differ from export processing zones.**

**Answer**

Foreign investors who invest in industrial zones and EPZs could enjoy the incentives in terms of profit tax, profit remittance tax and administration measures as follows:

1. Profit tax:
  - (a) regarding domestic enterprises: enjoying incentives as provided for in the Law on Encouraging Domestic Investment;
  - (b) regarding to enterprises with foreign investment capital:
    - EPZ enterprises:
      - a rate profit tax of 10 per cent and exemption from profit tax for the period of 4 years commencing from the first profit making year shall be applied to enterprises in production fields,

- a rate of profit tax of 15 per cent and exemption from profit tax for the period of 2 years commencing from the first profit making year shall be applied to enterprises in services sectors;
- regarding industrial zones enterprises:
  - the profit tax rate of 15 per cent and exemption from profit tax for the period of 2 years commencing from the first profit making year shall be applied to enterprises which export less than 50 per cent of its products,
  - enterprises exporting from 50 - 80 per cent of its products may be entitled to further reduction of 50 per cent of profit tax for the 2 succeeding years,
  - enterprises exporting more than 80 per cent of its products are subject to exemptions from profit tax for the period of 2 years and a reduction of 50 per cent of profit tax for the 2 following years commencing from the first profits declaring year,
  - a rate of profit tax of 20 per cent and exemption from profit tax for 1 year commencing from the first profit making year shall be applied to enterprises operating in service sectors;
- regarding enterprises developing infrastructure of industrial zones and EPZs:
  - a rate of profit tax of 10 per cent and exemption from profit tax for 4 years commencing from the first profit making year and a reduction of 50 per cent of profits taxable in the following 4 years shall be applied.

The above-mentioned rates of profit tax in connection with industrial zones enterprises and EPZ enterprises is applied for the whole course of operation of project.

2. Remittance tax:

A foreign investor shall, when remitting profits abroad, be subject to remittance tax at rates of 5 per cent of the profits remitted.

3. Import and export duty:

- EPZ enterprises could enjoy exemption from import duty imposed on the goods they imported from foreign countries and from export duty imposed on goods they export abroad;
- industrial zones enterprises are exempted from import duty imposed on:
  - machinery, equipment imported for setting up the fixed assets of the enterprises with foreign-invested capital;
  - specialized means of transportation included in production lines for setting up the fixed assets of the enterprises with foreign-invested capital and means of transportation used to transport workers (automobile of from 24 seats and upwards and watercraft);
  - components, parts, spare parts, support structures, moulds and accessories of the above mentioned equipment, machinery, specialized means of transport.

The exemption of import duties applicable to the above-mentioned equipment, machinery, means of transport shall also be applied in the case of expansion of a project and replacement or renewal of technology.

- with respect to raw materials, spare parts, accessories and other supplies imported for the production of goods for export, import duties must be paid upon being imported into Vietnam and shall be refunded upon export of finished products in proportion to the quantity of finished products exported.

4. Administration measures:

Activities of enterprises in industrial or EPZ are administrated by "one door service" regime. Board of administration of industrial zones is authorized by Ministries to carry out some functions of Ministries in order to handle in time problems arising in industrial zones or EPZ. For example: granting investment licence, approving export and import plans and issuing C/O, some procedures related to land use, customs procedures. Specialized organs such as Customs Office, Tax Administration and Banks establish their own offices in industrial zones or EPZs with a view to solving possible arising matters.

5. Infrastructures:

Industrial zones enterprises or EPZ enterprises are titled to rent land with complete infrastructures elements such as electricity, water system, transportation, telecommunication, etc.

**Question 144**

**Please describe the differences in rules applicable to foreign and domestic investors regarding prices and freedom of choice in the following areas: office space; residential quarters; public utilities such as water, gas and electricity; domestic and international telecommunications services; domestic and international airfares; taxes and government fees for companies producing similar products and services; hiring and compensation of employees. Please cite laws and regulations which authorize discriminatory treatment of foreign investors in the above areas.**

**Answer**

In the system of Vietnamese existing laws there are some differences in the rules applicable to foreign and domestic investors regarding the following areas: office space; residential quarters; public utilities such as water, gas and electricity; domestic and international telecommunications services, etc. However, at the present the domestic price of certain services such as water, and electricity, airfares (mainly monopolized by the Government) differ from domestic and foreign investors due to State price subsidies granted to Vietnam citizen and enterprises. Where electricity is concerned, in particular, the price of electricity used for production by enterprises with foreign investment capital is higher than that of electricity used by domestic enterprises. Similar situation also occurs with airfreight and airfares. In the future, the Government will withdraw gradually the said price subsidies to domestic citizen and enterprises, aiming at applying unique price to all buyers.

In terms of tax and fees, there is a difference between profit tax and income tax applied to domestic and that applied to foreign-invested enterprises. As set forth by the Law on Foreign Investment in Vietnam in 1996, the popular rate of profit tax applied to foreign-invested enterprises is 25 per cent, regarding to domestic enterprises the rate is 35 per cent, 45 per cent and 55 per cent depending on sectors. From 1 January 1999, a unique rate of profit tax and income tax of 32 per cent will be applied to all domestic enterprises, the rate for foreign-invested enterprises shall be remaining at 25 per cent.

Concerning labour employment, existing laws stipulate that foreigners shall only be recruited for jobs which require a level of technical and management expertise which a Vietnamese person cannot satisfy and training of Vietnamese citizens as replacements must be undertaken. The minimum salary paid to Vietnam workers in foreign-invested enterprises must not lower than that provided for by Ministry of Labour of Vietnam.

Only projects meet certain standards are permitted to offer for rent for foreigners. The unit rent price shall be made public.

The salary shall be discussed and agreed between employer and workers provided that it is not lower than minimum level.

#### **Question 145**

**What criteria are being applied in the determination of whether or not to approve an application from a foreign investor to engage in the distribution of products (warehousing, delivery, local invoicing, and after-sales service)? Are foreign investors permitted to establish in sectors where they may compete with domestic providers of goods and services? Do the same criteria apply to domestic investors seeking to engage in the distribution of products? How many such applications have been received from foreign investors in the past three years and how many have been approved?**

#### **Answer**

The Government of Vietnam does not encourage foreign-invested enterprises operating simply in trading services. A foreign-invested enterprise could conduct business as a agent distributing products and services produced or supplied by domestic economic organizations, foreign-invested enterprises, provided that the said products and services are produced legally in Vietnam and permitted to distribute in Vietnamese markets by competent authorities as well as in conformity with objectives of foreign-invested enterprises. If a foreign-invested enterprise want to be a agent, it must conduct a contract with economic organization in need of agent and undertake tax obligations to the Government. After being accepted as an agent, the enterprises with foreign-invested capital shall inform the Ministry of Planning and Investment and the people's committee of the province where the enterprise allocates its headquarters or branch for control purpose.

#### **Question 146**

**The paper notes that investment projects receive a tax holiday, paying only 25 per cent profit tax. What rate is paid by firms that do not receive the tax holiday?**

#### **Answer**

According to the Law on Foreign Investment of Vietnam dated 12 November 1993, foreign investment in the form of joint-venture enterprises and enterprises with 100 per cent foreign-owned capital are normally subject to the profit tax rate of 25 per cent (except for investment projects for exploitation of petroleum and scarce and precious natural resources of Vietnam).

When the tax holiday is granted, a 50 per cent tax reduction is provided. For priority projects, the profit tax rate is lower than 25 per cent (i.e. 20, 15 or 10 per cent) and is applied for the initial years of operation after investment licences are granted. The above-mentioned Law has been replaced by the Law on Foreign Investment in Vietnam of 6 November 1996.



Please refer to the answer to question 105.

**Question 147**

**Does the preference for certain investments take the form of the special advantages? If yes, which ones (a special tax advantage is mentioned), or does it also take the form that other investments are not permitted?**

**Answer**

The Law on Foreign investment in Vietnam dated 6 November 1996 and Decree No. 12/CP dated 18 February 1997 provided tax preference to investment in priority sectors and regions. Article 72 of the said Decree stipulated some preferences in term of foreign exchange control to special important projects: "...with respect to projects for the construction of infrastructure or the production of essential import substitutes and some special important projects, the State Bank assures the enterprises with foreign owned capital and foreign parties to business co-operation contracts shall be permitted to convert Vietnamese currency into foreign currency in order to meet their reasonable requirements in strict compliance with the regulations on foreign exchange control of Vietnam.

With respect to enterprises with foreign-owned capital and foreign parties to business co-operation contracts which are not entitled to the above assistance in meeting their foreign currency requirements and which encounter difficulties in meeting their foreign requirements, the State Bank may consider permitting conversion or purchase of foreign currency in accordance with the regulations provided by the State Bank".

As set forth in the Law on Foreign Investment in Vietnam, enterprises with foreign-owned capital could enjoy some preference such as preferential tax rates, or exemption from or reduction of profit tax in a certain period of time if they invested in sectors or regions the Government of Vietnam encourages investments and meets all the conditions defined in the Law. As mentioned above, the preference is mainly in terms of tax, this preference does not also take the form that other investments are not permitted.

Restriction on number of investors, if any, will be stipulated clearly in appropriate time.

**Question 148**

**What is the legal situation as regards the repatriation of foreign investments made in Vietnam and the repatriation of profits stemming therefrom?**

**Answer**

The activities in question are governed by the Law on Foreign Investment in Vietnam dated January 1996. Foreign investors can remit profits earned from business activities, payments for technical services, repayments of loans and interests, invested capital and other money and assets lawfully owned. Depending on the store of capital initially invested, the remittance shall be levied a tax of 5, 7 and 10 per cent.

**Question 149**

**Please describe the special cases in which foreign investors are exempted from the tax on profit repatriation.**

**Answer**

Please refer to the answer to question 150.

**Question 150**

**What is meant by "recession" on withholding tax (profit repatriation tax) available to enterprises manufacturing export goods or import substitution goods?**

**Answer**

Article 57 of Decree No. 12/CP dated 18 December 1997 providing regulation on implementation the Law on Foreign Investment in Vietnam dated November 1996 stipulated in details the rates as follows:

- 5 per cent of profits remitted abroad in respect of foreign investors contributing no less than US\$10 million to the legal capital or capital of a business co-operation;
- 7 per cent of profits remitted abroad in respect of foreign investors contributing from US\$5 million to less than US\$10 million to the legal capital or capital of a business co-operation;
- 10 per cent of profits remitted abroad in respect of foreign investors contributing less than US\$5 million to the legal capital or capital of a business co-operation.

There is no exemption from or reduction of profits remittance tax in any circumstance.

**Question 151**

**The Government announces every year a list of tax reductions on materials and equipment for the production of enterprises manufacturing export goods or import substitution goods. These tax provisions appear to be inconsistent with TRIMs - Article 2 (Please see paragraph 2 of the Illustrative List). How are these tax reductions determined and notified to investors? Are the tax reductions available for purchases of imported materials and equipment? How does Vietnam intend to bring these tax provisions into conformity with TRIMs requirements?**

**Answer**

At present, the Government of Vietnam announces every year a list of import substitution goods which could be considered for a reduction of sale tax for enterprises producing them. There is not a similar list of materials and equipment for the production of enterprises manufacturing export goods or import substitution goods. The determination of tax reduction granted to production of import substitution goods based on the out-put products which included in the list of import substitution goods issued by the Government each year, no matter the input materials are imported or domestically produced. The regulations truly reflect the current policy in this field. VAT applicable to both imported and domestically produced goods will replace the turnover tax.

**Question 152**

**The fourth sub-paragraph of paragraph 3, page 23 of the Memorandum (WT/ACC/VNM/2) says that "...encouraging investments generating employment and promoting exports". Does this mean that Vietnam has the investment policy which attaches some conditions to the foreign investment so as to generate employment and to promote exports?**

**Answer**

Investments generating employment and promoting exports are among those investments to be encouraged by the Government of Vietnam. By invest in these investments encouraging sectors, foreign investors may subject to tax preference as provided for in the Law on Foreign Investment in Vietnam.

**Question 153**

**The sixth sub-paragraph of the same paragraph says import duty is exempted for capital goods of joint-venture enterprises.**

**Is this not the requirement for participation in domestic capital with incentives?**

**Answer**

The Law on Foreign Investment in Vietnam set forth that “The exemption of import duties applicable to machinery, equipment specialized means of transportation included in production lines for setting up the fixed assets of the enterprises with foreign-invested capital shall or in the case of expansion of a project and replacement or renewal of technology”. This regulation is aimed at the attraction of foreign investment in Vietnam.

**Question 154**

**The seventh sub-paragraph of the same paragraph says that import duty reductions and exemptions are applied to imported materials for the purpose of export production. Could this mean so called "trade balancing requirement" which infringe the TRIMs Agreement, or export subsidy?**

**Answer**

This does not refer to a “trade balancing requirement”. Materials imported shall be normally subject to import duty. However, their paid import duty shall be refunded, if the tax payers can prove that such imported materials have been used for the production of export products and these products have in fact been exported.

**Question 155**

**When potential investors are denied an investment licence, do they always receive an explanation of the reasons for the denial? What are some reasons that licences have been denied? What percentage of applications are approved? Must investors already have access to land before they apply for an investment licence?**

**Answer**

Ministry of Planning and Investment has denied investment licence with a little percentages. The denial is made by official dispatch sent to investors in which reasons of the denial are always referred. In many circumstances, the official dispatches provide foreign investors with recommendations on proper directions in order to invest in Vietnam.

Prior to an application for an investment licence, a foreign investor must reach to an agreement with Vietnamese relevant agencies on the site where project will be developed. In such case that a foreign investor intends to rent land, works or infrastructure in industrial zones and EPZ,

he also has to get approval dispatch on investments place granted by the local people's committee as well as document contains terms and conditions on land renting agreed with enterprises running infrastructure in industrial zones or EPZ itself prior to application for investment licence.

#### **Question 156**

**What are the current dispute settlement procedures for foreign investors? Is there provision for investor versus government disputes? Does Vietnam allow for dispute to be arbitrated by impartial courts in third countries (e.g., UNCITRAL, ICSID, etc.)?**

#### **Answer**

Depending on the subject matter and the parties involved, when a dispute arises, foreign investors can use different existing Vietnamese juridical institutions with various dispute settlement procedures in Vietnam or abroad in accordance with Vietnamese law and international treaties to which Vietnam is a party in the field of trade and investment. Particularly:

- pursuant to Article 24 of the Law on Foreign Investment of Vietnam dated 12 November 1996, disputes arising between parties to business cooperation contracts or enterprises with foreign-invested and Vietnamese domestic enterprises shall be first to be resolved amiably; if it is not successful, they shall be referred for settlement before Vietnamese arbitration institutions or courts provided by Vietnamese laws;
- in addition to the above-mentioned provisions, parties to joint-ventures or business cooperation contracts can negotiate, in their contract, to choose an international arbitration institution or arbitration institution of a third country to resolve their disputes;
- disputes between the parties to BOT, BTO and BT contracts shall be resolved by the method agreed by them in these contracts;
- disputes between foreign investors and Vietnamese State: Although Vietnam has not acceded to the Washington Convention, in each of its agreements on investment protection and promotion signed with other countries there is a separate clause on the settlement of disputes between foreign investors and Vietnamese State which generally provide that these disputes can be resolved by an international arbitration institution in accordance with procedures selected by the disputing parties. Basically, these procedures are similar to those of UNCITRAL and ICSID.

In addition to the provisions on dispute settlement, the new investment law also contains a new Article 64 which provides that foreign investors, enterprises with foreign-invested capital and parties to business cooperation contracts have the right to sue or lodge complaints against illegal decisions or conducts triggering unnecessary burdensome of government employees or government agencies in accordance with the provisions of Vietnamese laws on the settlement of administrative disputes.

#### **Question 157**

**What are Vietnam's regulations regarding repatriation of profits and invested capital? Is there any protection against nationalization and appropriation? Is there any proposal to accede to the Multilateral Investment Guarantee Agency (MIGA) provisions?**

**Answer**

Regarding the repatriation of profits and capital abroad by foreign investors:

Article 22 of the Law on Foreign Investment in Vietnam provides that foreign investors in Vietnam are permitted to transfer abroad:

- profits derived from business activities;
- payments received from the provision technology and services;
- the principal and interest on any foreign loan obtained during the course of operation;
- invested capital;
- other sum of money and assets lawfully owned.

Article 57 of the Decree 12/CP dated 18 February 1997 provides the remittance tax rates as follows:

- 5 per cent of profit remitted abroad in respect of foreign investors contributing no less than US\$10 million to the legal capital or capital of a business co-operation contract;
- 7 per cent of profit remitted abroad in respect of foreign investors contributing from 5 per cent to no less US\$10 million to legal capital or capital of a business co-operation;
- 10 per cent of profits remitted abroad in respect of foreign investor contributing less than US\$5 million to legal or capital of a business co-operation.

Regarding nationalization and confiscation:

Article 21 of the Law on Foreign Investment provides:

During the course of investment in Vietnam, capital and other lawful assets of foreign investors shall not be requisitioned or expropriated by administrative measures (some specific exceptions are provided here under), and enterprises with foreign-owned capital shall not be nationalized.

The State of Vietnam shall protect industrial property rights and shall guarantee the legal interests of foreign investors in respect of technology transfer into Vietnam.

Where the interests of a licensed enterprise with foreign-owned capital or of the parties to a licensed business co-operation contract are adversely affected by a change in the law of Vietnam, the State shall take appropriate measures to protect the interests of the investors.

Additionally, in the agreements on investment protection and promotion signed between Vietnam and other countries there are detailed provisions on compensation for investors in case of expropriation as follows:

No signatory shall apply any expropriation measure, nationalization or any deprivation of possession right which have the same effect of nationalization and expropriation against investors of other signatories, except in the following cases:

- (a) measures are applied for public purposes in lawful manner;
- (b) measures are non-discriminatory;
- (c) measures are accompanied by the provisions of prompt adequate and effective compensation.

The compensation shall be equal to the market value of the investment immediately before the expropriation take place or being made known to public and shall be made without any delay. The compensation shall include the interest calculated from the date of expropriation. The compensation shall be performed effectively and freely transferred abroad.

Vietnam joined MIGA from November 1994.

#### **Question 158**

**Is foreign investment protected from expropriation?**

#### **Answer**

Please refer to the answer to question 157.

#### **Question 159**

**Page 23 refers (WT/ACC/VNM/2). Can Vietnam confirm that there are no sectoral restrictions on foreign investment. Please answer with respect to services as well as goods. Are there restrictions on the form which foreign investment can take, e.g. requirement to form a joint-venture? Page 23 contains a reference to policies encouraging investments which promote exports. Can Vietnam provide details on such policies and comment on their compatibility with the TRIMs Agreement?**

#### **Answer**

The Law on Foreign Investment in Vietnam stipulated that the Government shall announce the list of areas in which investment is conditional and the list of areas in which investment is prohibited.

Investment restriction is not based on the form of investment, but on investment sectors.

Please refer to the answer to question 121.

Enterprises with foreign-invested capital may enjoy the profit tax rate of 20 per cent if they export at least 50 per cent of their production and 15 per cent if they export at least 80 per cent of their production.

#### **(e) Competition policy**

#### **Question 160**

**Please provide more information on competition policy. In what way is competition regulated in the various laws and under law documents?**

#### **Answer**

In Vietnam, there is no specific law on competition. The Vietnamese Government is currently considering the possibility of adopting such a law. At present, Vietnam is using certain indirect measures such as prohibiting monopoly by organisations or individuals in certain business areas, prohibiting compulsory fixed price and permitting organizations and individuals, within the legal framework, to negotiate and sign economic contracts by themselves.

**Question 161**

**Could Vietnam explain more specifically what "economic areas under sectoral management" in the first sub-paragraph (page 24 of WT/ACC/VNM/2) means?**

**Answer**

When the economy was centrally planned, State-owned enterprises dominated in every sector. In each sector there was a governmental agency controlling all State-owned enterprises operating in that sector. Such management was referred to in the Memorandum (WT/ACC/VNM/2) as "sectoral management".

Nowadays, government agencies have no controlling power over the business activities of SOEs, but still manage sectoral development policy; therefore called "sectoral management".

**Question 162**

**Please provide the Working Party with a list of all areas under "sectoral management by specific product and service". Please identify all government ministries and offices which must approve application for an enterprise to operate in each of these areas.**

**Answer**

Other service sectors subject to sectoral management will be provided later.

**Question 163**

**Please provide a list of all enterprises allowed to operate in each sectoral management area by individual geographic area. Please describe these enterprises as State-owned privately-owned, domestic or foreign, and the year in which the enterprise was approved to operate. Please further identify and describe any special or exclusive rights that have been granted to these enterprises to provide goods or services in a particular location or to a particular customer.**

**Answer**

The Memorandum (WT/ACC/VNM/2) does not mention the sectoral management according to geographic areas, so far it is not available such list. The Vietnamese Government determines the list of sectoral industries, of regions and technological standards, etc. in priority, encouraged to all SOEs, private and foreign businesses under the Law on Business and Law on Foreign Investment in Vietnam.

The list of industries and regions in priority and encouraged for investment is determined in the Decree No. 29/CP dated 12 May 1995 "Detailed regulations on implementation of the Law on encouragement of domestic investment". All organisations, Vietnamese nationals, Vietnamese overseas and foreigners resident in Vietnam are encouraged and protected by the Government in their investment.

The incentives for the businesses providing goods and services to the above-mentioned industries and regions include: incentives in taxes and others as in Decree No. 29/CP.

**Question 164**

**Does Vietnam in the future intend to issue and apply legislation on competition?**

**Answer**

Please refer to the answer to question 160 herein.

**III. FRAMEWORK FOR MAKING AND ENFORCING POLICIES AFFECTING FOREIGN TRADE IN GOODS AND TRADE IN SERVICES**

**1. Powers of Executive, Legislative and Juridical Branches of Government**

**(a) National Assembly**

**Question 165**

**The Memorandum (WT/ACC/VNM/2) provides an outline of the constitutional basis for policy-making without reference to the role of the Communist Party of Vietnam. We would appreciate clarification on the constitutional role of the Communist Party in policy-making in Vietnam. Is the role of the National Assembly that of giving legislative effect to the policy of the Communist Party of Vietnam?**

**Answer**

The Constitution of the Socialist Republic of Vietnam of 1992 states that:

- The Communist Party of Vietnam is the leading force of the State and society. All organizations of the Party must act within the framework as prescribed by the Constitution and laws;
- The National Assembly is the highest representative body of the people and the supreme State authority of the Socialist Republic of Vietnam. The National Assembly is the sole organ charged with constitution- and law-making function. The National Assembly determines the principle policies relating to internal and external affairs, socio-economic tasks, national security and defence, main regulations for State's organization and functioning, social relations and activities of citizens;
- The National Assembly exercises the supreme supervisory function over all activities of the State;
- The Government is the executive body of the National Assembly and the highest administrative body of the Socialist Republic of Vietnam. The Government uniformly manages the implementation of the tasks of the State relating to political, economic, cultural, social and external affairs, security and defence;
- The People's Supreme Office of Supervision and Control (the People's Supreme Inspectorate) supervises the rule of law in relation to the activities of the ministries, ministerial-level agencies of the Government, local authorities, economic and social organizations, People's arms forces and citizens. It exercises the prosecutor's supervisory function to ensure the strict and uniform observance of laws;
- The People's Supreme Court, local People's courts, military courts and other courts established by laws constitute the juridical system of Vietnam;
- In summary, the Communist Party of Vietnam plays the leading role in the society by means of its Political Platform and the activities of its members in social organizations and agencies. The Communist Party of Vietnam does not run or manage the country.



**(b) The State President**

**Question 166**

**When does the President decide that it is necessary for the National Assembly instead of the President to ratify international treaties?**

**Answer**

Article 103, item 10 of the 1992 Constitution of the Socialist Republic of Vietnam stipulates that the State President shall make decisions on the ratification of international treaties except for those that must be submitted to the National Assembly for ratification. The President himself shall decide whether it is necessary to submit international treaties to the National Assembly for ratification. Since the 1992 Constitution of the Socialist Republic of Vietnam came into force, there has been just one case (i.e the 1982 United Nations Convention On the Law of the Sea) in which the international treaty was submitted to the National Assembly for ratification.

**Question 167**

**Is there anything to stop Vietnam from beginning implementation of its future WTO commitments before final ratification?**

**Answer**

In the process of integration in the world economy, accession to the WTO and joining other international economic organisations, Vietnam has been doing a lot of preparatory work to adjust its institutional capacity up to the requirements of the above mentioned process. Vietnam will strictly observe its commitments and obligations embodied in the Protocol of Accession.

There is no difficulty in implementing the commitments which is consistent with the existing laws of Vietnam and under the competence of the Government. Other commitments will be implemented upon the ratification of the National Assembly.

**(d) The Supreme People's Court and the Supreme People's Office for Supervision and Control**

**Question 168**

**In what way is the Head of the Supreme People's Office of Supervision and Control responsible to the National Assembly?**

**Answer**

According to Article 7 of the Law on Organization of the Supreme People's Office for Supervision and Control 1992, the Head of Supreme People's Office for Supervision and Control shall report to the National Assembly, or in between the sessions of the National Assembly to the Standing Committee of the National Assembly and the State President. In addition, he/she is also responsible for answering all questions raised by the Members of the National Assembly.

At the sessions of the National Assembly, the Head of Supreme People's Office for Supervision and Control shall submit written report on criminal and law infringement situation and the results of supervising activities to the National Assembly.

Reports to the Standing Committee of the National Assembly and the President of State may be made by submitting written reports or making oral hearings, as the case may be.

### **Question 169**

**Please explain in what way the President of the Supreme People's Court has to report to the National Assembly?**

#### **Answer**

Article 135 of the 1992 Constitution of the Socialist Republic of Vietnam, and Article 15 of the Law on the Organization of the People's Courts dated 10 October 1992 stipulates that:

"The President of the Supreme People's Court shall be responsible and report their work to the National Assembly and between the sessions of the National Assembly to the Standing Committee of the National Assembly and the State President."

Particularly, at each National Assembly session, the President of the Supreme People's Court must make reports on the trial of criminal, civil, matrimonial and family, economic, labour, administrative cases as well as its other professional activities to members of the National Assembly. At its year-end sessions, the National Assembly shall consider and discuss matters mentioned in the reports. At its mid-year sessions, the reports may be submitted if requested by the National Assembly. In order to draw up a report for submission to the members of the National Assembly, the President of the Supreme People's Court has to sum up the work of the Local People's Courts as Article 31 of the Law on the Organization of the People's Courts dated 10 October 1992 provided that the Presidents of provincial and municipal People's Courts under the direct control of the Central Government, are responsible for reporting activities of local People's Courts to the People's Councils at the same level and to the Supreme People's Court.

In addition, the President of the Supreme People's Court is also responsible for answering all questions raised by the Members of the National Assembly concerning the performance of trials and professional activities of the courts.

## **2. Government Entities Responsible for Making and Implementing Policies Affecting Foreign Trade**

### **Question 170**

**Please describe the administrative procedures followed by the Ministry of Planning and Investment (MPI) for business registration and issuance of investment licences for foreign enterprises seeking to establish 100 per cent foreign-owned companies or joint-ventures in Vietnam. Does MPI co-ordinate an inter-ministerial review, with line ministries, of applications before granting registration and licences for foreign investment projects? Does MPI grant registration licences before or after the Ministry of Trade issues export or import licences to the foreign enterprise?**

#### **Answer**

After receiving the application and the project documents, the Foreign Investment Department of MPI shall examine and arrange necessary procedures to send those documents to relevant Ministries and Agencies (or to the Office of the Government and State Council for Evaluation of Investment Projects if those projects belong to A group). The Office for Project

Evaluation of the MPI assure the coordination in evaluating investment projects. The Foreign Investment Department and other functional departments of the MPI also take part in the said process.

Based on the assessment of Ministries and Agencies, the Office for Project Evaluation submits the evaluating results to the Minister of MPI for their approval of issuance or refusal of an investment licence, or transfer the evaluating results for consideration of the Prime Minister (for A group projects). In case of approval, the Office for Project Evaluation prepares and submits the investment licence to the Ministers of MPI for their signatures. Upon receiving the investment licence, investors can implement follow-up activities such as register for the project head-quarter, register for import-export activities to Ministry of Trade.

#### **Question 171**

**Please clarify what is meant by the Ministry of Trade's responsibility "To consider and permit setting up of the offices in Vietnam by foreign economic organizations", especially how this differs from MPI's responsibility to manage business registration and issue investment licences.**

#### **Answer**

Pursuant to Article 21 of Decree No. 82/CP dated 2 August 1994 on issuing the regulations on establishment and operation of representative offices of foreign economic organisations in Vietnam, Ministry of Trade retains the uniform State administrative supervision over the operation of representative offices of foreign economic organisations in Vietnam.

The Ministry of Trade is authorized to issue and renew licences of make any change relating to the number of employees, office address for operation fields of representative offices. Ministry of Trade is entitled to withdrawing or rescinding licences of all representative offices of Foreign Economic Organizations in Vietnam (except financial and banking institutions which are under the competence of the State Bank of Vietnam).

The Ministry of Trade thus acts as a governmental agency on behalf of the State of Vietnam to monitor the operation of representative offices. The operations of representative offices of foreign economic organizations are limited in the function of liaison offices for promotional activities (but not profit making activities within Vietnamese territory), particularly:

- to promote the development of projects, economic and technical co-operation programmes;
- to supervise the implementation of the economic and commercial contracts;
- to be not permitted to conduct any direct profit-making activities such as doing business, services in Vietnam resulting in money-earning.

The Ministry of Planning and Investment is in charge of monitoring foreign investment in Vietnam, granting, renewing, amending or withdrawing investment licences in Vietnam to foreign economic organisations.

Provincial Departments of Planning and Investment which depend on line management of the Ministry of Planning and Investment and administrative management of provincial people's committees are in charge of granting business licences for Vietnamese enterprises.

#### **Question 172**

**Compliance with WTO rules and responding to queries from WTO Members on WTO issues will require a high degree of coordination and cooperation from government ministries. We**

**note that the Memorandum (WT/ACC/VNM/2) lists a large number of ministries and agencies at the national and provincial level with responsibilities in drafting and implementing policies relating to foreign trade.**

**We would be grateful for advice on any mechanism which may be in place, or which may have been proposed, to facilitate coordination and eliminate duplication among government agencies.**

**Answer**

The Government of Vietnam has formed a governmental negotiating delegation led by a Vice-Minister for Trade for Vietnam's accession to the WTO. The establishment of a governmental body coordinating international trade policies has been proposed and is under consideration. Such body will together with the negotiation delegation help ensure efficient co-ordination and implementation of trade and economic policies.

**3. Powers of the Local Government and Administrative Committees**

**Question 173**

**The Memorandum (WT/ACC/VNM/2) states that provincial administrations are authorized to carry out State management and control over foreign economic activities within the provinces. Paragraph XII of GATT Article 24 requires that WTO Members' central authorities take such reasonable measures as may be available to ensure observance of the provisions of the agreement by the regional and local governments and authorities within its territory.**

**When provincial administrations "carry out government management and control over foreign economic activities within the provinces" how is this actually done? Are provincial responsibilities and rights delegated by the central authorities, or do these local administrations have the right to conduct foreign economic and trade policies independently from the National Government?**

**Answer**

The provincial authority has the competence and responsibility to carry out the State management and inspection on the external economic activities in provincial area when it notices potential infringements or otherwise finds it necessary to do so. Their activities are subject to the following principles:

- integrity in State management from the centre to the local levels, in each economic sector as well as among different economic sectors must be ensured;
- such competence is authorized or delegated by the central authorities;
- activities are in conformity with the socio-economic development plans approved by the Government;
- consistency and integrity of laws and policies from the central to local levels must be observed.

In reality, inspection by provincial authority may be done in the following cases:

- to implement the programs of the central authority;
- to ensure the rule of law in necessary cases;
- to exercise the authority given by the central authority.

The provincial authority may implement external cooperation programs which are consistent with plans approved by the Government.

**Question 174**

**Please provide more details on the division of authority between central and sub-central governments.**

**Answer**

Please refer to the answer to question 178 herein.

**Question 175**

**For the activities which require central government approval, must foreign investors also seek and receive approval from provincial administration? If not, when is provincial approval required? Are there published regulations covering this subject? What is the reference?**

**Answer**

According to the project evaluation procedures, before the project being submitted to the Government for approval, the project is required to be approved by local authorities in its main lines together with recommendations that it corresponds to the local master plan of investment as for its location and proposal on the rate of land-rents.

**Question 176**

**Do local authorities have the right to set taxes on goods?**

**Answer**

Local authorities do not have the right to impose taxes on goods. For the time-being, there are some kind of fees charged by local authorities. Vietnam has been drafting a legal regulation on fees.

**Question 177**

**Do they (local authorities) have any say in development in trading policy?**

**Answer**

The local authority may:

- propose policy measures in line with regional needs;
- draft sectoral and multi-sectoral economic development plans and implement these plans when they are approved;
- make guidelines provisions of and in conformity with legal documents issued by higher authorities for implementation at local level; and,
- implement the tasks of the Government under the Government's written authorization.

#### **4. Regulations on Policy Planning Approval and Ratification**

##### **Question 178**

**According to Chapter I of the Memorandum (WT/ACC/VNM/2), the final Protocol of Accession of Vietnam to the WTO shall require ratification by either the National Assembly or the Standing Committee of the National Assembly depending on the final content.**

**Please describe the factors that will determine whether the Protocol will need to be ratified by the National Assembly or by the Standing Committee of the National Assembly. To what extent can the Government of Vietnam implement changes in its trade regime without legislative intervention or the requirement to formulate new laws?**

##### **Answer**

In accordance with the 1992 Constitution of the Socialist Republic of Vietnam, the National Assembly has the right to "...ratify or rescind international treaties to which Vietnam is a signatory or a participant according to the State President's proposal" (Article 84); the State President has the right to "...make decisions on the ratification of or participation in international treaties, except for cases that the submission to the National Assembly for its decision is necessary" (Article 103). The National Assembly's Standing Committee does not have the right to approve international treaties. Therefore, WTO acceding documents having the nature of an international treaty must be approved by the National Assembly or the State President.

The Government has the competence to decide on and apply the changes relating to the trade regime which must comply with legal documents issued by the National Assembly, the Standing Committee of the National Assembly and the State President. In accordance with the Law on the Enactment of Legal Documents dated 12 November 1996 (which took effect on 1 January 1997), the Government documents shall principally be documents guiding the implementation of laws and ordinances adopted by the National Assembly and the National Assembly's Standing Committee. Therefore they shall not include new provisions and shall not be contrary to the regulations of higher hierarchy. Only certain independent decrees in fields that have not yet been regulated by laws or ordinances are allowed to introduce new regulations. This provision is aimed at ensuring consistency and stability in Vietnam's legal system. The Commercial Law adopted by the National Assembly on 10 May 1997 provides in details the State management function of Government in commerce.

##### **Question 179**

**Please describe each step of the legislative process that will need to be completed to ratify Vietnam's Protocol of Accession to the World Trade Organization. Please note any significant differences in the process for ratification between the National Assembly and the Standing Committee of the National Assembly.**

##### **Answer**

In accordance with the Ordinance on the Conclusion and Implementation of International Treaties, the legislative process of ratifying Vietnam's protocol of accession to the World Trade Organization will include the following steps:

- the Ministry of Trade and the Ministry of Foreign Affairs jointly recommend the Prime Minister to submit the Protocol to the State President for his ratification;

- the State President either ratifies the Protocol or, should he find it necessary, presents the Protocol to the National Assembly for the latter's ratification;
- after the ratification, the Ministry of Foreign Affairs will formally make domestic and international notification of the Protocol's entering into force.

The differences in the process for ratification between the National Assembly and its Standing Committee:

The National Assembly considers and decides on the ratification of international treaties submitted by the State President.

The National Assembly's Standing Committee does not have the power to ratify international treaties to which Vietnam is a participant. Pursuant to the Law on Enactment of Legal documents, the National Assembly's Standing Committee only promulgates Ordinances and resolutions as assigned by the National Assembly.

### **Question 180**

**Who is responsible for the ratification and implementation procedures of international treaties?**

#### **Answer**

Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam, ratified (Articles 84 and 103) and the Ordinance of the Standing Committee of the National Assembly On the Conclusion and Implementation of International Treaties in 1989 (Article 7, item 2), the National Assembly and the State President shall have the right to ratify Vietnam's international treaties or otherwise submit them to the National Assembly for ratification.

Under item 3, Article 7 of the Ordinance, the agency in charge and the Ministry of Foreign Affairs shall jointly propose the international treaty to the Prime Minister who shall subsequently submit it to the State President.

Under the above Ordinance (Article 7, item 4; Article 8, item 4; Article 17; Article 18; Article 19), the Ministry of Foreign Affairs is responsible for notifying other signatories of the approval and ratification of international treaties, interested Vietnamese ministries and agencies of the date when the international treaties come into effect. It shall also be responsible for putting in archives, copying, registering and circulating international treaties of Vietnam.

### **Question 181**

**For which international agreements is ratification required by the National Assembly? Is this the case for the ratification of the WTO Agreement?**

#### **Answer**

All international treaties which contain provisions conflicting with the laws of Vietnam must be ratified by either the State President or the National Assembly. Other treaties which do not contain provisions conflicting with the laws of Vietnam may be ratified by the Prime Minister.

Please refer also to the answers to questions 166, 178 and 179.

**Question 182**

**What process will be needed to complete national procedures relating to WTO accession? Will implementing legislation be required?**

**Answer**

Please refer to section II.4 of the Memorandum (WT/ACC/VNM/2) and the answers to questions 179 and 181.

**Question 183**

**Please provide an up-date on progress of the implementation of the 1992 Constitution of the Socialist Republic of Vietnam and the Law on the Organization of the Government.**

**Answer**

1. Concerning the 1992 Constitution:

(a) In economic aspects: the National Assembly has adopted a series of important laws, such as:

- the Law on Encouragement of Domestic Investment dated 22 June 1994; Pursuant to this Law, enterprises of all economic sectors shall enjoy the same incentives;
- the Law on State-Owned Enterprises dated 20 April 1995;
- the Law on Cooperatives, dated 20 March 1996;
- the Law on Bankruptcy dated 30 December 1993;
- the Law on Foreign Investment in Vietnam (amended on 12 November 1996);

It has also established the Economic Court and two non-governmental arbitration institutions: The Vietnam Economic Arbitration Centre on 5 September 1994 and Non-Governmental Economic Arbitration on 16 February 1996.

(b) In socio-politic aspects:

- the Civil Code of the Socialist Republic of Vietnam was adopted on 28 October 1995;
- the Labour Code of the Socialist Republic of Vietnam was adopted on 23 June 1994; and
- the Law On Election of the Members of the National Assembly (1997) and the Law on the Election of People's Councils' Representatives were adopted.

(c). In juridical aspects: the Administrative Court, Labour Court and Economic Court have been established.



2. Concerning the Law on Government Organization:

- Decree No. 15/CP dated 2 March 1993 On the Duties, Rights and State Management Function of Ministries and Ministry-Equivalent Bodies;
- Decision No.38/TTg on the Reform of Administrative Procedures in the Activities of State Management Bodies of 1995;
- restructuring some ministries, for example: merged the Ministry of Forestry, the Ministry of Agriculture and the Ministry of Water Irrigation into the Ministry of Agriculture and Rural Development. Ministries are no longer responsible for business management. This management has been transferred to business organizations (e.g., the business management function is split from the General Post Department to the General Post and Telecommunications Corporation).

5. **Laws and Subordinate Legislation**

**Question 184**

**Please provide information on the hierarchy of law. Where do international agreements such as the WTO Agreement fit into the hierarchy of law?**

**Answer**

Pursuant to the Law on the Enactment of Legal Documents dated 12 November 1996, the Vietnamese hierarchy of law is as follows (in descending order of legal force):

- the Constitution of the Socialist Republic of Vietnam;
- legislation issued by the National Assembly including: laws, resolutions;
- legislation issued by the National Assembly's Standing Committee including ordinances, resolutions; and
- legislation issued by other authorized State agencies at the central level in order to implement legislation issued by the National Assembly and the National Assembly's Standing Committee:
  - orders and decisions of the State President;
  - resolutions and decrees of the Government and decisions and instructions of the Prime Minister;
  - decisions, instructions and circulars issued by Ministers, heads of ministry-equivalent bodies and bodies under the Government's direct control;
  - resolutions of the Judicial Committee of the Supreme People's Court; decisions, instructions and circulars issued by the Head of the Supreme People's Office for Supervision and Control;
  - resolutions and circulars jointly issued by government authorities, government authorities and socio-political organizations; and

- legislation issued by People's Councils and People Committees at different levels in order to implement the legislation of superior government authorities:
  - Resolution of the People's Council; and
  - Decisions and instructions of the People's Committees.

Please refer to the answer to question 185.

#### **Question 185**

**Do international agreements have direct applicability in the national legal system?**

#### **Answer**

Vietnamese legislation does not contain provisions concerning the position of international agreements in the legal system. However, it is stipulated in many legal documents that priority should first be given to the application of international agreements to which Vietnam is a signatory or in which it participates in the event that those agreements include provisions that conflict with those of Vietnamese law. After necessary procedure on legal validity are accomplished, international agreements shall be applied in the national legal system.

Vietnamese legislation neither provides for direct applicability of international treaties in the national legal system nor does it ban the direct application of such treaties.

#### **Question 186**

**Are all new laws, regulations and administrative orders published in the Public Gazette?**

#### **Answer**

As a general rule, as stipulated in Law on the Enactment of Legal Documents dated 12 November 1996, legal documents shall be published in the Public Gazette or made known to the public through mass media. Legal documents issued by local authorities and provincial People's Councils shall be put up in notice in such localities.

#### **Question 187**

**Is publication a legal obligation?**

#### **Answer**

Yes.

#### **Question 188**

**Can laws, regulations or administrative orders take effect before publication? If yes, under what circumstances? How frequently does this occur?**

**Answer**

In accordance with the Law on the Enactment of Legal Documents, legal documents may stipulate a retroactive date in sparingly applied cases. However, they must not stipulate a retroactive date in the following cases:

- stipulating new legal liability for an act for which, at the time of occurrence of that act, the Law did not provide for any liability, or
- stipulating a heavier legal liability than that previously existing for the act.

**Question 189**

**Can laws, regulations or administrative orders reach back and be applied retroactively?**

**Answer**

Please refer to the answer to question 188.

**Question 190**

**What is the juridical status of Vietnam's economic courts and what is their jurisdiction? How many petitions were filed by foreign investors in the economic courts in each of the past three years? How many judgments were issued and how many of the judgments were awarded to foreign investors?**

**Answer**

(a) According to Article 1 and Article 2 of the Law on Organization of the Supreme People's Court, Economic Courts are specialised courts belonging to the People's Courts and are established at central, provincial or city level.

(b) According to Article 23:3 of the Law on Organization of the Supreme People's Court, Article 78:2 of the Ordinance on Economic Disputes Settlement Procedures and Decision No. 94/TCCB dated 11 March 1994 of the Chief Justice of Supreme People's Court on Functions, Responsibilities and Operation Regulations of Economic Court of the Supreme People's Court, the functions and responsibilities of the Economic Court of the Supreme People's Court are as follows:

- reviewing economic cases which have been judged by provincial court in case its decision or judgment has come into effect but that decision or judgment is appealed in conjunction with provisions of proceeding laws;
- assisting the Chief of Justice to examine and deal with complains which fall into the competence of Economic Court. Assisting the Chief of Justice to implement the rights of final appeal to the decisions and judgments of provincial courts when those decisions or judgments have come into effect but are appealed in conjunction with proceeding laws;
- preparing reports on economic cases which settling decisions or judgments have come into effects but are appealed in conjunction with proceeding laws and submit that reports to the Committee of justices and the Council of Justices of Supreme People's Court;

- drafting recapitulating reports and sum-up reports of the Supreme People's Court on Economic dispute settlement situation and request for statement of bankruptcy of enterprises.

(c) According to Article 30:3 of the Law on Organization of People's Court, Article 4:1 of the Law on Bankruptcy, Article 12, Article 13:2 and Article 78:1 of the Ordinance on Economic Dispute Settlement Procedures, the provincial courts are responsible for:

- serving as preliminary court in some economic cases, such as: disputes arising from contract between legal persons and legal persons, legal person and natural person who has business registration (except the cases of which the value is under 50 million Dong. These cases shall be judged by District Courts), disputes between a company and its members, disputes among members of a company relating to establishment, operation or dismissing of the company, disputes relating to credit and bond deals and other economic disputes which are stipulated by the law.
- serving as Appellate Court in the case of decisions or judgments of lower courts which have not yet come into effects and being appealed.
- dealing with cases of enterprises bankruptcy as stipulated by the law.

According to Article 32:2 of the Law on Organization of People's Court and Article 13:1 of the Ordinance on Economic Dispute Settlement Procedures, District Courts are responsible for judgement of disputes concerning economic contract of which the value is under 50 million Dong (except the case where the parties are foreigners).

According to reports of 17 out of 61 Provincial Courts (including the courts of the cities under direct control of the Central Government), there were 95 complains submitted to 7 provincial courts over the past 3 years relating to foreign investors and 79 cases were tried, from which 74 cases were awarded to foreign investors.

## **6. Description of Judicial, Arbitral or Administrative Tribunals or Procedures**

### **Question 191**

**It has been suggested that foreign companies are not able to successfully use Vietnam's court system to resolve a dispute. It has also been suggested that there is a widely-held view among foreign interests operating in Vietnam that in a dispute with domestic private interests, State-owned enterprises or the Government, goes to litigation, then it is already lost.**

- (a) **Is it true that Vietnam's new Economic Court System is largely unused by foreigners?**
- (b) **We would appreciate advice on the steps the Government intends to take to ensure that Vietnam's juridical system will become both transparent and impartial.**
- (c) **Could Vietnam provide more detail on how it plans to improve the transparency and impartiality of its legal system as it relates to foreign trade and commercial matters involving foreigners?**
- (d) **Could Vietnam provide an assurance that the institutional structure and the Government's policies and practices will not in any way impair its ability to meet the range of obligations that it will assume as a WTO Member, including under Article XVII of the GATT?**

## Answer

In order to meet the requirements of Vietnam and foreign businesses in settlement of economic disputes in the economic transitional period. Vietnam has been trying to reform and gradually complete the legal framework for the settlement of economic disputes in term of substantive laws, procedural laws and laws on organizational structure.

Economic Courts were established (Law Amending and Supplementing Certain Provisions of the Law on the Organization of the People's Court dated 28 December 1993 which took effect on 1 July 1994).

The procedures for the settlement of economic disputes are outlined in the Ordinance on the Procedure for the Settlement of Economic Disputes which entered into force from 1 July 1994.

In accordance with the above Law, the Economic Court is organized in the Supreme Court and the Provincial People's and city under central government courts; in district courts there are no economic courts, but there are judges specialised for economic disputes. The Ordinance shall be applied to the settlement of economic disputes in Vietnam to which one or more parties is a foreign individual or legal entity, unless otherwise provided in the international treaties to which Vietnam is a signatory or in which it participate. The provincial People's Courts have the right to settle economic disputes with foreign involvement at the first instance. The Economic Court of the Supreme People's Court can act as a Court of Appeal.

Article 1 of the Ordinance stipulates that every individual and legal entity has the right to initiate economic cases before the court in order to protect their legitimate rights and interests. Although the language used in Vietnamese, the Ordinance ensures (in Article 8) that participants in the procedures can use their language in both oral and written form by stipulating (in Article 26) that the court has to appoint interpreter in case the person concerned does not know Vietnamese.

Objectivity and openness in the judicial process are guaranteed by the laws. Foreign parties have the right to request a lawyer or another person who is a Vietnamese citizen to defend their legitimate rights and interests. This person has the right to take part in the litigation from the beginning. Parties to the case, or those who defend their rights and obligations, have the right to require changes in judges, the jury, Court Secretary, inspector or interpreter if they discover that these persons may be not impartial in performing of their duties. Parties have the right to appeal, within 10 days, against the judgment, a decision on temporary suspension or complete suspension of the case's settlement of the court of first instance. If the losing party of the case does not voluntarily implement the valid judgment within one month from the date when the decision on the execution of the judgment is issued, the winning party shall be entitled to ask the executing agency of civil cases to enforce the judgment.

Therefore, the existing regulations of Vietnam provide easy access for foreigners to the Court, equality for parties involved, Vietnamese as well as foreigners, and objectivity of judicial and enforcement processes. Who is winning or losing party depends on the Courts judgement in conformity with legal regulations.

The establishment of the Vietnam International Arbitration Centre and other non-governmental arbitration institutions have created a wider range of tribunal's choice for litigators.

The Vietnamese Government has determined to further strengthen administrative and legal reforms in three aspects: systematic reform, reform of the administrative apparatus and staff and judicial reform. In term of systematic reform, the Law on the Enactment of Legal Documents dated 12 November 1996 which took effect from 1 January 1997, is an important step forward which helps

to define clearly the competence and the procedures for law making process. This Law also ensures the order in the legislative process, improves the quality of legal documents and uniformity and consistency of the legal system. In the judicial field, legal documents served as the foundation of organizational structure and activities of judicial bodies are being completed (in Vietnam, judicial bodies include the Courts, the Supreme People's Office for Supervision and Control, investigating and executing agencies, barristers, and other judicial supporting agencies and institutions).

The reform of the courts' structure is intended to better implementation of basic judicial principles such as two level adjudication, the independence of the judges and people's juries on the trials, the openness of the court proceeding, the availability of adjudication against any legislation violence, the equality of all citizens before the law.

The jurisdiction of certain courts is to be redefined and the jurisdiction of the District People's Court is broadened.

Election of judges by People's Committees has been replaced by the appointment of judges by the State President (1992 Constitution). The professional qualification requirements for the judges have been standardized in accordance with the Ordinance of the Standing Committee of the National Assembly On Judges and People's Juries dated 15 August 1993.

Professional training centres for judges and other judicial titles (under the Ministry of Justice) have been established. Courses for upgrading legal knowledge, and comprehension of new legal documents and judicial decision making techniques for judges, people's juries of specialized courts (civil, criminal, economic, labour courts) have been regularly organized.

Physical and technical conditions for trials and file archives have been gradually improved and modernized. Strict penalties for infringements or corruption of those working in the judicial area have been introduced.

All of the above-mentioned measures will contribute to the improvement of the adjudication quality, the objectivity and impartiality of the court system of Vietnam.

In order to strengthen the openness and equity of the legal system applicable to trade activities of foreigners, legislative reform has been implemented in the following directions:

- create a level playing field domestic and foreign entities in their business and investment operation as well as in the settlement of dispute;
- increase the legal force of legal documents to codes, laws and ordinance.

Review and systematize all current law codes and make public through mass media. National Assembly session X (November - December 1997) approved Decision No. 11/1997/QH10 on Laws and Ordinances drafting schedule for 1998. Many laws and regulation on foreign involvement in trade and investment will be issued or prepared in 1998 such as: Law on Amendment of the Law on Foreign Investment in Vietnam, the Law on Export-Import (amended), Ordinance on economic contract, Ordinance on Commercial Arbitration. It is obviously that Vietnam has been hard working in transparency and equality of commercial arbitration. Draft of the Ordinance on Commercial Arbitration is being worked out in consideration of Uniform law of UNCITRAL and New York Convention 1958, creating general and unique legal ground for activities of all arbitration centres (domestic and international). Judicial process will be regulated in this Ordinance and in the Civil Judicial Procedures Code (being drafted), not as norms in the decrees or decisions of the Government

at the present. According to this draft, relevant Courts for execution in Vietnam can consider all arbitration awards (domestic and international).

The fulfilment of Article XVII shall not be an exception for Vietnam in accession to the WTO. Currently, the Vietnamese legal system has ensured the equality between State-owned enterprises and enterprises from other sectors before the laws.

**Question 192**

**Do foreign companies have the right to have disputes settled by an arbitral tribunal?**

**Answer**

Please refer to the answers to questions 191 and 193.

**Question 193**

**Do foreign companies have the same right to initiate and pursue claims in the commercial court system?**

**Answer**

Foreign companies have the right to initiate and pursue claims in Vietnamese courts in accordance with Vietnamese legal procedures in the following circumstances:

- Vietnamese law stipulates that the case is under the jurisdiction of Vietnamese court;
- the dispute arises from contracts signed between a foreign party and a Vietnamese party which are implemented in Vietnamese territory or in which it is stipulated that Vietnamese courts have the jurisdiction to settle disputes; and
- in accordance with international agreements between Vietnam and a foreign country, the case is within the jurisdiction of Vietnamese courts.

**Question 194**

**Do foreign exporters and foreign investors have access to all courts and quasi-judicial bodies in Vietnam?**

**Answer**

Please refer to the answers to questions 192, 193 and 197.

**Question 195**

**It is stated that "one or all parties to a dispute are to file with the Centre a petition accompanied by other necessary documents and to pay, at the same time, in advance, an arbitration fee according to the legal provisions". Please explain the reasons behind the difference between the procedures for domestic economic disputes and international disputes. Why, for example, do parties to an international dispute have to pay in advance?**

### **Answer**

The prevailing legal documents governing dispute settlement procedures by arbitration do not contain any differences between domestic and international dispute.

Arbitration Centres, including the Vietnam International Arbitration Centre and Economic Arbitration Centres, have the right to settle disputes falling within their competence as provided by the law without considering to nationalities of dispute's parties.

Arbitration proceedings are uniformly enforced for domestic and international disputes. However, the Vietnam International Arbitration Centre issued two regulations dealing with Arbitration proceedings, one for international disputes and one for domestic disputes. However, there is no difference in the principles applicable to and between those regulations.

Concerning arbitration fees, the Decree No. 116/CP dated 5 August 1994 of the Government stipulates that: "When submitting the request, the complainant must pay in advance arbitration fees". Both of Arbitration Proceedings Regulations of the Vietnam International Arbitration Centre provide: "When submitting the request, the complainant must pay in advance all arbitration fees".

In summary, Vietnamese Laws and the Regulation on the Proceedings of both Arbitration Centres do not create any discrimination in economic dispute settlement procedures applicable between Vietnamese parties and Vietnamese parties versus foreign parties.

The Statutes of the Vietnam International Arbitration Centres (issued in conjunction with Decision No. 204/TTg dated 28 April 1993 of the Prime Minister, Decision No. 114/TTg dated 16 February 1996 of the Prime Minister on Extension of Scope of Dispute Resolution Jurisdiction of the Vietnam International Arbitration Centre, Decree No. 116/CP dated 5 August 1994 of the Government on Organization and Operation of Economic Arbitration, parties involved economic disputes have, by mutual consent, the right to make a choice between Vietnam International Arbitration Centre or Economic Arbitration Centre to resolve their disputes.

However, according to Article 10 of the Regulation on Organization of the Vietnam International Arbitration Centre, arbitration fees are applicable when resolving disputes. The arbitration fees determined by the Board of Directors of the Vietnam Chamber of Commerce and Industry based on international practices which are applied by International Arbitration Organizations in other countries. According to Article 14 of the Decree No. 116/CP of the Government on the Organization and Operation of Economic Arbitration, when submitting the request, the complainant must pay in advance arbitration fees that shall be determined by the arbitration centre in accordance with the schedule of arbitration fees stipulated by the Ministry of Finance and the Ministry of Justice. The arbitration fees shall be born by the losing party unless otherwise agreed by the parties.

### **Question 196**

**How many petitions were filed by foreign investors in people's courts in each of the past three years? How many judgments were issued and how many of the judgments were awarded to the foreign investors?**

### **Answer**

According to reports of 17 out of 61 Provincial Courts (including the courts of the Cities under direct control of the Central Government), 95 complaints were submitted to 7 provincial courts



over the past 3 years, relating to foreign-invested enterprises, from which 79 cases have been tried. In all, 74 judgements have been awarded to foreign-invested enterprises.

**Question 197**

**What are the procedures for foreign investors to seek administrative relief from the Government of Vietnam for government actions?**

**Answer**

According to Article 32:5 of the Ordinance on Economic Dispute Settlement Procedures, the Court shall reject a request when that request is already agreed by the parties to be resolved by arbitration. Whether an economic dispute (either trade or investment dispute) would be resolved by the court or not, totally depends on the decision of the parties, including foreign investors.

Consultation, negotiation and mediation are pre-requisitions to resolve economic disputes (including investment disputes). Article 12:1 of the Decree No. 12/CP of the Government stipulates: Disputes among parties who are taking part in joint-ventures, business co-operation contracts must be first resolved amicably. The parties may agree to chose an organization or individual to serve as mediator. Therefore, foreign investors may resolve disputes through negotiation or mediation and need not bring the dispute to the court. Negotiation and mediation may be implemented in any stage of dispute settlement process. The mutually agreed results of negotiations and mediation will be recorded, implemented and have the effect of ending any other dispute settlement process.

In the case of failure of the negotiation and/or mediation, the parties may, by mutual consent, not chose the court but a arbitration centre (either governmental or non-governmental arbitration centre) to judge the dispute. This is recognized by and provided in Vietnamese Law (such as Civil Code, Article 239:3 Trade Law, the Law on Foreign Investment in Vietnam).

According to above mentioned regulations, the parties will negotiate to chose an arbitration organization to judge the dispute if they do not want to bring the dispute to the court. If the name of that arbitration organization is not provided in contract, the parties shall negotiate on the method of resolving the dispute or the choice of the arbitration organization to judge the dispute.

**Question 198**

**How many disputes involving foreign investors or foreign exporters were resolved in the Vietnam International Arbitration Centre for each of the past three years?**

**Answer**

During the last 3 years, the Vietnam International Arbitration Centre settled 53 cases (13 cases in 1994, 17 cases in 1995 and 23 cases in 1996).

**Question 199**

**How many disputes involving foreign investors or foreign exporters were resolved in the Vietnam International Arbitration Centre for each of the past three years?**

**Answer**

Please refer to the answer to question 198.

#### **IV. POLICIES AFFECTING TRADE IN GOODS**

##### **1. Import Regulations**

##### **(a) Registration requirements for engaging in importing**

###### **Question 200**

**Please describe the process for obtaining a production enterprise import-export licence, by completing a response to the WTO Questionnaire on Import Licensing.**

###### **Answer**

Please refer to Annex 3 (WT/ACC/VNM/3/Add.1) which provides the requested information in the format of WTO Questionnaire on Import Licensing.

###### **Question 201**

**What is the difference between a production enterprise and a non-production trading enterprise? Are foreign enterprises or enterprises with foreign-invested capital eligible to be production enterprises for the purposes of conducting import and export activities? What is meant by the requirement that the enterprise "operate in business lines registered initially"?**

###### **Answer**

Production enterprises conducting export-import activities are enterprises running their own production facilities and import and export their products.

Non-production enterprises are enterprises which do not have their own production facilities and their activities are confined to trading only.

An enterprise may engage in both trading and production at the same time.

Foreign owned enterprises are permitted to import products which meet the needs of their own production and export their own products.

Upon its establishment, an enterprise must register, which is called "initial registration". Based on the enterprise's application, the lines of business of an enterprise are defined in this initial registration. When the enterprise engages in international trade, its import/export activities are also confined to the initially registered lines of activities. The initially registered lines of activities may be amended or supplemented and the enterprise's import/export activities can thus be amended or supplemented correspondingly.

###### **Question 202**

**What is the total number of enterprises that have production enterprises import-export licences? How many of these enterprises are foreign-owned? How many of these enterprises are State-owned?**

###### **Answer**

Please refer to the last paragraph, section IV.1(a) in the Memorandum on the Foreign Trade Regime of Vietnam (WT/ACC/VNM/2).

As of 30 November 1997, there are 1,630 of domestic enterprises which have been granted import/export trading rights, in which:

- broken down by ownership:
  - State-owned: 1,361 enterprises
  - non-State-owned: 269 enterprises
- broken down by forms of enterprises:
  - production enterprises: 867 (of which 219 are non-State-owned)
  - trading enterprises: 763 (of which 50 are non-State-owned)

Foreign owned enterprises are automatically granted import-export rights in accordance with their investment licence. As of 31 December 1996, investment licences have been granted to a total of 1,868 foreign-invested projects. The classification of enterprises into production and trading enterprises is not applied to foreign owned enterprises. Therefore, statistics broken down by such classification is not collected.

#### **Question 203**

**We understand that production enterprises are only granted licences to import products for their own production in accordance with their business plans. This regime for import licensing for production enterprises appears to be a TRIM which is inconsistent with the obligations of general elimination of quantitative restrictions, because the amount of the importation is related to the volume of local production.**

**Please explain how this import licensing regime is compatible with the requirement of the TRIMs Agreement.**

#### **Answer**

These measures are not related to the TRIMs Agreement in our point of view.

#### **Question 204**

**Enterprises in non-production trading are required to "dispose of minimum of its owned working capital, stated in the prescribed capital, in Vietnamese Dong or other currencies equivalent to US\$200,000 at the point of registration for import/export business".**

**Please explain what this rule means in practical terms. What is meant by the term "owned working capital?" Are enterprises required to pay the equivalent of US\$200,000 to obtain a licence to conduct import-export activities as "production enterprises"?**

#### **Answer**

This requirement is only applied to pure non-production trading enterprises.

- (a) The required working capital is an amount of Vietnamese Dong equivalent to US\$200,000.
- (b) The purpose of this requirement is to preclude the incapable enterprises which may dishonour the signed contracts and, in their doing so, decrease Vietnam's overall prestige in the world market.

This requirement does not mean the enterprises have to pay US\$200,000 for the import-export trading licence. The licensing fee is 1 million Vietnamese dong (which is less than US\$100 in the current exchange rate). The "owned capital" is the capital which the enterprise actually has at its disposal, excluding loaned capital.

Please refer to the answer to question 210.

#### **Question 205**

**What is the reason for requiring general trading companies to "dispose of minimum amount of its own worked capital equivalent to US\$200,000 at the point of registration"?**

#### **Answer**

Please refer to section (b) of the answer to question 204.

#### **Question 206**

**What is the total number of enterprises that have non-production trading import-export licences? How many of these enterprises are foreign-owned? How many of these enterprises are State-owned?**

#### **Answer**

Please refer to the answer to question 202.

#### **Question 207**

**As of 31 December 1994, there were 1,372 foreign-invested ventures, entitled to export products of the joint ventures and import materials for production needs of joint ventures. Is there a different import and export licensing regime applicable to joint ventures? Are joint venture subject to performance requirement? Are the requirements for obtaining import and export licences for joint venture compatible with the TRIMs Agreement, for example, is the granting of the licence, or level of imports allowed, tied to local content, production or export levels?**

#### **Answer**

As of 31 December 1996, investment licences have been granted to a total of 1,868 foreign-invested projects. The classification of enterprises into production and trading enterprises is not applied to foreign-invested enterprises. Therefore, statistics broken down by such classification is not collected.

(a) Import/export activities of the foreign-invested enterprises are subject to separate set of regulations. Please refer to section E in Annex 3 (WT/ACC/VNM/3/Add.1).

(b) Some of the aspects of the licensing regime applied to the foreign-invested enterprises may not be in conformity with the provisions of the TRIMs Agreement. Vietnam is examining its regime vis-à-vis the requirements of the TRIMs Agreement in order to single out the inconsistent measures.

### Question 208

**General trading companies may only trade in the goods listed on the licence. What is the reason for this restriction? Does Vietnam have a timetable to remove it?**

#### Answer

The lines of business activities listed on the import-export business licence are based on the enterprise's application and the practice is thus not considered as a restriction (please refer to section (c), in the answer to question 201 for information in respect of the lines of business as specified in the registration licence and the import-export business licence). Therefore, Vietnam has no intention to eliminate this measure.

The ability of the enterprise is one criteria which will be taken into consideration for the purpose of business licence issuance and registration of items to be traded.

### Question 209

**Can domestic or foreign natural persons or joint-ventures engage in trading activities? If so, under what circumstances? If not, why not?**

#### Answer

Registered Vietnamese natural persons and residents in Vietnam have the rights to participate in trading activities. The conditions for this operation are provided for in the Commercial Law dated 23 May 1997 and other relevant provisions of the applicable regulations in respect of different lines of trading activities.

### Question 210

**Paragraph 5, page 33 states that only businesses licensed by the Ministry of Trade can conclude foreign trade contracts directly. Can Vietnam provide details on the purpose and operation of this licensing system, including whether there are other criteria for granting such licence, apart from the requirement to have working capital of US\$200,000? Are there any restrictions (on product area or form of business) contained in the licences granted to engage in foreign trade activities? Is the fee for obtaining a licence (mentioned in paragraph 5, page 34) a one-off flat fee or an annual fee? What proportion of businesses in Vietnam are currently licensed to perform foreign trade? What plans does Vietnam have to ease current licence restrictions?**

#### Answer

Please refer to Annex 3 of WT/ACC/VNM/3/Add.1.

The purposes of the licensing regimes are presented in the answer to question 204.

The fee for import-export business licence is 1 million Dong. It is an one-time fee payable upon the receipt of the licence and applicable on equal terms to all enterprises.

The planned relaxation on the regulations of import-export business licensing regime are as follows:

- lowering the minimum capital requirement;

- abolishing the requirements in respect of the qualifications of staff.

Among 32,254 enterprises in the country (as of 31 December 1995), 1,630 enterprises (or 5.1 per cent) have the import-export trading rights.

**(b) Characteristics of the national tariff**

**Question 211**

**What is the level of average weighted tariff?**

**Answer**

The current average trade weighted tariff is 16.3 per cent.

**Question 212**

**According to the Foreign Trade Memorandum (WT/ACC/VNM/2), the average tariff rate collected on imported goods was about 19 per cent in 1995.**

**How were these average tariff rates calculated? What is the trade-weighted average tariff rate currently in effect in Vietnam?**

**Answer**

This number is obtained from dividing the real import revenue collected in the year by the total import value of tariff bearing items (excluding grants, presents and goods for processing, etc., which are exempted from customs duties). Please refer to also the answer to question 211.

**Question 213**

**Which version of the Harmonized System does Vietnam use - 1988, 1992 or 1996?**

**Answer**

Vietnam's nomenclature of import and export commodities (which is not used for tariff purposes) is based on the 1996 version of the WCO Harmonized System. Vietnam's tariff schedule was issued in 1993, based on the 1992 version of the Harmonized System, and has since undergone many amendments. Vietnam is planning to apply a new tariff nomenclature based on HS 96 and will, as far as possible, keep the Working Party informed of the developments.

**Question 214**

**Does Vietnam apply the 1996 version of the HS? If not, what version is currently applied and when will the 1996 version be applied?**

**Answer**

In November 1992, the nomenclature of export-import commodities corresponding to 6 digits HS nomenclature of the WCO was published.

The nomenclature was then developed to become the Vietnamese nomenclature of export and import commodities, at 8 digits level, and which was published in January 1997. The Vietnamese nomenclature is based on the HS 1996 and has been used in the classification for the purpose of customs declaration and import-export statistics collection for the Government.

However, more preparations are required before the Vietnamese nomenclature can be applied for tariff collection purposes. In order to meet the immediate needs, Vietnam has developed, in the transitional period, a tariff schedule in parallel with the Vietnamese nomenclature. That evolution has led to the subsequent discrepancies between the nomenclature and the tariff schedule.

The Vietnam Government is preparing for an early accession to the International Convention on the HS.

#### **Question 215**

**Vietnam does not currently have a consolidated tariff schedule and the ad hoc nature of the current publication system lacks transparency for exporters and for Working Party members evaluating Vietnam's trade regime.**

**Has Vietnam adopted the 1996 changes to the Harmonized Tariff system? If not, when might that be accomplished, given its importance in providing a framework for negotiations of Vietnam's goods market access schedule.**

#### **Answer**

Please refer to the answers to questions 213 and 329 herein. Vietnam is trying to establish a new tariff nomenclature as soon as possible.

#### **Question 216**

**Are there any additional charges (other than tariffs) applied to imports of these products?**

#### **Answer**

Yes. Please refer to details in Annex 9 (WT/ACC/VNM/3/Add.1) and the list attached to the answer to question 228.

#### **Question 217**

**Please describe the policy granting tariff exemptions or reductions.**

#### **Answer**

Please refer to Section IV.1(b) of document WT/ACC/VNM/2 and the answers to questions 17, 96, 105, 128, 146 and 149.

#### **Question 218**

**Vietnam grants preferential tariff rates to imports from the European Communities pursuant to a bilateral agreement and is a member of ASEAN, and has undertaken to grant preferential tariff rates to ASEAN member countries within the framework of the Agreement on the Common Effective Preferential Treatment (CEPT).**

**Please list all products, including HS numbers, imported from the European Communities which are covered by the bilateral agreement and the applicable preferential tariff rates. Please identify and describe all other forms of preferential market access available to imported products from the European Communities.**

**Answer**

According to the Agreement on Textile and Clothing signed between Vietnam and the European Communities, 243 tariff lines of textile items of the European Communities imported to Vietnam are subject to tariff reduction over a 10 years period, starting from 1 January 1996 (the list of these items was given in the Decree No. 18/CP).

Decree No. 18/CP of 4 April 1996 specified the tariff reduction schedule for 1996 and 1997 applied to textile imports from the European Communities.

Vietnam does not have any other market access preferences granted to the European Communities.

**Question 219**

**How does Vietnam intend to amend its bilateral agreement with the European Communities in order to conform with the requirements of GATT Article I (MFN treatment)?**

**Answer**

So far, Vietnam has no agreement with the European Communities in respect of amending the bilateral agreement. However, upon accession to the WTO, Vietnam will respect the MFN principle as provided for in Article 1 of the GATT. Thus, when Vietnam is acceded to WTO, the preferential treatment accorded to the European Communities will be multilateralized.

**Question 220**

**Could Vietnam please provide further details as well as the status of implementation of preferential treatment under ASEAN and CEPT? Do these tariff concessions include agricultural products? If so, please indicate the commodities affected, as well as the rates of duty applied to these imports.**

**Answer**

Preferential treatment under ASEAN is divided into 5 categories:

1. Inclusion List (IL): is the list of products for immediate inclusion in preferential treatment implementing the Common Effective Preferential Tariffs (CEPT), starting from 1996. The list of Vietnamese products in this category now consists of 1,633 tariff lines.
2. Temporary Exclusion List (TEL): Pursuant to the provisions of the CEPT, Vietnam has published a list of 1,371 products which are temporarily excluded from tariff reduction under the CEPT. The products in this list will be carried forward to the Inclusion List by the end of 1999.

The products in the two above lists will have maximum tariff rates of 5 per cent by the year 2006.



3. General Exclusion List (GEL): this list includes 213 groups of products which Vietnam excludes from CEPT implementation. As Vietnam has not developed a HS tariff nomenclature, the number of tariff lines affected by this list is not available.
4. List of sensitive agricultural products: this list, which has 23 tariff lines (at 6 digits level) in the case of Vietnam, will be totally phased in the inclusion list by the year 2013 with final bound rate of 5 per cent.
5. List of highly sensitive products: Vietnam does not have this list.

In Vietnam's current and future Lists under CEPT included agricultural products.

#### Question 221

**We note that the average tariff on automobiles and motorbikes is 55 per cent and according to other information sources, automotive tariffs in Vietnam are 200 per cent for new passenger automobiles and 150 per cent for new mini-vans. The tariff on unassembled kits is as low as 20 per cent, but the Government may impose an annual quota for kit imports. In addition, we understand that in late 1994 the Vietnamese Government introduced a rule requiring any foreign applicant seeking to import kits to commit to producing 60 per cent of vehicle parts locally, in an apparent effort to expand its indigenous automotive components production, which is currently rather limited (i.e., batteries and floor mats).**

**Please describe in detail the tariff and non-tariff measures that apply to the importation of automobiles and automobile parts into Vietnam.**

#### Answer

Vietnam is in the process of tariff reform. At present, importation of automobiles and automobile parts into Vietnam are subject to the following tariffs and non tariff measures:

- Tariffs: Automobiles and automobile parts imported into Vietnam are subject to tariffs ranging from 0 to 60 per cent. Details are as follows:

HS	Description	Tariff rate
870200	Public-transport type passenger motor vehicles with more than 24 seats (buses)	
87020010	- Completely assembled	50
87020020	-- SKD	40
87020030	-- CKD1 with painted body	18
87020040	-- CKD1 without painted body	12
87020050	-- CKD2	6
87020060	-- IKD	3
8703	Cars and other vehicles principally designed for the transport of persons (other than those category No. 8702), including wagon stations and racing cars:	
870310	- Cars and other vehicles for passenger transportation (other than those of heading No. 8702):	
	- Exceeding 15 seats but not exceeding 24 seats:	

HS	Description	Tariff rate
87031011	- Completely assembled	55
87031012	-- SKD	40
87031013	-- CKD1 with painted body	30
87031014	-- CKD1 without painted body	25
87031015	-- CKD2	10
87031016	-- IKD	7
	- With from 5 to 15 seats:	
87031021	- Completely assembled	55
87031022	-- SKD	45
87031023	-- CKD1 with painted body	45
87031024	-- CKD1 without painted body	40
87031025	-- CKD2	20
87031026	-- IKD	5
	- With less than 5 seats	
87031031	-- Completely assembled	55
87031032	-- SKD	50
87031033	-- CKD1 with painted body	55
87031034	-- CKD1 without painted body	50
87031035	-- CKD2	30
87031036	-- IKD	5
870320	Motor vehicles designed for transporting both passengers and goods	
87032010	-- Completely assembled	60
87032030	-- CKD1 with painted body	45
87032040	-- CKD1 without painted body	40
87032050	-- CKD2	30
8704	Motor vehicles for the transport of goods	
870410	Dumpers designed	0
	- Automobiles designed with cargo hold, whether or not fitted with self-loading or self-unloading device:	
870421	-- G.v.w. not exceeding 5 tons:	
	--- Motor vehicles designed for light freight transporting, similar to passenger transporting vehicle:	
87042111	---- Completely assembled	60
87042112	---- SKD	40
87042113	---- CKD1 with painted body	20
87042114	---- CKD1 without painted body	16
87042115	---- CKD2	8
87042116	---- IKD	4

HS	Description	Tariff rate
	--- Others:	
87042191	---- Completely assembled	60
87042192	---- SKD	40
87042193	---- CKD1 with painted body	20
87042194	---- CKD1 without painted body	16
87042195	---- CKD2	8
87042196	---- IKD	4
	-- G.v.w. exceeding 5 tons but not exceeding 20 tons:	
	--- G.v.w. exceeding 5 tons but not exceeding 10 tons:	
87042211	---- Completely assembled	40
87042212	---- SKD	20
87042213	---- CKD1 with painted body	12
87042214	---- CKD1 without painted body	8
87042215	---- CKD2	4
87042216	---- IKD	2
	--- G.v.w. exceeding 10 tons but not exceeding 20 tons:	
87042221	---- Completely assembled	30
87042222	---- SKD	20
87042223	---- CKD1 with painted body	12
87042224	---- CKD1 without painted body	8
87042225	---- CKD2	4
87042226	---- IKD	2
870423	-- G.v.w. exceeding 20 tons	10
	- Vehicles designed for the transport of special goods:	
870431	-- For petrol, chemicals, etc.	10
870432	-- For cement	10
870433	-- For frozen product	10
870434	-- For money	10
8705	Special purpose motor vehicles, other than those designed principally for the transport of persons or goods (e.g. breakdown lorries, crane lorries, fire fighting vehicles, concrete-mixer lorries, road sweeper lorries, spraying lorries, mobile workshops, mobile radiological units):	
870510	- Crane lorries	0
870520	- Mobile drilling derricks	0
870530	- Fire fighting vehicles	0
870540	- Concrete-mixer lorries	0
870590	- Others	0

- Excise tax: details are as follows:

Description	Tax Rate
Automobiles with 5 seats or less	100 %
Automobiles from 6 to 15 seats	60%
Automobiles with from 16 to 24 seats, automobiles for transport of both passengers and goods, lambro	30%

Excise tax is applied to imports of complete automobiles and SKD kits.

- Non-tariff measures:

For the purpose of maintaining a number of cars corresponding to the infrastructure conditions, Vietnam applies quantitative restrictions on importation of automobiles in CBU, SKD and CKD1 forms. For more information about these measures, please refer to the answer to question 246 and Annex 3 (WT/ACC/VNM/3/Add.1).

Restrictions on importation are applied to vehicles for passengers and goods transportation only. No quantitative restrictions are applied to importation of specialized vehicles such as crane lorries, fire fighting vehicles, public service vehicles, etc.

#### **Question 222**

**Does Vietnam have a performance requirement for the importation of unassembled kits?**

#### **Answer**

In the application for the establishment of automobile assembling factory, investors must provide a feasibility study which specifies the localization plan.

The minimum local content ratio is 5 per cent for the first year of production but should be increased to at least 30 per cent by the tenth year. These regulations are applied to all new investments.

#### **Question 223**

**Please provide more details about the discretionary tariff exemptions permitted under Articles 10 and 11 of the Law on Import-Export Duties.**

#### **Answer**

The Decree of the Government No. 54/CP of 28 August 1993 on the Implementation of the Law on Import-Export Duties provides in detail the tariff exemptions permitted under Article 10 of the Law on Import-Export Duties dated 26 December 1991 as follows:

1. Non-refundable aid.
2. Temporary imports and re-exports, temporary exports for exhibitions and re-imports.
3. Goods in transit.

4. Exports and imports of foreign organizations which and individuals who, pursuant to international treaties to which Vietnam is a signatory or in relation to which it is a participant, enjoy immunities stipulated by the Government.
5. Materials and raw materials imported for processing and re-export in accordance with a contract entered into with a foreign party.

The following goods shall be subject to a reduction of applicable duty (Article 11, Law on Import-Export Duties):

1. Imports for specialized use for security, national defence, scientific, educational, training or research purposes.
2. Exports and imports of an enterprise with foreign owned capital and of the foreign parties to a business co-operation in each special case where it is necessary to encourage investment.
3. Gifts of foreign organizations and individuals given to Vietnamese organizations and individuals.
4. Imported goods for duty-free shops.

For detailed regulations, please see Decree No. 54/CP of 28 August 1993 which is available in the WTO Secretariat (Accessions Division, Room 1126) for consultation.

#### **Question 224**

**We would be grateful for further information about Vietnam's tariff regime.**

- **Is Vietnam's tariff publicly available?**
- **Could Vietnam provide more information about its intention to reduce and simplify tariff, in particular which tariff are to be affected, and when?**
- **What is Vietnam doing to simplify the current array of charges and regulations?**
- **When does Vietnam expect its fees and charges will be in full conformity with the relevant provisions of the WTO Agreement?**
- **Could Vietnam advise whether the current import duty exemption for foreign investors will be maintained and for how long?**

#### **Answer**

Vietnam's export and import tariffs are publicly available.

The plan for tariff reform and simplification is as follows:

Vietnam has been proceeding the reform on import tariff since 1995. The reform is planned to be accomplished in 1998. The direction of the reform is that taxes applied to imported goods shall include customs duty, excise tax (for certain categories of products only) and value added tax.

The current tariff has 27 different rates. It is expected that two rates (7 and 6 per cent) in the import tariff shall be withdrawn by the end of 1997. Therefore 25 different duty rates shall remain and they shall be gradually reduced in the following years.

Fees and charges: the general policy of Vietnam is to limit the number of fees and charges so as to reform, step by step, administrative procedures. Currently, Vietnam is studying the implementation of fees and charges compatible with the WTO regulations.

Import duty exemption for foreign investors:

Article 47 of the Law on Foreign Investment of Vietnam which was adopted by the National Assembly of the Socialist Republic of Vietnam on 12 November 1996 and came into force from 23 November 1996 (this Law replaces all the previous foreign investment laws of Vietnam) contains provisions concerning export-import duties levied on exported and imported goods of enterprises with foreign-invested capital and parties to business cooperation contracts. It also provides for the import duty exemptions for enterprises with foreign-invested as follows:

"Equipment, machinery and specialized means of transportation which are used in technical process imported into Vietnam for the purpose of forming the fixed assets of an enterprise with foreign-invested capital, forming the fixed assets of the implementation of a business co-operation contract, or to expand the scale of an investment project, and imported means of transportation used to transport workers shall be exempted from import duty.

The Government may grant exemption from, or reduction of, export and import duties in respect of other special goods which are subject to investment encouragement."

Therefore, import duty exemptions for foreign investors under the Law on Foreign Investment in Vietnam dated 12 November 1996 shall continue to be applied.

Please refer also to the answers to questions 17 and 105.

**(c) Tariff quotas and tariff exemptions**

**Question 225**

**What is the current policy regarding the importation of vehicles by foreign companies for corporate use?**

**Answer**

Article 63 of Decree No. 12/CP of 17 February 1997 regulating in details the Implementation of Foreign Investment Laws in Vietnam and passed by the National Assembly on 12 November 1996 stipulates as follows:

Enterprises with foreign investment are exempted from customs duties for the following imports:

- specialized means of transportation which are used in technical process imported into Vietnam for the purpose of forming the fixed assets of an enterprise with foreign-invested capital, forming the fixed assets for the implementation of a business co-operation contract, or to expand the scale of an investment project, and imported means of transportation used to transport workers (cars with more than 24 seats, maritime transportation means).

In case those duty free imported vehicles are resold in the Vietnamese market, they are subject to approval by the Ministry of Trade, and payment of import duties and VAT tax under regulations of Vietnam Laws.

- representative offices and branches of foreign economic organizations based in Vietnam are allowed to import vehicles for their own use within a limited number set by the Ministry of Trade. Their imports are subject to import duties and excise tax.

#### Question 226

**Vietnam states that it "...has not adopted the tariff quota, reserves its right to impose the tariff quota when it is deemed necessary and possible" (page 36 of WT/ACC/VNM/2).**

- (a) **Under what circumstances would Vietnam deem its claim to such a right to be "necessary" and "possible"?**
- (b) **How would Vietnam justify the impediments to trade and the administrative burdens which are created by tariff quotas?**

#### Answer

At present, Vietnam has not fully identified cases where tariff quotas are needed. However, the possible impediments to trade and the provisions of the WTO will be taken into consideration when tariff quotas are applied.

- (d) **Other duties and charges**

#### Question 227

**Vietnam states that the surcharge of 5-10 per cent is applied to some exports to support the Price Stabilization Fund. GATT Article VIII provides that all import and export fees and charges shall be limited in amount to the approximate cost of services rendered and cannot be used for fiscal purposes.**

**How does Vietnam intend to bring these charges into conformity with WTO requirements, in particular the requirement that tariff rates not exceed bound rates specified in the goods market access schedule, or that the charge be specifically related to the cost of the service provided by customs, not the value of the good?**

#### Answer

Under Vietnam's policy, surcharges are not used for budgetary purposes. They are used to mitigate the effects of international price fluctuations on the domestic prices. However, these regulations would be refined during the process of formulating and implementing trade policy.

#### Question 228

**Please identify, including tariff line numbers, all products subject to import or export surcharges. For each item, please provide the rate of the surcharge and the period for which it has been imposed. How is the amount of the surcharge affected by price fluctuations? Is the surcharge levied on an *ad valorem* basis? Does the Government of Vietnam publish the surcharge rates for individual products?**

**Answer**

Commodities subject to surcharges:

At present, there are 6 items which are subject to surcharges, of which 3 are imports and 3 are exports as follows:

- import goods: petrol, iron and steel, fertilizer;
- export goods: coffee, rubber and cashew nuts.

Surcharge rates and duration of application of each good:

A. Import goods subject to surcharge:

1. Surcharges on petrol and oil:

Goods	Surcharge Rate (%)		Time of Application
	South	North	
Gasoline	3	0	1/5/1993
Gasoline production additives	5	0	1/5/1993
Diesel	3	0	1/5/1993
Mazout	3	0	1/5/1993
Kerosene	2	1	1/5/1993
Aviation spirit	3	1	1/5/1993
Gasoline	7	6	1/8/1993
Gasoline production additives	9	8	1/8/1993
Diesel	7	6	1/8/1993
Mazout	7	6	1/8/1993
Kerosene	5	4	1/8/1993
Aviation spirit	7	6	1/8/1993
Gasoline	12		15/5/1994
Gasoline production additives	12		15/5/1994
Diesel	9		15/5/1994
Mazout	7		15/5/1994
Kerosene	9		15/5/1994
Aviation spirit	9		15/5/1994
Gasoline	12		15/7/1994
Gasoline production additives	12		15/7/1994
Diesel	12		15/7/1994
Mazout	0		15/7/1994
Kerosene	15		15/7/1994
Aviation spirit	15		15/7/1994



Goods	Surcharge Rate (%)		Time of Application
	South	North	
Kerosene	0		10/11/1994
Aviation spirit	0		10/11/1994
Liquidated oil	10		10/7/1994
Diesel	0		1/1/1995
Liquidated gas	0		20/4/1995
Gasoline	0		10/5/1005
Gasoline production additives	0		10/5/1005
Gasoline	10		22/9/1995
Other products	10		22/9/1995
Diesel	5		22/9/1995
Diesel	0		10/12/1995
Gasoline	0		10/12/1995
Other products	10		10/12/1995
Gasoline	0		15/1/1996
Other products	0		15/1/1996
Gasoline	5	4	20/7/1996
Other products	5	4	20/7/1996
Kerosene	4	3	20/7/1996
Aviation spirit	4	3	20/7/1996
Mazout	4	3	20/7/1996
Diesel	0		15/8/1996
Gasoline	0		15/8/1996
Other products	0		15/8/1996
Kerosene	0		15/8/1996
Aviation spirit	0		15/8/1996
Mazout	0		15/8/1996
Gasoline	6		26/7/1997
Gasoline production additives	6		26/7/1997
Gasoline	6		26/7/1997
Diesel	15		26/7/1997
Kerosene	10		26/7/1997
Aviation spirit	10		26/7/1997
Diesel	0		1/9/1997

Goods	Surcharge Rate (%)		Time of Application
	South	North	
Kerosene	0		1/9/1997
Aviation spirit	0		1/9/1997

## 2. Surcharges on iron and steel:

Goods	Surcharge Rates (%)	Time of Application
CT3 steel round rods diameter 6-65 mm	2	1/5/1993
CT5 steel reinforcement bars, diameter 6-16 mm	2	1/5/1993
CT3, CT3C steel plate	4	1/5/1993
CT3 steel round rods diameter 6-16 mm	10	15/5/1994
CT5 steel reinforcement bars, diameter 6-16 mm	10	15/5/1994
CT3, CT3C steel plate	4	15/5/1994
Welded steel pipe (black or galvanized), diameter 15-100 mm	10	1/4/1995
Welded steel pipe (black or galvanized), diameter	0	20/12/1995
Welded steel pipe (black or galvanized), diameter 14-114 mm	10	1/10/1997

## 3. Surcharges on fertilizers:

Goods	Surcharge Rates (%)	Time of Application
Urea, SA	4	5/11/1993
NPK	4	5/11/1993
DAP	6	5/11/1993
Urea, SA	0	15/11/1993
NPK	2	25/4/1994
DAP	2	25/4/1994
Urea	7	3/5/1995
Urea	0	15/9/1995
NPK	0	15/10/1996
DAP	0	15/10/1996

B. Export goods subject to surcharge  
1. Surcharges on coffee:

Goods	Surcharge Rates (%)	Time of Application
Coffee	20%	1/9/1994
	300 US\$/ton	15/11/1994
	200 US\$/ton	25/11/1994
	100 US\$/ton	16/12/1994
	200 US\$/ton	6/3/1995
	100 US\$/ton	22/6/1995
	0%	5/12/1995

2. Surcharges on rubber:

Goods	Surcharge Rates (%)	Time of Application
Rubber	5	1/9/1994
	0	20/7/1995

3. Surcharges on cashew nuts:

Goods	Surcharge Rate (%)	Time of Application
Cashew nuts	4	20/4/1994
	10	10/2/1995

Surcharge rates against price fluctuation level:

Surcharges are collected against the difference of price. Surcharges do not exceed 70 per cent of price differences for imported goods, 50 per cent for exported goods and 30 per cent for domestically produced and consumed goods.

Price disparity of imported goods is the difference between the reasonable domestic selling price of the good in question and the import price including the real import price, freight cost (F), insurance cost (I) to the port of arrival, import duty and distribution expenses.

Price disparity of exported goods is the difference between the real export price excluding freight cost (F), insurance cost (I) against the real export price which includes the purchasing price, export duty and transport costs to the embarking port.

Price difference of domestically produced and consumed goods is the difference between the average actual selling and the average actual costs which include the production costs, applicable taxes and the average profit of the industry.

These are the principles for surcharge calculation. The specific applicable surcharge rates depend on the actual price disparity.

For imported or exported goods, surcharges are calculated on the basis of transaction value which excludes the added value.

**Question 229**

**Does Vietnam impose any import surcharges other than those imposed in order to monitor prices?**

**Answer**

Other than surcharges for the purpose of price stabilization, Vietnam is not applying any other kind of import surcharges.

**Question 230**

**Please identify and describe, including amounts, any custom service and processing fees or charges. Are the fees uniform at all ports? Do the amount of these fees and charges exceed the approximate costs of the services rendered, in accordance with GATT Article VIII?**

**Answer**

The Decree No. 171/HDBT dated 17 May 1991 of the Council of Ministers (which is now the Government) and the joint Circular No. 31/TTLB-TC-TCHQ dated 7 April 1993 of the Ministry of Finance and the General Department of Customs stipulate that customs fees are payable as follows:

- customs clearance fee is payable when clearance procedures are done, at the request of goods-owners, at places other than the official venues;
- merchandise fee is payable for goods (including postal packages and parcels), luggage and means of transport in transit or hiring passage through Vietnam as delegated imports-exports for foreigners;
- fee is payable when customs documents of goods and luggage are re-certified or re-issued;
- fees for goods escorting and sealing;
- fees for customs warehousing.

These fees are uniformly applied.

Fee rates are defined for each type of fee on the basis of the service rendered.

**Question 231**

**On page 36 it is said that "in addition to import duties, surcharges might be applied on essential items". Apart from coffee and urea, are there any products which are considered as essential in this context? If yes, please indicate the products (with HS codes) and the level of the surcharges.**

**Answer**

The list of products subject to surcharges and the applicable surcharge rates may vary from time to time. In the last few years, the following goods have been subject to surcharges: urea, petroleum, some types of steel (for imports) and coffee, rubber, cashew nuts (for exports). At the time

of 1 December 1997, surcharges are applying to imported petroleum and some types of steel and exported raw cashew nuts.

Please refer also to the answer to question 228.

**Question 232**

**Are there any other additional charges other than the Price Stabilization Fund?**

**Answer**

No. At the moment, there is no surcharges other than surcharge for the Price Stabilization Fund.

**Question 233**

**Under what circumstances are they applied and to which goods?**

**Answer**

Please refer to Annex 9 (WT/ACC/VNM/3/Add.1) for detailed information on the list of goods subject to surcharges and the mechanism of the Price Stabilization Fund.

**Question 234**

**Please provide more detailed information about the circumstances under which the surcharge is levied. For example, how is the level determined? Is it limited to certain times of the year?**

**Answer**

Please refer the detailed information in the answer to question 228 and Annex 9 (WT/ACC/VNM/3/Add.1).

**Question 235**

**Does Vietnam levy any charges for services rendered, e.g. a customs processing fee? Wharfage charges? Storage charges? If so, please provide details.**

**Answer**

Please refer to the answer to question 230 for the information relating to customs clearance fees. In addition, the following customs fees are applied:

- wharfage charge;
- customs warehousing fees;
- storage and port space rents.

The rates of above-mentioned fees are determined for each type of fee, for example:

- ships embarkation on wharf: US\$/GRT 0.0035; anchorage: US\$/GRT 0.0012;
- port passage is US\$/passenger 2 (valid for both entrance and exit);
- storage and customs warehousing fee:

- for goods not in container: US\$/MT/day 0.2,
- for 40 feet container: US\$3 and 1.5 per day for loaded and empty container respectively.

**(e) Quantitative import restrictions, including prohibitions, quotas and licensing systems**

**Question 236**

**It would appear that most of the restrictions applied by Vietnam to imports described in this section are inconsistent with the GATT 1994 and other WTO Agreements. In particular, GATT Article XI prohibits the use of prohibitions or restrictions, other than duties, taxes or other charges, on the importation of any product from a WTO Member, or on the exportation of any product to a Member State.**

**How does Vietnam intend to reform and revise its extensive system of quantitative, licensing, and other restrictions in order to satisfy the requirements of GATT Article XI concerning products subject to these restrictions?**

**Answer**

Import restrictions which are inconsistent with the provisions of the GATT and other WTO Agreements will be examined and eventually addressed during WTO accession negotiations.

**Question 237**

**Please identify all the products listed in Appendix 2 of the Memorandum (WT/ACC/VNM/2), export/import commodity control, by tariff line number.**

**Answer**

Please find the requested information in Appendix 7 - List 2 and Annex 3 in document (WT/ACC/VNM/3/Add.1).

**Question 238**

**Do published criteria exist to determine whether a toy is "morally pernicious", or whether products are "depraved cultural and reactionary products"? If so, please outline the criteria are applied. Are products other than toys covered?**

**Answer**

At present, there is no specific legal document stipulating those criteria. Competent officials are authorized to make decisions (for which they are responsible). The official decisions are made public. This practice is only limited to toys and cultural products (for example: guns with plastic bullets, water guns, etc.).

**Question 239**

**According to the Memorandum (WT/ACC/VNM/2), petroleum, urea fertilizer, sugar, construction, steel and cement, are "...considered relevant to the general equilibrium of the national economy" and therefore subject to additional import restrictions.**

**Please provide a list, by tariff line item number, of all products considered relevant to the general equilibrium of the national economy and thereby subject to import restriction. What criteria are used to add products to this list?**

**Answer**

Every year, the Government issues a list of goods relating to the major balance of the economy (goods relevant to the general equilibrium of the national economy). In 1996, it covered petroleum, fertilizers, cement, sugar and construction steel. In 1997, only petroleum and fertilizer are included in this list.

The decision to include a particular product in the list is based on the analysis of the economic ministries concerned on the cross-sectoral impact of the product, the need for protection of the industry (particular emphasis are laid on labour-intensive, local resources utilization and infant industries).

**Question 240**

**Please describe the import restrictions applicable to each product relevant to the general equilibrium of the national economy. Are these products subject to import prohibition or quantitative restriction? Do the import restrictions apply to imports of these products pursuant to preferential trade agreements?**

**Answer**

Please refer to Appendix 7 - List 2 (WT/ACC/VNM/3/Add.1 which gives the answer to question 237) for the list of products which are subject to quantitative restrictions. This list also specifies the restrictions applying to products relating to major balance (or general equilibrium) of the national economy. In 1997, the products concerned are petroleum and fertilizer which are all subject to MFN-based quantitative restrictions. Import prohibition is not applied.

Please refer to the answer to question 250.

**Question 241**

**Please explain the significance of sugar to the "general equilibrium of the national economy" and describe all protection it receives.**

**Answer**

In 1997, sugar is no longer included in this list. It is, however, still subject to import restriction for the reasons as mentioned in the answer to question 283.

**Question 242**

**Please identify, by tariff line item, each consumer product (including foods, personal and household utensils, electronics, electric appliances, optical instruments and personal vehicles) subject to such import limitations. For each item, please provide the amount of the quantitative limitation or any other restrictions currently applicable to importation.**

**Answer**

Before 1996, the total value of imported consumer goods was limited to 20 per cent of the total exports value. Since 1997, the Government no longer applies this restriction (except for cars under 12 seats and motorbikes). However, import licences from Ministry of Trade are still required for importation of consumer goods.

The Government is planning to replace this licensing regime by tariffs which will be the main tools for regulating imports of consumer goods.

**Question 243**

**How is the 20 per cent limitation administered? Does the limitation apply at the enterprise level? It would appear to be a TRIM inconsistent with the obligation of general elimination of quantitative restrictions (see paragraph 2(A) of the Illustrative List in the Annex to the TRIMs Agreement).**

**Answer**

Please refer to the answers to questions 242 and 266.

**Question 244**

**Are there any other policy measures affecting the importation of these items?**

**Answer**

It is planned that this restriction will be substituted by import tariff for the majority of those items. Please refer to the answer to question 242 for the detailed information.

**Question 245**

**Are agricultural and food imports considered "consumption imports"? If so, please explain in further detail how Vietnam controls consumption imports when this limit is reached.**

**Answer**

Only a limited categories of agricultural and food imports are considered as consumer goods. Please see the detailed information on the measures applying to consumer imported goods in the answers to questions 242 and 266.

**Question 246**

**What import restrictions are applied to transportation vehicles?**

**Answer**

The following quantitative restrictions are applied to transportation vehicles:

- automobiles with less than 12 seats (quota of approximately 3,000 vehicles per year);
- automobiles with more than 12 seats; freight vehicles (quota of approximately 30,000 vehicles per year).



Restrictions are not applied to specialized automobiles which are not used for passengers and freight transport (e.g., crane lorries, fire-fighting vehicles, road sweeper lorries, water spraying lorries, etc.).

#### Question 247

**What is the WTO rationale for the prohibition of imports of antiques, drugs of all kinds, cigarettes, used consumer goods, automobiles and other motor vehicles with left-handed steering, used spare parts of automobiles, and two-wheel and three-wheel motor vehicles? Does Vietnam prohibit the domestic production and sale of these products? Does Vietnam allow the importation of any of these products pursuant to preferential trade agreements? If so, please identify.**

#### Answer

Antiques are not subject to import prohibition.

Drugs are prohibited for reasons protection of human health.

The reasons for import prohibition of cigarette, used consumer goods, used parts of automobiles and two- and three-wheel vehicles are referred to in the answer to question 281.

Reasons for import prohibition of right-handed drive cars are referred to in the answer to question 284.

All of the above-mentioned goods are prohibited from production and sale in the domestic market, except for:

- cigarettes (please refer to the answers to questions 271 and 272 for details);
- used consumer goods, used parts of automobiles transport vehicles which are not prohibited from sale in the domestic market;
- right-handed drive cars for export.

Other restrictions will be considered and addressed in the course of accession negotiations.

#### Question 248

**According to the Memorandum (WT/ACC/VNM/2), Vietnam limits the importation of transportation vehicles in order to limit the deterioration of the environment and traffic system, to control the pressure of booming demand for transportation vehicles on development investment and to control foreign exchange savings.**

**Please provide a detailed list, including HS numbers, of all transportation vehicles subject to these limitations and/or the criteria for application of the restrictions. Please describe in detail the nature of the limitations on the importation of transportation vehicles and how the limitations are applied. Are there any import restrictions other than the 55 per cent import tariff rate? Does Vietnam have a programme to limit the domestic production of transportation vehicles for the reasons noted above? What is the current status of the prohibition on the importation of used motor vehicles?**

#### Answer

Please refer to Appendix 7 - List 2 (WT/ACC/VNM/3/Add.1) for the detailed list, including HS numbers, of all the restrictions applied.

**Question 249**

**Regarding limitation on import of transportation vehicles which is aimed at limiting the deterioration of the environment and the traffic system (page 37, WT/ACC/VNM/2) are these vehicles produced in Vietnam? If so, does the limitation apply to domestic production? Are there any differences in the contents between import limitations and domestic limitations?**

**Answer**

Please refer to Annex 3 (WT/ACC/VNM/3/Add.1), except the vehicles assembled from CKD2 and motorcycles from IKD. The transport vehicles assembled locally are subject to quantitative restrictions similar to import of CBU vehicles.

**Question 250**

**According to paragraph IV.1(f)(3) of the Memorandum (WT/ACC/VNM/2), the Ministry of Trade shall announce and grant an import quota for the whole year to selected enterprise applicants.**

**Please provide a list, including HS tariff numbers, of all items subject to import quotas and the size of the quotas for the past three years.**

**Answer**

Following is the list of products which are subject to import quantitative restriction in 1995, 1996 and 1997:

No.	Commodities	Unit	1995	1996	1997
1	Petroleum (except lubricants)	ton	4,800,000	5,400,000	6,500,000
2	Urea	ton	1,300,000	1,400,000	1,500,000
3	Commonly used steel	ton	600,000	AAA	500,000
4	Steel ingots	ton	No restriction	No restriction	900,000
	Black cement	ton	2,200,000	1,400,000	5-700,000
5	Clinker	ton			1,100,000
	Sugar	ton	70,000	AAA	AAA
6	Automobiles of all kinds	unit		20,000	
7	- with less than 12 seats	unit	6,500 (1,500-2,000 units are locally manufactured)	Subject to regulations on importing consumer goods (5,000 assembled units)	3,000
	- trucks; passenger vehicles	unit		30,000	
	Motorcycles (including unassembled kits)	unit	350,000	350,000	350,000

No.	Commodities	Unit	1995	1996	1997
8	Consumer goods		not exceeding 20% the total export value during the year	not exceeding 20% the total export value during the year	No quantitative restriction applied but import licence is required.
9	Construction glass	m2	No restriction	No restriction	2,000,000
10	Paper (printing paper, newspapers paper and paper for writing)	ton	No restriction	No restriction	20,000

AAA: Instead of setting any specific quota, the Government authorized relevant ministries to determine the market demand and appoint appropriate import channel, with the aim of satisfying production and consumption requirements and avoiding wide market fluctuation.

#### **Question 251**

**What factors does the Ministry of Trade consider in determining the size of the import quotas and how they are allocated?**

#### **Answer**

The quantity of quotas is determined on the basis of supply and demand of the product concerned. Detailed information is given in the answers to questions 239 and 252.

The information on quota allocation regime is presented in Annex 3 (WT/ACC/VNM/3/Add.1).

#### **Question 252**

**How is the "supply-demand plan on the national economy scale of the year" determined?**

#### **Answer**

The supply-demand plan of the year is resulted from comprehensive demand-supply analysis of each of the major products. It is determined on the basis of the projected aggregate supply (including production and stocks) and aggregate payable demand (demand for domestic and imported products) in the year concerned.

Ministry of Planning and Investment, as the focal point, cooperates with Ministry of Trade and other ministries to determine the aggregate demand and supply of the whole economy for each of the major products.

#### **Question 253**

**Are import licence holders permitted to sell their import quotas to other licence holders? Please provide details on how much import quota is sold annually, rather than used by enterprises to which it was allocated for those products where the practice is most wide-spread.**

#### **Answer**

The transfer of import licence is strictly prohibited and judged by Vietnamese laws.

**Question 254**

**On page 36 it is said that "Vietnam has not yet adopted the tariff quota, but it reserves its right to impose it, when it is deemed necessary and possible". From page 39 of WT/ACC/VNM/2 we understand that the responsible ministry is "announcing the yearly quantity under import quota regulation: the quantity being adjusted according to the supply". Could Vietnam explain the apparent discrepancy between the two statements, please?**

**Answer**

At present, Vietnam is applying some quota restrictions. These are quotas, not tariff quotas. Therefore, the adjusted quota (according supply) does not affect the applied tariff rate.

**Question 255**

**Are the lists of prohibited exports and imports contained in Appendix II of the Memorandum (WT/ACC/VNM/2) up to date? Does Vietnam intend to maintain these restrictions after it has joined the WTO? If yes, on what grounds?**

**Answer**

The lists of prohibited exports and imports contained in Appendix II of the Memorandum (WT/ACC/VNM/2) still remain in force (according to Decision No. 28/TTg, dated 13 January 1997 of the Prime Minister). Such lists may be subject to changes upon the Prime Minister's decision. In the past two years, however, those lists have been unchanged (According to Decision No. 864/TTg dated 30 December 1997 and Decision No. 28/TTg dated 13 January 1997 of the Prime Minister).

Due to national security and environmental protection purposes, Vietnam will continue to apply the lists of prohibited imports and exports.

Please refer to Annex 3 (WT/ACC/VNM/3/Add.1) for detailed information.

**Question 256**

**Please provide a full list of products (with HS codes) subject to import quantitative restrictions. The list should include the type of restriction maintained and the WTO justification for maintaining the restrictions.**

**Answer**

According to the Decision No. 28/TTg dated 13 January 1997 and Circular No. 02 dated 21 February 1997 of the Ministry of Trade, the following products are subject to quantitative restrictions:

- export items:
  - rice,
  - textiles and garments exported to the European Communities;
- import items:
  - steel:

- V/L-shaped beam from 80 mm,
- U(C)-shaped beam from 120 mm,
- I(H)-shaped beam from 120 mm,
- steel sheet of a thickness of less than 3.75 mm. In which:
  - steel sheet used as materials for production of pipes and galvanized sheet
  - galvanized steel, in sheet or rolls used as materials for production of corrugated steel sheet,
- steel sheet of a thickness from 3.75 mm to 34 mm,
- construction steel used for special purposes,
- steel billets from 45 x 45 mm to 130 x 130 mm;
- steel billets;
- cement;
- clinker;
- construction glass (thickness between 3 mm and 12 mm);
- trucks, passenger vehicles and cars;
- paper (printing paper, newspapers paper, writing paper);
- sugar.

Please refer to Annex 3 (WT/ACC/VNM/3/Add.1) for the detailed list.

Vietnam is in the process of formulating a new tariff nomenclature based on HS version 1996 and it will provide the list of products, with HS codes version 1996, subject to import quantitative restrictions when the process is completed. Please refer to Appendix 7 - List 2 (WT/ACC/VNM/3/Add.1) which contains the list of products, with HS in Vietnam's current nomenclature, which are subject to quantitative restrictions.

The measures inconsistent with the provisions of WTO Agreements will be addressed in the process of accession negotiation.

#### **Question 257**

**Could it be correct to understand that Vietnam has no import prohibition measures to protect its domestic industries?**

**Answer**

Yes.

#### **Question 258**

**Could Vietnam provide more information about the non-tariff measures which are applied to protect particular industries, and indicate whether it intends to provide non-tariff protection for these industries in the future?**

**Answer**

At present, other than tariff, quantitative restrictions and conditional licensing, Vietnam does not apply any measures to protect domestic industries. However, Vietnam is examining its applied

measures vis-à-vis the provisions of the WTO Agreements. Vietnam will notify the Working Party all inconsistent measures, if any, as soon as possible.

**Question 259**

**Are non-tariff measures being employed to support a policy of import substitution in Vietnam?**

**Answer**

At present, Vietnam applies a number of non-tariff measures for the purpose of protection of infant and labour-intensive industries.

**Question 260**

**What are the "used consumer goods" which fall under "prohibited imports" (page 39, seventh and ninth sub-paragraph, page 74, WT/ACC/VNM/2)?**

**Answer**

Please refer to the list in Annex 3 (WT/ACC/VNM/3/Add.1).

**Question 261**

**Could Vietnam inform us about the exact import restrictions that apply to each of the five products considered to be "relevant to the general equilibrium of the national economy"?**

**Answer**

Please refer to the answers to questions 239 and 250 for detailed information.

**Question 262**

**What are the import restriction measures for petroleum, sugar, cement, etc. in connection with the general equilibrium of the national economy (page 36, last paragraph, WT/ACC/VNM/2) (Contents of each measures, requirements for invocation of such measures etc.)?**

**Answer**

Please refer to the answers to questions 239, 250, 252 and 283.

**Question 263**

**How is the amount of a quota set?**

**Answer**

The quota quantity is determined on the basis of the projected aggregate supply (including production and stocks) and aggregate payable demand (demand for domestic and imported products) in the planning year. Thus, quotas are, in most cases, adjusted annually.

**Question 264**

**Is it set at the beginning of the year for the whole year?**

**Answer**

Yes, quota is set at the beginning of the year for the whole year.

**Question 265**

**Is the quantity adjusted according to the supply-demand during the year?**

**Answer**

Yes.

**Question 266**

**We note that Vietnam has a policy of restricting imports of finished consumer goods to 20 per cent of export revenue.**

- (a) Is this policy intended to protect non-competitive local industry?**
- (b) Could Vietnam provide details of its plans to abandon this policy?**

**Answer**

- (a)** The purpose of this policy is to increase domestic savings, and to ease the current account deficit.
- (b)** The restrictions on imported consumer goods was applied in 1995 and 1996. The protective nature is secondary as many types of consumer goods subject to restriction are not produced in Vietnam. For this reason, Vietnam is now planning to replace this quantitative restriction by tariff measure, i.e., import tariff shall be the main tool to regulate imports of consumer goods.

**Question 267**

**Does Vietnam intend to maintain a policy to regulate imports of consumer goods not exceeding 20 per cent of the total export value (page 37, limitation on import of consumer goods)? If so, how does Vietnam justify this policy in terms of WTO Agreements?**

**Answer**

Please refer to the answer to question 266.

**Question 268**

**According to the Memorandum (WT/ACC/VNM/2), in order to save foreign exchange for investment development demand and other pressing needs arising out of pre-stage development economy, to protect small scale and infant domestic industry, imports of consumer goods are subject to separate regulations.**

**How would Vietnam justify the use of quantitative restrictions to protect small-scale and infant industries under WTO rules?**

**Answer**

Please refer to the answer to question 266. In the overall development policy formulation for sustainable development, the rules of WTO will be taken into considerations.

**Question 269**

**Characteristics of the National Taxation System (page 34, WT/ACC/VNM/2). One of the basic principles followed in setting tariff rates is that they should help to guide domestic consumption. How is this principle being applied in reality?**

**Answer**

This principle is reflected in the Law on Excise Tax dated 30 June 1990 and the Law on Export and Import Duties dated 26 December 1991. These laws provide for higher tax rates applicable to products which are not essential to livelihood of the people.

**Question 270**

**Vietnam will need to remove all of its quantitative restrictions, including all of its import quotas, before it can accede to the WTO. When will Vietnam remove all of its quantitative restrictions?**

**Answer**

Vietnam has unilaterally removed many of its quantitative restrictions over the last few years. In some cases, however, corresponding to the characteristics of its economic development, Vietnam may need to maintain quantitative restrictions or apply tariff quotas in some sectors.

**Question 271**

**Import of cigarettes is prohibited (except for personal use in rationed quantities). Given that Vietnam has a domestic tobacco industry, what is the WTO justification for these restrictions?**

**Answer**

Please refer to the answer to question 272 herein.

In addition, Vietnam is reviewing its tax regime applicable to the tobacco industry.

**Question 272**

**Is there any control measure in Vietnam with regard to consumption of domestically produced cigarettes?**

**Answer**

Import prohibition of cigarettes is one of the measures in the anti-smoking programme which aims at restricting production and consumption of cigarettes. Other measures are:



- prohibition of establishment of new cigarette production facilities;
- application of high excise tax rate to tobacco;
- prohibition on cigarettes advertisement of any form;
- prohibition of sponsorship by tobacco companies for cultural and sports activities;
- promotion of anti-smoking campaigns.

**Question 273**

**"Mother's milk simulation" (page 40 of WT/ACC/VNM/2) requires special approval from the line ministry. Does this mean that milk powder and condensed milk (under HS heading 0402) are subject to any import restriction?**

**Answer**

As other mother's milk simulations, milk powder and condensed milk may only be imported into Vietnam after being inspected and granted a certificate confirming that the products meet all food hygienic criteria by the Ministry of Health. As like any other consumer goods, milk powder and condensed milk are also subject to the licensing regime as referred to in the answer to question 242.

**Question 274**

**Are these restrictions, based as they are on environmental reasons, applied on an MFN basis, including to other ASEAN Members?**

**Answer**

Yes.

**Question 275**

**Please comment on how these restrictions, which the Memorandum (WT/ACC/VNM/2) states have been taken for environmental reasons, sit with the policy of the Vietnamese Government to encourage joint-ventures in the vehicle manufacture and assembly sectors.**

**Answer**

Please refer to the answer to question 248 for the requested information.

**Question 276**

**What does Vietnam mean when it states that it regulates "consumption imports ... not exceeding 20 per cent of total export value"?**

**Answer**

Please refer to the answer to question 266 for the requested information.

**Question 277**

**Upon what basis is the 20 per cent calculated - HS6, HS4, HS chapter heading or another basis?**

**Answer**

This restriction has been abolished since the beginning of 1997. However, imports of consumer goods are still subject to import licence issued by Ministry of Trade. Vietnam is planning to replace this measure by tariff and thus tariff will be the sole tool used to regulate imports of consumer goods.

**Question 278**

**What measures has Vietnam taken or is planning to take to "regulate consumption imports in this way"?**

**Answer**

Please refer to the answer to question 266.

**Question 279**

**Does Vietnam have any intention of removing any of these types of import restrictions on consumption imports?**

**Answer**

Please refer to the answer to question 266.

**Question 280**

**It would appear from the text that it is sometimes possible to import goods listed in Annex 2.1 (WT/ACC/VNM/2) as "prohibited". For each of products listed in Annex 2.1, please indicate the precise circumstances, if any, under which these products may be imported into Vietnam.**

**Answer**

The list is issued by the Prime Minister. If the importer has a legitimate demand and has obtained approval from the Prime Minister, such goods can be imported. For example, in recent years, weapons, ammunition, explosives and military equipment have been imported pursuant to the decision of the Prime Minister.

**Question 281**

**Please explain the reasons the following products are prohibited for imports: cigarettes, used consumer goods and used spare parts of automobiles (Appendix 2, WT/ACC/VNM/2). Please provide the list of used equipment (including spare parts of components) prohibited for imports.**

**Answer**

Import of cigarettes is prohibited for reasons of human health protection.

Import of used consumer goods is prohibited for environmental and hygienic reasons.

Import of used spare parts of automobiles is prohibited for reasons of traffic safety.

Currently (in 1997), the following equipment (including spare parts and components), if used, is not allowed to import:

- equipment for oil and gas processing industry; electric power equipment, cement production lines; ore separators; metallurgical furnace equipment; equipment used in the production of basic chemicals, fertilizers and insecticides;
- equipment which are essential to product quality in food processing and pharmaceutical industries;
- high precision equipment such as measuring, experimental and testing equipment, and equipment used in the post and telecommunications network;
- equipment that require high safety standards such as boilers, elevators, nuclear reaction controllers, testing and safety system for controllers;
- equipment that may have significant environmental impact over a large area such as waste disposal equipment, water dam gates and equipment used in industrial or other production lines that may cause accidents resulting in serious environmental impacts.

#### **Question 282**

**How does Vietnam reach decisions on import quota allocations?**

#### **Answer**

Different method of allocation is applied for each type of product. However, quotas are basically allocated to:

- enterprises which are granted import-export trading rights;
- enterprises holding export/import licences for the product in question; and
- enterprises which have the financial and other business-related management capability.

#### **Question 283**

**Discretionary import licensing for sugar (page 38, WT/ACC/VNM/2) is inconsistent with the WTO Agriculture Agreement. We are concerned that the discretionary licensing appears to impose quantitative restriction on imports. Could Vietnam provide more information on the quantitative restrictions applied to sugar?**

#### **Answer**

The importation of sugar affects a significant number of farmers involved in sugar cane cultivation. In Vietnam, sugar canes are cultivated in central coastal areas and the Central Highlands which are relatively poor areas. People in these areas are therefore subject to the Poverty Alleviation Programme of the Government. Due to several objective factors (such as cultivation practices, huge costs incurred due to delayed restructuring in a less developed economy, low productivity and low rates of sugar extraction from sugar cane due to obsolete technology), Vietnam has to temporarily impose restrictions on imported sugar for the last 3 years to ensure a market for domestically planted sugar cane. The import quota for sugar is set with consideration to (a) local production (i.e. refinery)

capacity; (b) annual sugar-cane outputs; and (c) domestic demand for sugar, and for the purpose of (i) ensuring consumption of entire outputs and (ii) covering farmers' production costs.

**Question 284**

**What are the reasons why the "motor vehicles with left-handed steering" are classified as prohibited import (page 74, eighth sub-paragraph, WT/ACC/VNM/2)?**

**Answer**

Right-hand steering automobiles are prohibited imports because the Traffic Code of Vietnam stipulates that automobiles have to go on the right-hand side and only left-hand steering automobiles are allowed to go on roads.

**Question 285**

**Paragraph 3, page 37 refers to a limit on "consumption imports" of 20 per cent of total export value. Can Vietnam provide details on those products (by HS tariff line) classified as "consumption imports", and on the way in which this 20 per cent restriction is operated. Can Vietnam please comment on the consistency of this policy with Art XI of the GATT.**

**Answer**

Please refer to the requested list (with HS code) in Appendix 1 to document WT/ACC/VNM/3/Add.1.

For other information, please see the answers to questions 242 and 266.

**(f) Import licensing procedures**

**Question 286**

**For each product still requiring an import licence, please describe the import licensing requirements by completing a questionnaire on import licensing.**

**Answer**

Please refer to Annex 3 (WT/ACC/VNM/3/Add.1).

**Question 287**

**How does Vietnam intend to bring its licensing and shipment licensing regime into conformity with the WTO Agreement on Import Licensing?**

**Answer**

The shipment licence (licence required for each consignment) is no longer applied. For information concerning other types of licence, please refer to the answer to question 236.

The refinery and improvement of import licensing regime is under consideration with due regard to the provisions of the WTO Agreements.

**Question 288**

**Since 1 February 1996, Vietnam has removed shipment licences from almost all exports. Please identify, including HS numbers, all imported products still requiring shipment licences.**

**Answer**

The shipment licence (licence required for each consignment of goods) is no longer applied.

**Question 289**

**Please explain how a shipment licence differs from an import licence.**

**Answer**

The shipment licence (licence required for each consignment) is no longer applied. In the past, when the customs authorities are not capable of collecting trade data, shipment licences are used for statistics collection (not for management of imports and exports).

**Question 290**

**For each product still requiring a shipment licence, please describe the import licensing requirement by completing a questionnaire on import licensing.**

**Answer**

Please refer to the answer to question 288 and Annex 3 (WT/ACC/VNM/3/Add.1).

**Question 291**

**According to the Memorandum (WT/ACC/VNM/2), the import of second-hand machinery and equipment are subject to regulations issued by the Ministry of Science, Technology and Environment. We have received reports that the importation of these products is effectively prohibited.**

**Please describe in detail the provisions of the regulations that apply to the importation of second-hand machinery and equipment.**

**Answer**

Please refer to the answer to question 281 and Annex 3 (WT/ACC/VNM/3/Add.1).

**Question 292**

**Please describe the import licensing procedures applicable to the importation of second-hand machinery and equipment in the form of a response to the questionnaire on import licensing.**

**Answer**

Please refer to Annex 3 (WT/ACC/VNM/3/Add.1).

**Question 293**

**What are the criteria for permitting the import of second-hand machinery and equipment? What is the policy rationale for prohibiting or requiring governmental approval for the import of used machinery and equipment?**

**Answer**

For detailed information, please refer to the answer to question 281 and Annex 3 (WT/ACC/VNM/3/Add.1).

**Question 294**

**According to the Memorandum (WT/ACC/VNM/2), the imports of complete equipment financed by the State budget shall be presented under the section related to government procurement.**

**Does the State budget finance the purchase of any complete equipment for commercial use? Does the State budget finance the purchase of any complete equipment for non-State enterprises? Please describe any import restrictions that apply to such equipment purchases financed by the State budget and the applicable import licensing procedures.**

**Answer**

Except for newly established enterprises, the State only provides capital in the form of equity investment. State-owned enterprises may use either State-financed capital or loaned capital to purchase complete equipment. State-owned enterprises are required to make feasibility study and obtain approval for their purchase of complete equipment.

The procedures for approval of complete equipment imports are as follows:

- approval of Ministry of Trade (which must consult the line-management ministry and Ministry of Finance) for projects valued less than US\$5,000,000;
- approval of the State Appraisal Committee (which comprises of various ministries and is chaired by Ministry of Trade) for projects valued between US\$5,000,000 and 10,000,000;
- approval of the Prime Minister (who shall make the decision based on recommendation of the State Appraisal Committee) for projects valued more than US\$10,000,000;

The maximum processing period for approval is 30 days. When the approval is obtained, one licence is issued for the whole purchase contract.

These procedures are under review for adjustment.

**Question 295**

**According to the Memorandum (WT/ACC/VNM/2), “certain items which may relate to GATT Article XX require approval from the line ministry before importation”.**

**Please identify, including HS numbers, all items requiring approval from the line ministry before importation and the specific criteria these imports must meet to qualify for approval.**

**Please describe the import licensing procedures for each of these products in the form of a response to the questionnaire on import licensing. Where the licensing is non-automatic, list the specific criteria applied for approval of each imported product.**

**Answer**

The information regarding the licensing regime is presented in Annex 3 (WT/ACC/VNM/3/Add.1). For the list (with HS), please refer to Appendix 7 - List 1 (WT/ACC/VNM/3/Add.1).

**Question 296**

**There is a brief description in the Memorandum (WT/ACC/VNM/2) of the administration of the import quota system for certain products, including sugar. However, Article IV.2 of the WTO Agreement on Agriculture prohibits non-tariff measures, such as import quotas for agricultural products. How does the Government of Vietnam intend to eliminate these quotas?**

**Answer**

The measures which are not consistent with the provisions of the WTO will be examined and addressed during the course of accession negotiation.

**Question 297**

**Vietnam is requested to complete the questionnaire on import licensing procedures, which will form the basis of discussion on this point.**

**Answer**

Please refer to Annex 3 (WT/ACC/VNM/3/Add.1) which provides the information on import licensing in the format of the Questionnaire on Import Licensing Procedures.

**Question 298**

**Import licensing procedures (page 38, WT/ACC/VNM/2). The Memorandum states that since 1 February 1996, Vietnam has removed shipment licensing for almost all imports. However, the regime described is that of 9 April 1992 (Regulation No. 297/TMDL/XNK). What regime is in force? Please supply a list of goods subject to import licensing.**

**Answer**

At the moment, shipment licence (i.e. licence for each consignment of goods) has been abolished. Decision No. 297/TMDL/XNK dated 9 April 1992 has been repealed.

For the list of all goods subject to import licensing and the licensing procedures, please refer to Annex 3 (WT/ACC/VNM/3/Add.1).

**Question 299**

**We refer to the information provided on Vietnam's import licensing procedures under section IV.1(f) (pages 37-39, WT/ACC/VNM/2).**

- (a) **Could Vietnam provide details of the requirement for prior approval and information on the basis of which licences are granted or allocated?**
- (b) **Could Vietnam provide details of the relevant legislation and administrative procedures required to obtain prior approvals and import licences? What is required under Ministry of Trade and Tourism's Regulation No. 297/TM/DL?**
- (c) **What is the amount of time for approval requests to be acted upon?**
- (d) **What fees are payable for prior approvals? Is the form of such fees a flat-rate or a percentage?**

**Answer**

Regarding the licensing procedures, please refer to Annex 3 (WT/ACC/VNM/3/Add.1).

Decision No. 297/TMDL/XNK dated 9 April 1992 has been repealed.

**Question 300**

**Information that we have suggests that obtaining import and export licences is currently a difficult and non-transparent process. It also appears to be much easier for State-owned enterprises to obtain such licences.**

- (a) **Are import and export licences used for monitoring purposes only? Or are they used to control imports and exports.**
- (b) **Is preference granted to Vietnam's State-owned enterprises. in the grant of import and export licences?**
- (c) **Could Vietnam outline any plans which it may have for streamlining the process of obtaining import and export licences and making such licences more freely available?**

**Answer**

In the past, due to the limits and difficulties in terms of information, working facilities, and administration mechanism (applications for licence are processed manually), the licensing process is not as transparent and speedy as it may be in other more developed countries. This has led to the misunderstanding as to the impediments caused by the licensing regime. In fact, for those enterprises which have complete the application file as required, it is relatively easy to obtain the import licence. The licensing procedures have recently been improved significantly.

The import/export business licence which provides the trading rights for the enterprise is issued, on the basis of the set criteria, once for validity in many years. The purpose of this type of licence is to preserve the creditability of Vietnam in the world market by minimizing the risks of non-performance resulting from incapability of implementing the contract. Certification of the specialized management agencies is applied for reasons of national security, plant, animal and human health, environment protection etc. Regarding the detailed information on each type of licence, please refer to Annex 3 (WT/ACC/VNM/3/Add.1).



There is no provision in the existing laws which stipulates preferential treatment to State-owned enterprises in the issuance of export-import licence. The criteria for granting of export-import licence are uniformly applied to all enterprises, irrespective of their forms of ownership. However, as the State-owned enterprises have more experience and better understanding of the procedures (the private sector has been in existence only since the beginning of the 1990s), it may cause to think that it is relatively easier for State-owned enterprises to obtain the licence.

### **Question 301**

**The importation of aqua-cultural feeds requires the prior approval of the Ministry of Aqua-culture.**

**Please describe the type of approval that is required from this Ministry prior to importation. Does Vietnam impose special sanitary, health, or other technical requirements on imports of aqua-cultural feed products?**

#### **Answer**

Enterprises that need to import aqua-cultural feeds must submit their annual import plan to the Ministry of Aqua-culture. After obtaining the approval of the Ministry of Aqua-culture, these enterprises shall register for product quality inspection in accordance with the Decision No. 1184QD/KHCN dated 21 December 1996 of the Ministry of Aqua-culture and then proceed with the import procedures at the Customs Office.

### **Question 302**

**Paragraph 5, page 38 states that Vietnam has removed the requirement for shipment licences for "almost all imports " from 1 February 1996. Could Vietnam please provide a list (by HS tariff line) of those products for which shipment licences are still required. Could Vietnam also please confirm that, apart from those products which appear on the list requested above, any broader requirement for shipment licences has now been abolished.**

#### **Answer**

At the moment, the shipment licence (i.e. licence for each consignment of goods) has been abolished. Decision No. 297/TMDL/XNK dated 9 April 1992 has been repealed.

**(g) Other border measures**

### **Question 303**

**According to paragraph IV.4(g) of the Memorandum (WT/ACC/VNM/2), if duties payable are under 5 per cent, then the rate of 5 per cent shall be imposed.**

**Is Vietnam's regime for border trade consistent with the requirement of paragraph 3(a) of GATT Article XXIV, i.e., that only "frontier traffic" is subject to special regime?**

#### **Answer**

In the border area, there are two types of trade which co-exist. They are normal (official) trade and small border trade.

(a) Normal trade encompasses trading activities implemented by enterprises which have been granted import-export business licence. All the provisions applicable to import and export activities as presented in the Memorandum and these answers are also applied, without any exceptions, to this type of trade.

(b) Border trade is the exchange of goods in small scale between residents of the two countries in the border areas. The term "small scale" is construed to be of value less than 500,000 Dong (approximately US\$40 at the current exchange rate) for each trading transaction.

(c) Those who can conduct border trade are:

- in the Vietnam-China border areas: traders residing in border districts; trading enterprises based in the border provinces which have obtained approval of the provincial people's committee for their engagement in border trade;
- in the Vietnam-Laos border areas: only residents in the border districts.

(d) The regulation regarding duties as referred to in the question is only applicable to small border trade. In principle, small border trade is subject to normal tariffs, except the two following cases:

- if the product is not included in the tariff nomenclature, then the tariff rate of 5 per cent is applied;
- if the product is included in the tariff nomenclature but the applicable tariff rate is less than 5 per cent, then the tariff rate of 5 per cent is applied.

Duties exemptions are applied as followed:

- duty exemption for transaction valued at less than 500,000 Dong (approximately US\$40/person/week);
- the above duty exemption is only applied to goods with origin from the adjacent country or exported from Vietnam.

(e) Article XXIV of GATT 1994 allowed MFN exemption for border trade. Vietnam tariff regime applicable to border trade is thus consistent with GATT rules.

#### **Question 304**

**Please describe the regime for border trade and identify the specific geographic areas to which the border trade regime applies, including distance from the border covered. What other market access preferences are provided for products originating in the border trade areas?**

#### **Answer**

Vietnam has land borders with China, Laos and Cambodia. Trading activities conducted in the border areas are classified into two types: normal trade and small border trade (please refer to the answer to question 303).

In principle, the provisions applicable to normal border trade is also applied to small border trade, except:

- (a) those who engage in border trade may not necessarily be licensed importers or exporters (please refer to section (c), the answer to question 303);
- (b) the same tariffs are applied, except for cases as specified in section (d), the answer to question 303;
- (c) border trade is subject to limit on the value of the transaction whereas normal trade is not (please refer to section (c), the answer to question 303).

Other than the above points, no preferential access is provided to small border trade and normal trading activities in the border areas.

### Question 305

**Re. the products arriving in the rest of Vietnam from border trade subject to normal customs clearance procedures, fees and charges, tariff and restrictions? If so, how are normal procedures, charges and restrictions applied to these products?**

#### Answer

Please refer to the answers to questions 303 and 304.

### Question 306

**For each of the past three years, please provide the total value of imports and exports exchanged in each border trade area. Please identify the ten product items with the largest border trade import and export value, by HS tariff numbers, individual import values and principal supplying border area.**

#### Answer

Vietnam border trade activities are conducted with 3 countries: China, Laos, Cambodia, in which trade with China accounts for the major part. The following figures show the total import/export turnover and the top-10 import/export commodities in border trade between Vietnam and China in the past 3 years:

Import/Export Commodities	Unit	1994	1995	1996
Vietnam-China cross-border export turnover, principal export commodities	million US\$	207,6	147,9	130,4
Coal	1,000 tons	200	12	5
Rubber	1,000 tons	25,1	66	16
Marine products	1,000 US\$	900	2.700	1.200
Electronics	1,000 US\$	10,000	900	50
Fresh vegetables	1,000 tons	2,400	1,200	1,500
Coconut oil	1,000 tons	8,1	2,0	0,5

Import/Export Commodities	Unit	1994	1995	1996
Metal ores	1,000 US\$	1.330	2.500	980
Tea		350	300	250
Steel		35		
Vietnam-China cross-border import turnover, principal import commodities	Million US\$	271,9	216,2	174
Construction materials	1,000 US\$	500	400	200
Consumer electronics	1,000 US\$	428	373	305
Cement	ton	1,052	1,400	470
Electrode coal	ton	152,9	233	102,5
Fresh vegetables	1,000 US\$	2,400	1,200	1,500
Insecticides	1,000 US\$	4,100	3,500	3,000
Agriculture machinery	1,000 US\$	200	150	50
Sugar	1,000 US\$	120	200	
Silk	1,000 US\$	350	300	150
Construction glass	m2		950	1000

Source: Department of Market Administration - Ministry of Trade

### Question 307

**According to the Memorandum (WT/ACC/VNM/2), the provincial people's committees and provincial customs authorities shall be responsible for setting the minimum customs prices for merchandise not covered by the list of minimum prices in force.**

**Are the provincial people's committees and provincial customs prices for any imports from countries not bordering Vietnam?**

### Answer

The people's committees of provinces and cities and the local customs authorities do not have the authority to make decisions in respect of the minimum import prices. This is solely under the power of the Ministry of Finance and the General Department of Customs. For detailed information, please refer to the answer to question 311.

The Ministry of Finance and the General Department of Customs have the power to set the minimum import prices for goods from any origins.

### Question 308

**Would it be possible to have a clarification on the following sentence (page 40, WT/ACC/VNM/2): "If duties payable are under 5 per cent, then the rate of 5 per cent shall be imposed"?**

**Answer**

Please refer to section (d), answer to question 303.

**Question 309**

**Does this apply to an MFN basis or only to certain trade (please specify)?**

**Answer**

The provisions concerning tariffs payable for small border trade, except tariff exemption cases, are applied to goods of all origins. For detailed information, please refer to section (d), the answer to question 303.

MFN treatment is applied to normal trade in the border areas (please refer to section (a), answer to question 303).

**Question 310**

**Paragraph 2, page 40 explains that if the duties payable on border trade imports are under 5 per cent then the rate of 5 per cent shall be imposed. Could Vietnam please clarify this comment.**

**Answer**

This policy is adopted in order to encourage traders to shift to normal trading activities as regulated by the bilateral trade agreement between Vietnam and the adjacent country concerned. Please refer to the answer to question 303.

**Question 311**

**Paragraph 2, page 40 also states, "As for merchandise not covered in the list of minimum prices in force, issued by the Ministry of Finance, provincial people's committees and provincial customs authority shall be responsible for setting the minimum prices". Could Vietnam provide further clarification of the involvement of such sub-central bodies in setting minimum prices.**

**Answer**

Pursuant to Decision No. 918 TC/QD/TCT dated 11 November 1997 of Ministry of Finance (which become of effect as from 1 December 1997), the Ministry of Finance and the General Department of Customs have the power to fix the minimum import price for the purpose of customs valuation. The Ministry of Finance fixes the minimum prices for the products which are subject to the State management in respect of customs valuation prices. The General Department of Customs fixes (with agreement from the Ministry of Finance) the minimum prices for the following products:

- goods which are not subject to the State management in respect of customs values and for which the contract values cannot be applied;
- goods imported under special terms which are not normal purchase terms and payment is not made through banks.

Thus, sub-central bodies have no authority in setting the minimum prices for customs valuation.

**(h) Customs valuation**

**Question 312**

**Is Vietnam's use of the term of "contract price" synonymous with "transaction value" used in the WTO Agreement on Implementation of Article VII of the GATT?**

**Answer**

The term "contract price" is construed to be the price as indicated in the contract. "Contract price" is the main criteria on which customs valuation is based. Therefore, the "contract price" is not exactly a synonym of "transaction value" used in the Agreement on Implementation of Article VII of the GATT.

**Question 313**

**According to the Memorandum (WT/ACC/VNM/2), customs valuation is based on the price written on the contract (contracted price) and authentic commercial invoice in relation to other relevant documents. However, the State is authorized to issue regulations to supervise prices of certain groups of merchandise. This is done in order to limit tax evasion through fraudulent pricing practices in relation to certain major imports and exports which are often traded at high value and great volume. As of November 1995, Vietnam defined minimum prices for import duty valuation for 34 tariff headings.**

**Please identify, by HS tariff number, the certain groups of merchandise for which the Government is authorised to issue regulations to supervise minimum import prices. Please identify, including HS numbers, the items that could be subject to minimum import prices because they are often traded at high value and great volume. Please identify the 34 tariff headings currently subject to minimum import pricing.**

**Answer**

The list of 34 categories of merchandise subject to government management in terms of import prices for customs valuation (issued together with Decision of the Ministry of Finance No. 975 TC/QD/TCT On the Issuance of Minimum Import Price for Customs Purpose dated 29 October 1996) was replaced by the list of 21 categories of merchandise, enacted by Decision No. 918 TC/QD/TCT dated 11 November 1997 of the Ministry of Finance. The detailed list is as follows:

No.	Items	Code
1.	Milk powder, condensed milk and fresh milk	0401, 0402, 0403
2.	Wheat flour, grain flour, tonic drinks	110100, 110190, 21069020, 21069090
3.	Vegetable oil of all kinds	from 150700 to 151800
4.	Monosodium glutamate	210300
5.	Sugar and confectionery	170100, 170200, 1704, 180600, 1905

No.	Items	Code
6.	Beverages of all kinds	220100, 220200, 20300, 20600, 220400, 220500
7.	Cement, plaster	2523
8.	Paint and varnishes of all kinds	from 3208 to 3210
9.	Shampoos, soaps	350510, 340100
10.	Plastics and plastic products:	392500, from 3919 to 3921, 391800
	- plastic roofing; - plastic doors and windows. - plastic ceiling boards; - thin plastic layer for packing purposes.	
11.	Tyres and tubes of all kinds	4011, 4012, 4013
12.	Papers and boards of all kinds: with HS codes from 4801 to 4816 and 4818 and tariff rates of more than 10%.	
13.	Sanitary porcelain ware, ceramic tiles	9200, 691000, 691100, 91200, 732400, 741800, 61500, 681599, 690100, 90200, 690400, 690700, 90800
14.	Construction glass	00300, 700400, 700800
15.	Iron and steel of all kinds, aluminum structure	72, 7610 except 761020
16.	Gas cooker	732100
17.	Electric appliances and components - Electric pump; - Electric fans; - Air conditioners and parts; - Refrigerators and parts; - Washing machines and parts; - Electric water heaters; - Electric cookers; - Vacuum cleaners; - Speakers; - Amplifiers; - Radio cassette and parts; - CD players and parts; - LD players and parts; - Television sets and parts; - VCRs and parts; - Iron.	41350, 841360, 841370, 41381 41451, 841859 from 41510 to 841590 and 8418 8450 851610 851660 850910 851821, 851822, 51829 851840, 8519  52200 52810, 852820, 52100 51640
18.	Accumulator, battery	from 850710 to 850780, 506
19.	Automobiles and components	70200, 8703, 8704, 870600, 70700, 870900, 8715, 8716
20.	Motorcycles and parts	71100
21.	Chairs and tables, beds and wardrobes of all kinds	40100, 94020030, 940300

**Question 314**

**What plans does Vietnam have to introduce laws and regulations to govern "inter-company" prices (is intra-company meant) and sales between related persons?**

**Answer**

At present, Vietnam has no regulations governing price-transferring practices in its customs valuation legislation. However, this issue has been addressed, in a preliminary manner, in the Circular No. 74/TC/TCT dated 20 October 1997 of Ministry of Finance making provisions relating to the taxation regime applied to enterprises which are subject to the Law on Investment in Vietnam. According to this Circular, if, in the regular inspection or inspection of the enterprise's reports, the tax authority identifies unjustifiable prices or profit levels in transactions between connected companies, it may apply the following measures to correct the taxable amount of the enterprise concerned:

- applying the market price to the price of goods and services being traded among the connected companies;
- determining the buying price based on the selling price in accordance with a formula established by Ministry of Finance;
- determining the taxable profit based on total costs in accordance with a formula established by Ministry of Finance.

**Question 315**

**According to the Memorandum (WT/ACC/VNM/2), there are no specific regulatory provisions applicable to inter-company pricing or for sales between related persons.**

**In the absence of regulatory provisions, how are Vietnamese customs authorities currently valuing inter-company sales and sales between related persons?**

**Answer**

At present, Vietnam has no regulations governing price-transferring practices in its customs valuation legislation. Therefore, the customs authorities determine the customs values on the basis of either the contract or the list of minimum import prices.

**Question 316**

**How does Vietnam plan to bring this regime into conformity with the Agreement on Customs Valuation prior to WTO accession?**

**Answer**

Vietnam is planning to apply the Agreement on Customs Valuation upon accession to the WTO. Vietnam is taking preparatory steps in this direction. As the first step, Vietnam has reduced the products subject to State management in terms of minimum import price from 34 to 21 groups of products.

Please refer to the answer to question 313.



**Question 317**

**Does Vietnam intend to modify the law on import-export duties or applicable regulatory provisions to incorporate the Interpretative Notes to the Customs Valuation Agreement?**

**Answer**

Yes, Vietnam is planning to amend its Law on Export and Import Duty. With regard to customs valuation, please refer to the answer to question 316.

**Question 318**

**Please confirm that Vietnam intend to fully implement the WTO Agreement on the Implementation of Article VII of the GATT 1994 from the date of accession, and that all the provisions of the Agreement, including the interpretative notes, are, or will be, incorporated in Vietnamese law and regulation prior to that time.**

**Answer**

Vietnam will implement its commitments properly upon accession to the WTO.

**Question 319**

**Please confirm that Vietnam will fully implement the provisions for the valuation of carrier media bearing software for data processing equipment and the provisions on the treatment of interest charges in customs value of imported goods.**

**Answer**

This issue is under consideration.

**Question 320**

**How does Vietnam intend to eliminate its minimum import pricing practices prior to WTO accession?**

**Answer**

Please refer to the answer to question 316.

**Question 321**

**How does the Ministry of Finance determine the minimum prices that are being set? What criteria is used in this determination? Are the minimum prices uniform for all products included in a tariff line, or do they differ by country of origin or brand name? Do provincial customs officials have discretionary authority to set minimum import prices for items not included on the list of imported products issued by the Ministry of Finance?**

**Answer**

In the situation of rampant fraudulent trade practices and limited management capacity of government authorities, Vietnam has to use the minimum prices for the purpose of customs valuation.

The list of minimum import prices for customs purposes is formulated pursuant to the provisions of the Law on Export and Import Duty: the price used is in c.i.f. terms and is set on the

basis of data such as imported price of the prestigious companies in a representative period, international market price and prices of similar products.

The minimum prices for customs valuation are not uniformly applied to all items in a tariff line. As the prices of the world market vary according to quality which again may be dependent on the origin of the products, different minimum prices may be applied to a tariff line.

The General Department of Customs is authorized to set (with agreement from Ministry of Finance) the minimum customs valuation import price for goods which are:

- not in the list of the minimum prices;
- under transactions in which the contract price cannot be used or imported by method other than normal purchase in which payments are not made through banks.

### **Question 322**

**Please describe the process of appeal available to importers seeking to overrule a customs office determination of value.**

#### **Answer**

The present process of appeal available to importers seeking to overrule a customs office determination of value is as follows:

- if the importer does not agree with the decision of the customs offices, he has the right to appeal to customs offices at higher levels (the Customs Departments of cities and provinces under the direct control of the central Government);
- Municipal and Provincial Departments of Customs must consider and re-examine the determination of value determined by customs offices at lower levels and advise the importer concerned of its decision in writing;
- if the importer does not agree with the above-decision, he has the right to lodge a claim with the General Department of Customs. Within twenty days from the date of receipt of the application for review, the General Department of Customs must fully resolve the matter and give notice in writing to the importer of the decision;
- if the importer disagrees with the decision of the General Department of Customs, he may either lodge a claim to the Minister of Finance or bring the case to the administrative court. If the importer opts to lodge a claim to the Minister of Finance, the Minister's decision shall be final. Within thirty days, the Minister of Finance must fully resolve the matter and answer to the importer.

### **Question 323**

**Vietnam is requested to complete the Questionnaire on Customs Valuation, which will provide the basis for discussion on this issue, and to submit to the Working Party a copy of its Law relating to Customs Valuation.**

**Answer**

Please refer to Annex 4 (WT/ACC/VNM/3/Add.1).

**Question 324**

**Does Vietnam have any intention to abandon the minimum prices, which apply to a number of products (page 40 of the Memorandum, document WT/ACC/VNM/2)?**

**Answer**

Please refer to the answer to question 316.

**Question 325**

**Could Vietnam provide copies of its laws governing customs valuation?**

**Answer**

Translations of the Decree No. 54/CP, dated 28 August 1993 and Decision No. 918/TC/QD/TCT are available in the WTO Secretariat (Accessions Division, Room 1126) for consultation.

Please refer also to the answer to question 327.

**Question 326**

**Vietnam does not appear to envisage the right of appeal by an importer ultimately to juridical authority (as required by Article II.2 of the Agreement on Implementation of Article VII of the GATT) but only to Ministerial Authority. Does Vietnam intend to rectify this and, if so, when?**

**Answer**

If the importer disagrees with the decision of the General Department of Customs, he/she may either lodge a claim to the Minister of Finance or bring the case to the administrative court. If the importer opts to lodge a claim to the Minister of Finance, whose decision will be final.

**Question 327**

**Paragraph 5-7, page 40 refer to the use of minimum prices to determine import duty valuation. Could Vietnam please provide a full explanation of the operation of this system and comment on its consistency with the WTO Customs Valuation Agreement.**

**Answer**

The customs valuation regulations of Vietnam:

The legal basis for customs valuation is the Law on Import and Export Duties.

Under the provision of this Law, the value for the purpose of duty calculation shall be the face value of legitimate contract, commercial invoice and other related documents. The "contract value" which shall be used for duty calculation is the price actually paid by buyer to seller:

- for exports, export value shall be export price at the border point in f.o.b. terms, which means freight and insurance costs are excluded;
- for imports, import value shall be import price at the border point in c.i.f. terms, which means freight and insurance costs are included.

For imports in particular, in order to deal with under-declaration of value and other fraudulent acts for the purpose of duty avoidance, the Government from time to time sets the minimum import prices for certain groups of goods (which typically have significant import volume, high duty rates and significant duty revenue). Under the authorization of the Government, Ministry of Finance shall, in coordination with Ministry of Trade and the General Department of Customs, determine the minimum prices for these goods. These minimum prices shall be compared to the declared "contract price", which is higher than chosen for duty calculation.

The minimum import prices are set in c.i.f. terms (which is pursuant to the Law) based on statistics of average import price of the most creditable enterprises and the international prices in a representative period.

The use of minimum import prices is, by its nature, a solution to prevent under-declaration of price and other trade fraudulent acts for duty avoidance purposes.

**(i) Other customs formalities**

**Question 328**

**Are importers and exporters able to obtain written determinations of controlled import and export prices prior to shipment of goods, by writing a letter of request to the general department or local customs office?**

**Answer**

In Vietnam, customs valuation of the import/export goods can only be obtained after the customs authority has examined the documents and the goods.

**Question 329**

**When does Vietnam intend to accede to the convention establishing the Customs Cooperation Council and the International Convention on the Harmonized Commodity Description and Coding System?**

**Answer**

Vietnam acceded into the Convention on the Establishment of Customs Cooperation Council (CCC) (now called World Customs Organization) on 1 July 1993 (and became full member of the organization since then).

Vietnam is currently completing the procedures for accession into the Convention on Harmonised System of Description and Coding (HS Convention).

**Question 330**

**We note that Vietnam is to issue regulations to limit losses through fraudulent pricing practices. Could Vietnam provide details of these proposed regulations?**

**Answer**

Preventing and limiting losses caused by fraudulent pricing practices for dutiable purpose is a difficult and time-consuming task. In the near future, provisions on fraudulent pricing practices will be gradually introduced into the Law on Corporate Income Tax, Law on Oil and Gas and documents guiding the implementation of the Law on Foreign Investment in Vietnam. In principle, the new provisions would allow the Ministry of Finance and the taxation authorities to re-determine the value of transactions or production and business costs according to reasonable market prices.

**(j) Pre-shipment inspection****Question 331**

**According to the Memorandum (WT/ACC/VNM/2), Vietnam avails itself to reserve the right to impose pre-shipment inspection requirements.**

**Does Vietnam intend to implement a pre-shipment inspection regime? If so, please describe the proposed regime. Is the proposed regime compatible with the WTO Agreement on PSI and other agreements, such as the WTO Agreement on Customs Valuation?**

**Answer**

Please refer to the answer to question 334.

**Question 332**

**Does Vietnam intend to implement a pre-shipment inspection regime? If so, please describe the proposed regime. Is the proposed regime compatible with the WTO Agreement on PSI and other agreements, such as the WTO Agreement on Customs Valuation?**

**Answer**

Please refer to the answer to question 334.

**Question 333**

**Is Vietnam prepared to undertake that, should it in the future introduce a system of pre-shipment inspection, this will comply with the relevant WTO rules and in particular the Agreements on Pre-shipment Inspection and Customs Valuation?**

**Answer**

Please refer to the answer to question 334.

**Question 334**

**If Vietnam contracts the services of pre-shipment inspection firms to assist in the implementation of its customs procedures, will the Government of Vietnam ensure that the operations of such firms are consistent with the relevant WTO Agreements, in particular GATT Article VIII, the Agreement on PSI and the Agreement on the Implementation of GATT Article VII?**

**Answer**

So far, Vietnam has not adopted any mandatory pre-shipment inspection regulations. In the course of policy formulation in this area, Vietnam will take into consideration the provisions of the WTO Agreements.

**(k) Domestic taxes levied on imported goods**

**Question 335**

**Please confirm that the special sales tax described in this paragraph of the Memorandum is the same as the special excise tax described in paragraph II.2(b)(iii) of the Memorandum (WT/ACC/VNM/2).**

**Answer**

In the Memorandum WT/ACC/VNM/2, the terms "special sales tax", "special excise tax" and "special consumption tax" share the same meaning. This tax is referred in this document as "special sale tax"

**Question 336**

**Please identify all products, including HS numbers, for which the turnover tax rate is different for sales of imported goods than for sales of domestically-produced goods. For each product, please provide the turnover tax rate applicable to imported products and the turnover tax rate applicable to domestically-produced products.**

**Answer**

The Law on Turnover Tax will be replaced by the new Law on Value-added Tax (VAT) from 1 January 1999. The Law on Value-Added Tax (VAT) does not discriminate between domestically-produced products and imports.

**Question 337**

**Please provide a complete list of products which are exempt from the Turnover Tax.**

**Answer**

From 1 January 1999, The Law on Value-Added Tax (VAT) (adopted on 10 May 1997) will replace the Law on Turnover Tax. VAT-exemption cases are presented in the answer to question 93.

**Question 338**

**Will Vietnam abolish the turnover tax system prior to WTO accession? If the turnover tax system is still in place, how does Vietnam intend to bring it into conformity with the national treatment requirement of GATT Article III?**

**Answer**

The Law on Value-Added Tax, adopted by the National Assembly on 10 May 1997, will take effect on 1 January 1999 and will replace of the Law on Turnover Tax.

### Question 339

**Please identify all products, including HS numbers, for which the value added tax rate is different for sales of imported goods than for sales of domestically-produced goods. For each product, please provide the value added tax rate applicable to imported products and the value added tax rate applicable to domestically-produced products.**

#### Answer

When the VAT Law comes into effect, both imported and domestically-produced products will be subject to the same tax rates.

### Question 340

**What is the purpose of the "special sales tax" which is only imposed on 6 imported group of items? Is the "special sales tax" not also imposed on like products which are produced domestically? Is this not a measure which could infringe Article 3 of GATT which stipulates national treatment. What is Vietnam's view?**

#### Answer

The purpose of the "special sales tax" is to regulate the consumption of certain products, redistribute income and raise tax revenues for the State budget.

The Law on Special Sales Tax was amended and supplemented on 1 January 1996.

Special sales tax is imposed on 6 imported group of items. The tax is uniformly applied to both domestically-produced and imported goods, except that:

- domestically manufactured and assembled automobiles (in CKD and IKD forms) are not subject to the tax; and
- cigarettes produced from imported tobacco is subject to 70 per cent tax rate against the rate of 52 per cent applicable to cigarettes using domestic tobacco.

The measures which are inconsistent with Article III of the GATT will be reviewed in due time.

### Question 341

**Please provide a full list of products on which export duties are levied. For each product, what is the level of the export duty? Are export duties applied on an MFN basis? Does Vietnam intend to eliminate any of these export duties?**

#### Answer

Export duties are applied on an MFN basis. For the time being, Vietnam applies export duty on several agricultural and forestry products in order to regulate exploitation, limiting export of scarce natural resources and protecting natural forests. The main products under export duty are:

- marine products;
- wood and wooden products;

- steel scraps.

At present, Vietnam has no plan to amend and/or eliminate export duties.

The HS list of products subject to export duties will be supplied as soon as Vietnam is a position to do so.

**(l) Rules of origin**

**Question 342**

**According to the Memorandum (WT/ACC/VNM/2), Vietnam uses rules of origin for imports under CEPT for AFTA countries. There are no legal documents or specific regulations on rules of origin for use in non-preferential commercial policy instruments.**

**In the absence of legal documents or specific regulations, please describe how the Vietnamese customs authorities are currently determining rules of origin for use in non-preferential commercial policy instruments.**

**Answer**

The customs authorities are currently determining the origin of goods in accordance with prevalent international practices, such as trade mark of country origin, legal certificate.

**Question 343**

**Please confirm that Vietnam will adopt legal provisions for rules that conform fully with the requirements of the WTO Agreement on Rules of Origin prior to WTO accession. Please confirm that Vietnam will administer the WTO-consistent rules of origin for both MFN and preferential trade prior to WTO accession.**

**Answer**

After WTO accession, Vietnam will properly implement its commitments and obligations including those related to the rules of origin.

**Question 344**

**Does Vietnam intend to adopt the rules of origin that are being developed in the WTO?**

**Answer**

Yes, the concrete transitional terms will be addressed in the process of negotiation

**Question 345**

**Under section IV.I(1) (page 4, WT/ACC/VNM/2), the Memorandum notes that Vietnam presently has no specific legislation or regulations on rules of origin and reserves its right to introduce such legislation and regulations.**



- (a) **We would be grateful if Vietnam could explain how it expects to be able to administer the obligations it will assume under the WTO Agreement on Rules of Origin when it accedes to the WTO.**
- (b) **What time frame is envisaged for the development and implementation of legislation and regulations in the area of rules of origin?**

**Answer**

Please refer to the answers to questions 343 and 344.

- (m-o) **Anti-dumping, countervailing duties and safeguards regime**

**Question 346**

**Vietnam has no provisions on anti-dumping, countervailing duty or safeguard measures.**

**Answer**

No. However, Vietnam intends to formulate those provisions in the near future.

**Question 347**

**We note that Vietnam has no provisions relating to anti-dumping, countervailing duty and safeguards measures (section IV.1(m), (n) and (o), page 41, WT/ACC/VNM/2).**

- (a) **Does Vietnam have any intentions of imposing such measures on imports?**
- (b) **What legislation, policies and practices does Vietnam intend to introduce in the areas of anti-dumping, countervailing duty and safeguards measures? What time-frames are envisaged for their introduction?**
- (c) **How does the Government of Vietnam intend to proceed to develop an appropriate legal basis to implement the provisions of the relevant WTO Agreements?**

**Answer**

Please refer to the answer to question 346.

Vietnam is improving and systematizing the existing legislation. When time-frame is envisaged for introduction of legislation with regard to each specific sector, Vietnam will immediately notify the Working Party.

**Question 348**

**Paragraphs 5-6, page 24 and 42. What are Vietnam's intention with respect to legislation on anti-dumping, countervailing duties and emergency safeguards?**

**Answer**

Legislation on anti-dumping, countervailing duties and emergency safeguards would be in the form of law or ordinance.

Please refer also to the answer to question 111.

**2. Export Regulations**

- (b) Customs tariff nomenclature, types of duties, duty rates, weighted averages of rates, etc.**

**Question 349**

**The listing of various rates provides an indication of the range of export tariffs but it does not help Members of the Working Party to understand how these rates are applied to specific products. Please identify all products, including HS numbers, subject to export tariffs and provide the applicable export tariff rate.**

**Answer**

Vietnam's tariff nomenclature is being re-structured according to HS 1996. The Working Party will be provided with detailed information as soon as it is available.

**Question 350**

**According to the Memorandum (WT/ACC/VNM/2), a fundamental principle of export tariff elaboration is to regulate and reconcile revenue to State budget when price of some exports of raw materials are much lower than that of the international markets.**

**Please identify those raw materials whose export prices would be much lower than the prices on international market. Please explain why, in the absence of export tariffs, Vietnamese exporters would sell these raw materials at prices below international market prices.**

**Answer**

In the 80s when the export tariffs had not yet been introduced, a number of Vietnamese enterprises had over exploited natural resources for exportation without considering the costs which the society has to bear.

The data relating to the commodities which export prices were much lower than international price had not been collected. For the last few years, such situation never occurred.

**Question 351**

**Please describe the surcharge, including the tax rates, applicable to the exports of cashew nuts and coffee. How are the amounts of the surcharges determined? What is the purpose of the export surcharges for these products?**

**Answer**

Please refer to Annex 9 (WT/ACC/VNM/3/Add.1) and the answer to question 228.

- (c) Quantitative export restrictions**

**Question 352**

**For each item described in the Memorandum (WT/ACC/VNM/2), paragraph IV.2(c)(i) prohibited exports; IV.2(c)(ii) export quota items; and IV.2(c)(iii) goods under line-**

**management, please describe the procedures to obtain an export licence in the form of a response to the Questionnaire on Import Licensing.**

**Answer**

The procedures described in paragraphs IV.2(c)(i), (ii), (iii) are identically applied to all products.

Please refer to Annex 3 (WT/ACC/VNM/3/Add.1) for details.

**Question 353**

**Please identify all goods, including HS numbers, in the Memorandum (WT/ACC/VNM/2), paragraph IV.2(c) for which exporters are required to obtain prior agreement from provincial governments to support their request for export licensing. What is the WTO rationale for requiring provincial approval to support this requests? Please describe the procedures for obtaining export approvals from provincial governments and line ministries.**

**Answer**

The requirement referred to in the question is only applied to prohibited imports in section IV.2(c)(i) of the Memorandum.

In case an enterprise wish to export a product in the prohibited list, it has to send an application, which includes justifications for the exports, to the ministry or people's committee concerned. If the demand is justifiable, the ministry or people's committee concerned will submit the application to the Prime Minister who will make final decision.

**Question 354**

**According to the Memorandum (WT/ACC/VNM/2), rice exports are subject to minimum export prices and an annual export quota of about 2 million tons. Please describe in further detail the operation and administration of this quota system.**

**Answer**

Regarding the information on the allocation of rice quota, please refer to the answer to question 263.

**Question 355**

**Please indicate how Vietnam believes this system of export control is consistent with WTO provisions, e.g., Article XI?**

**Answer**

The Memorandum on the Foreign Trade Regime (WT/ACC/VNM/2) reflects the current foreign trade policies in Vietnam. The consistence with Article XI and other provisions of WTO will be considered.

**Question 356**

**What is the GATT Article XX rationale for the export prohibitions for aqua-cultural breeds, medicines, vaccines, activating substances and fees?**

**Answer**

The above products are subject to import licensing requirement, not import prohibition.

Please refer to the answer to question 57 for detailed information.

**Question 357**

**What is the GATT Article XX rationale for the export prohibitions for red coral, konojci coral, leaf-shaped earth worms, round earth-worms, grown batrachian, lobsters, sea cods of various kinds and awa?**

**Answer**

Please refer to the answer to question 57.

**Question 358**

**What is the GATT Article XX rationale for the export prohibitions for of timber logs, sawn wood, charcoal, productions made of group 1.(a) and processed plates made of wood of group 1.(a), semi-processed wood products and raw rattan? Why must a request for a permit to export these products be approved by the Prime Minister?**

**Answer**

Vietnam is applying policies to strictly control logging for the purpose of protecting the environment. Prohibition on exportation of such above-mentioned products is part of this policy.

**Question 359**

**Please confirm that the voluntary export restraint agreements mentioned apply only to textile and clothing.**

**Answer**

Yes.

**Export quotas**

**Question 360**

**Vietnam imposes an export quota on rice in the amount of about 2 million tons.**

**Please describe the process for allocating export quotas for rice. What percentage of the rice export quota has been allocated to companies which either grow or mill rice? Please identify the companies that were granted a rice export quota in 1996. Are rice export quota holders permitted to sell their export quotas to other export licence holders? Please provide details on**

**the amount of export quota shares that are sold annually, rather than used by the enterprise to which it was allocated. How many of the companies which receive rice export quota allocations have directors and managers who are current or former career employees of the line ministry or Ministry of Trade, or are family members or relations of senior Vietnamese government officials?**

**Answer**

Please refer to the details in the answer to question 363.

**Question 361**

**Do all of Vietnam's export prohibitions and export quotas apply to products exported to countries with which Vietnam has preferential trade agreements?**

**Answer**

Yes, for the time being.

**Question 362**

**With regard to exports, it is stated that rice is subject to an export quota and that cashew nuts and coffee are subject to surcharges. Are any other agriculture products subject to export restrictions? Does Vietnam have any intention to liberalize exports of the said products before its accession to WTO? Does Vietnam intend to eliminate any of these export duties?**

**Answer**

Except for rice quota, no restriction is applied to agricultural products (forestry products are not accounted for as agricultural products). The purpose of the surcharge is for price stabilization, not export restriction.

The Vietnamese Government will consider to adjust its measures imposed on above-mentioned export products, taking into accounts WTO's rules.

**Question 363**

**Export quotas for rice are set as a function of the overall rice production in relation to food security concerns. Is there a list of criteria used in determining the quota allocation? If not, how is the quota allocation achieved? Can quotas be transferred once allocated?**

**Answer**

According to the Decision No. 141/TTg of the Prime Minister On the Administration of Rice Exports and Fertilizer Imports in 1997 dated 8 March 1997, rice export quotas are allocated to provincial people's committees based on the output of rice paddy in commercial quantity in each province. Provincial people's committees, in turn, allocate quotas to enterprises based on their actual export capacity. Quotas are also distributed to some Central Food Corporations based on their capacity. In addition, to be eligible for quotas, enterprises must be members of the Vietnamese Foods Association.

The number of rice export channels is limited at a necessary level to prevent monopoly, encourage fair competition, and protect interests of producers and the prestige of the country.

According to the same Decision, any enterprise which is not able to fulfil the allocated quotas must report promptly and timely to the Ministry of Trade and the Ministry of Agriculture and Rural Development. These two Ministries report to the Prime Minister who would re-adjust the quotas and transfer to other enterprises which are able of fulfilling the quota. No form of quota sale or transfer is permitted.

**Question 364**

**When will Vietnam remove its export quota on rice of about 2 million tons (page 43, WT/ACC/VNM/2)? Export quotas are inconsistent with GATT Article XI.**

**Answer**

So far, managing the balance between rice paddy and rice export quota are basic policy measures to stabilize macroeconomic environment and ensure food security.

**Line management**

**Question 365**

**Please identify, including HS numbers, all products currently under line management. For each product, please identify the line ministry that has authority to make the policies and describe the export restrictions that are in effect.**

**Answer**

Please refer to Annex 3 (WT/ACC/VNM/3/Add.1) for the information referred to in the question.

For the list with HS number, please see Appendix 7 - List 1 (WT/ACC/VNM/3/Add.1).

**(d) Export licensing procedures**

**Question 366**

**Please indicate how Vietnam believes this system of export control is consistent with WTO requirements.**

**Answer**

Line management of exports is used for the reasons of national security, natural resources preservation and environmental protection (in accordance with international conventions such as CITES), etc. Vietnam therefore believes that the system is consistent with WTO's requirements.

**Question 367**

**Paragraph 5, page 43 refers to export quotas. Does Vietnam intend to maintain its export quota on rice?**

**Answer**

Yes.

Please refer also to the answer to question 364.

(e) **Other measures**

**Question 368**

**Does Vietnam set minimum export prices for any crucial products other than rice and crude oil?**

**Answer**

Minimum export prices only serves as guidance prices, and currently applies to rice and crude oil only.

**Question 369**

**How does the Government of Vietnam determine the minimum export prices for rice and crude oil? What is the rationale for using minimum export pricing? Have any export sales been lost or significantly delayed because the minimum export price was set higher than the international market price?**

**Answer**

The minimum export prices, when necessary, are determined based on prices in the past and present transactions as well as forecast market price.

**Question 370**

**How does Vietnam intend to eliminate its use of minimum export pricing in order to conform with GATT Article XI.**

**Answer**

The Vietnamese Government will consider the adjustment of its minimum export price measures with reference to the WTO's rules.

**Question 371**

**Will Vietnam notify the Textiles Monitoring Body (TMB) the restrictions maintained by WTO Members on imports of textiles and clothing products originating in Vietnam that are in force on the date prior to the date of the accession of Vietnam to the WTO, as the base levels for the purposes of application of Article 2 and 3 of the WTO Agreement on Textiles and Clothing?**

**Answer**

It is too early to refer to this issue, in our point of view.

**Question 372**

**Does Vietnam accept that, for the purposes of Vietnam's accession to the WTO, the phrase "day prior to the date of entry into force of the WTO Agreement contained in Article 2:1 of the Agreement on Textiles and Clothing shall be deemed to refer to the WTO, and that to these base levels, the increase in growth rates provided for in Article 2:13 and 2:14 of the Agreement on**

**Textiles and Clothing shall be applied, as appropriate, from the date of accession of Vietnam to the WTO?**

**Answer**

Vietnam will, in the accession to the WTO, undertake to gradually implement all the WTO Agreements, including the Agreement on Textiles and Clothing. It is however still premature to decide the beginning date for the calculation of the base volume according to Article 2 and 3 of the Agreement on Textiles and Clothing. The growth rate as provided for in Article 2:13 and 2:14 of the Agreement on Textiles and Clothing will be decided after the date for calculation of the base level is set.

**Question 373**

**Aqua-culture breeds can only be traded with the approval of the Ministry of Aqua-culture (Annex 2.3 of WT/ACC/VNM/2).**

- (a) Please list all the products (with HS codes) covered by this.**
- (b) What are the procedures and requirements for seeking this approval?**
- (c) Is full national treatment and MFN treatment applied?**

**Answer**

(a) The list (HS codes are not available) of breeds under the Ministry of Aqua-culture's control is attached to the Circular No. 05/TT/NC dated 10 October 1996.

(b) Regulations concerning the export and import of aqua-culture breeds:

- requirements and procedures relating to imports of aqua-culture breeds are stipulated in the Regulations on Import and Export of Aqua-culture Products under line Management enacted by Decision 263 QD/KHDT dated 9 June 1997;
- government management system in respect of aqua-culture breeds is uniformly organized at the central and the local levels as follows:
  - the Minister of Aqua-culture is responsible for the implementation of the management function in respect of aqua-culture breeds in the whole industry;
  - provincial and Municipal People's Committees under the direct control of the Central Government are responsible for State management in respect of aqua-culture breeds in their localities;
- the Ministry of Aqua-culture is responsible for the registration of F, F1, F2 breeds in respect of aqua-culture breeds throughout Vietnam.

(c) National treatment and MFN treatment:

The two above-mentioned legal documents of Ministry of Aqua-culture do not contain any provision which discriminates Vietnamese nationals and foreigners or between foreigners of different nationality.



**(f) Export financing, subsidy and promotion policies**

**Question 374**

**According to the Memorandum, producers and export-import businessmen are granted priority access to financing.**

**What is meant by priority access to financing? What is meant by requirements on loans are the same as other economic activities? Please describe the procedures and preferential financing terms generally available to the producers and export-import businessmen. Do the producers and export-import businessmen pay interest at rates below commercial rates?**

**Answer**

According to provisions of the Law on Promotion of Domestic Investment and its Guidelines, producers of export goods, exporters who are holders of preferential investment certificate could borrow from State-owned banks the amount needed for their operations, with maturity matching their business cycle. Normal commercial interest rates are charged on these loans. In case an enterprise exporting certain agricultural products or importing fertilizer incurs big losses due to price fluctuations, the Government may consider paying a portion of interest with financing from the Price Stabilization Fund.

**Question 375**

**Is the provision of the financing to producers and export-import businessmen contingent upon export performance? Is the availability of the financing contingent upon the use of domestic over imported goods? Is priority access to financing available to foreign-invested enterprises under the same terms and conditions as for domestic producers and export-import businessmen?**

**Answer**

The priority in the provision of the financing to producers of export goods and exporters depends on financial condition of and demand for loans of those businesses. This is a provision in the Law on Promotion of Domestic Investment, and thus applies to enterprises governed by this Law only.

**Question 376**

**What is the total amount of government financing that has been granted to producers and export-import businessmen? What percentage of this financing is considered non-performing?**

**Answer**

Production and export-import business enterprises must borrow capital from commercial banks and pay commercial interest at rates as applied to any other business enterprise.

Currently there are no statistics concerning the amount of loans granted to production enterprises or import-export business enterprises respectively nor any statistics on loan performance.

Vietnam will provide the Working Party the requested information as soon as it is possible.

**Question 377**

**Does the Government of Vietnam intend to subsidize exports? How does the Government of Vietnam intend to administer the subsidies it maintains pursuant to the WTO Subsidies Agreement?**

**Answer**

Currently, the Vietnamese Government does not grant any direct budgetary outlays as subsidies to exports. However, it has supportive policies to encourage the export of such commodities as rice, coffee, rubber, cashew nuts, etc. These policies are carried out through some measures such as:

- establishment of price stabilization funds which assists the buying-in when supply of rice is higher than demand during harvests;
- provision of credits at preferential interest rates for the purchase of agricultural products at regulated prices during some specific periods.

The assessment whether other economic measures are direct export subsidies requires technical assistance, expertise and time.

**Question 378**

**According to the Memorandum (WT/ACC/VNM/2), Vietnam does not maintain any subsidies from the State budget to agricultural production.**

**Please describe all non-budgetary policy measures used by Vietnam to promote agricultural exports.**

**Answer**

Non-budgetary policy measures used by Vietnam to promote agricultural exports are:

- facilitation of agricultural exports: all enterprises with import - export trading rights are allowed to export agricultural products (except rice, timber and wood products, coffee and natural rubber) in unlimited quantity whether the product is included in the company's initially registered lines of business or not;
- simplification and improvement of transparency of export procedures for agricultural products;
- establishment of Export Promotion Centre of the Government which promotes exports, including agricultural exports.

**Question 379**

**Please confirm that Vietnam does not maintain any export subsidies.**

**Answer**

Although there is no subsidies in the form of budgetary outlays, Vietnam still maintains export subsidies. The classification of these subsidies measures will be informed to the Working Party as soon as Vietnam is able to do so.

**(g) Export performance requirements**

**Question 380**

**How does Vietnam determine which products qualify as export goods or import substitution goods, for purposes of providing the 2-year profit tax exemption?**

**Answer**

The regulation referred to in the question is contained in Law on Foreign Investment in Vietnam of 1993 which has been replaced by the Law on Foreign Investment of 11 December 1996. A translation of this Law is available in the WTO Secretariat (Accessions Division, Room 1126) for consultation.

**(h) Import duty drawback schemes**

**Question 381**

**According to the Memorandum (WT/ACC/VNM/2), imports by some Vietnamese enterprises licensed as distribution and sales agents of foreign goods will be refunded import duties on the basis of actual sold (exported) goods.**

**Are foreign-invested enterprises eligible to be licensed as distribution and sales agents of foreign goods? Please describe the procedures for obtaining a licence to be a distribution and sales agent of foreign goods? What is the criteria for determining whether an application to be a distribution and sales agent of foreign goods will be approved?**

**Answer**

Duties are refunded for all imports which are the re-exported. Therefore, imports for re-exports, conducted by agents or in any other forms, are eligible for duty refund.

Decree No. 54/CP of 28 August 1993 makes provisions for tariffs applicable to goods and is not concerned with the trading rights of enterprises. Foreign-invested enterprises can operate in Vietnam in accordance with the provisions of the investment licence.

**Question 382**

**What was the amount of import duties refunded to Vietnamese enterprises as distribution and sales agents of foreign goods for each of the past three years?**

**Answer**

The statistics are not available.

Please refer to the answer to question 381.

### **3. Internal Policies Affecting Trade in Goods**

#### **(a) Industrial policies and subsidies**

#### **Question 383**

**Article 19 of the 1992 Constitution states: "...the State sector shall be consolidated and developed especially in key branches and areas and play a leading role in the national economy". How does Vietnam intend to go about achieving this?**

#### **Answer**

To strengthen and improve the effectiveness of the State sector, Vietnam has promulgated the Law on State Enterprises, and intends to restructure the State sector, improve management methods, and promote equitization (turning State-owned companies into joint stock companies).

Please see also the answers to questions 3, 7, and 59; Other measures, if any, will be informed to the Working Party in due course.

#### **Question 384**

**Please describe all tax systems providing minimum tax treatment to prioritized industries. Please identify all industries currently identified as prioritized industries. Does priority status mean that no other companies besides those already doing so will be permitted to operate in these industries but will not receive the same benefits? If the answer to these questions is negative, what are the criteria for additional companies to be authorized to operate in these industries and to receive the same special benefits?**

#### **Answer**

Tax systems providing preferential rates to prioritized industries include: turnover tax, profit tax, export and import duties and natural resources tax. This preferential treatment is applied to all prioritized industries (which have been elaborated in details in Part II concerning tax policies of the Memorandum WT/ACC/VNM/2) not on a case-by-case basis. Therefore, any enterprise operating in these prioritized industries may benefit from such preferences to the same extent.

#### **Question 385**

- (a) The first paragraph says that "prioritized industries" are given favourable access to financing, and, are subject to a minimum tax rate. Could Vietnam explain more specifically about this policy?**
- (b) What are the targeted industries under this policy?**
- (c) What is the "favourable access"?**
- (d) What are the requirements to be eligible for these favourable measures?**

#### **Answer**

- (b) "Favourable access to financing" refers to activities that are given priority of access to capital during the time of capital shortage.**

(a) and (c) In accordance with the Foreign Investment Law, the following sectors are accorded preferences:

- cultivation, husbandry and processing of forestry, agricultural and aquatic products;
- export production;
- industries that utilize advanced technology and modern techniques, protect the environment or invest in research and development;
- labour intensive industries, industries efficiently processing raw materials or effectively using domestic natural resources; and
- construction of infrastructure and important industrial production establishments.

Preferences may take the following forms:

- low profit tax rate;
- exemption from and/or reduction of profit tax.

In accordance with the Law on Promotion of Domestic Investment dated 22 June 1994, the following areas are granted preferences:

- construction of technical infrastructure;
- processing of agricultural, forestry and marine products; and
- export production.

Preferences may take the following forms:

- exemption from and/or reduction of profit tax;
- possible duty exemptions for machinery, equipment and accessories imported as capital investment to set up production establishments;
- possible priority in granting long- and medium-term credits from Investment Support Funds; and
- grants of credit guarantees and export credits (applied to export production only).

#### **Question 386**

**Please explain what is meant "...by giving prioritized industries favourable access to financing and subject to minimum tax rate". Please describe all tax systems providing minimum tax treatment to prioritized industries. Please identify all industries currently identified as prioritized industries. Does priority status mean that no other companies besides those already doing so will be permitted to operate in these industries but will not receive the same benefits? If the answer to these questions is negative, what are the criteria for additional companies to be authorized to operate in these industries and to receive the same special benefits?**

#### **Answer**

Please refer to the answers to questions 384 and 385.

#### **Question 387**

**Does the statement that "...the Government of Vietnam advocates to gradually introduce fair competition in the domestic market and stimulate the development of the former as a way to challenge industrial competitiveness" mean that Vietnam's policy is to promote import**

**substitution and discriminate against foreign investment or imports in selected industries? If not, please explain what the statement means.**

**Answer**

For many years, the encouragement import substitution has been a part of Vietnam's policy. Vietnam has then embarked on building up an export-oriented economy, with a view to introducing competition. This is a gradual change.

**Question 388**

**At what stage of planning are the two high-tech parks? Will companies locating in these parks receive special incentives? If so, please submit a list of these incentives.**

**Answer**

The two high-tech parks at the planning stage are as follows:

- Hoalac high-tech park: Development of final master plan and feasibility study;
- Ho Chi Minh City high-tech park: Development of feasibility study.

The companies in these high-tech parks shall receive such special incentives as follows:

- simple administrative procedures as applied to industrial and export-processing zones;
- maximum preferential treatment as prescribed by law for the Vietnamese and foreign investors (e.g. for high-tech industrial or service enterprises, the profit tax rate applicable is 10 per cent, profit tax exemption for 8 years from the first profit-making year);
- Vietnamese residing overseas, including those Vietnamese holding a foreign nationality and foreign economic organizations set up or controlled by overseas Vietnamese shall enjoy preferential treatment in accordance with the provisions in Article 44 of the Law on Foreign Investment in Vietnam and the related stipulations of the Government.

The policies relating to land, investment, labour and administrative procedures are being further examined in order to facilitate investment in high-tech parks.

**Question 389**

**In the paragraph labelled "industry" Vietnam describes some priorities for industrial development.**

**Please identify any industrial development policies that are not yet in compliance with the requirements WTO Agreement on Subsidies and Countervailing Measures. How does Vietnam intend to bring these policies into conformity with the Subsidies Agreement?**

**Answer**

Vietnam is examining its policies in this respect and will provide the answer in due course.

**Question 390**

**According to paragraph IV.3(e) of the Memorandum (WT/ACC/VNM/2), Vietnam had 6,264 State-owned enterprises as of 1 April 1994.**

**Please provide the total amount of subsidies, as defined in Article 1.1 of the Agreement On Subsidies and Countervailing Measures, granted by the Government of Vietnam to these State-owned enterprises for each of the past three years. Of this total amount of subsidies that were contingent upon export performance or upon the use of domestic over the imported goods. Please provide the total amounts of any amounts paid to cover operating losses sustained by an industry or the enterprise. Please provide the total amounts of direct forgiveness of debts or grants to cover debt repayment for these enterprises.**

**Answer**

The number 6,264 given in the Memorandum is the number of State-owned enterprises.

Vietnam will provide the WTO Secretariat with the requested information as soon as it is possible.

**Question 391**

**Please provide the list of regulations and measures aimed at protecting small scale and infant domestic industries (page 39 of WT/ACC/VNM/2).**

**Answer**

Vietnam has no specific regulations concerning the protection of small enterprises. Infant industries may be protected through import tariffs and some non tariff measures from time to time on periodical basis. Steel, sugar, cement, construction glass and paper industries are further protected through quantitative import restrictions.

**Question 392**

**Vietnam is asked to comment on the apparent contradiction between its statement that it "grants no subsidy to industrial production" with the fact that State-owned enterprises benefit from low raw material costs (including energy), monopolies of supply, control of distribution and privileged access to credit.**

**Answer**

Although Vietnam has no subsidies in the form of direct budgetary outlays, some measures, including those raised in question, would require further study to see whether they have the effect of subsidies or not. For transparency purpose, these measures have been concretely explained in the Memorandum, or in the answers herein.

The State-owned enterprises do not enjoy any benefits from raw material costs, as well as energy.

The State-owned enterprises have monopoly only in the sectors that may affect national security or that relating to social policy such as telecommunication, electricity and petroleum.

**(b) Technical specifications and standards**

**Question 393**

**Please explain how each of the following production and services are covered by the provisions of GATT Article XX: culture, artistic and cinematographic products, show and performance and printing equipment; banking facilities; chemicals and chemical-related equipment requiring safety inspection; and lubricants.**

**Answer**

Restrictions or conditions on the import of cultural, artistic and cinematographic products, show and performance and printing equipment; banking facilities come from the terms and spirit of the Article XX of the GATT.

The measures applied to imports of chemicals, chemical-related equipment and lubricants are applied in accordance with the provisions of the TBT Agreement.

**Question 394**

**Does Vietnam's standards and inspection regime conform fully with the requirements of the TBT Agreement? Please describe in detail any aspects of Vietnam's standards and inspection regime that are currently deficient and the steps Vietnam will take to remedy the deficiency prior to WTO accession.**

**Answer**

In general, Vietnam's standards are established with reference to ISO-IEC and EN international standards. Vietnam is now moving towards full recognition of corresponding international standards (e.g. application of full translated texts).

For products typical to Vietnam, standards are formulated with reference to relevant international norms wherever possible.

Vietnam's inspection regime (applied to imported goods that are subject to the compulsory inspection list) is not yet fully consistent with international practices. Most imported goods are inspected on a consignment-by-consignment basis.

Vietnam is now taking the following steps to remedy the deficiencies in regulation of technical standards:

- reviewing and revising the existing standards to ensure consistency with international and regional standards in the direction said above;
- shifting from the consignment-by-consignment inspection regime to an "offered sample" and representative sample inspection regime;
- establishing product testing laboratories which meet requirements of Guide 25, and recognized to be in accordance with procedures and processes of assessment based on ISO guidelines;
- entering mutual recognition agreements with foreign countries in order to shift from the inspection at destinations to the pre-shipment inspection regime.



Vietnam believes that its standards and inspection regime conform fully to the requirements of the TBT Agreement. Anyway, best efforts are made in order to regularly review and improve the said regime.

**Question 395**

**What practical steps is Vietnam taking/planning to take to prepare for applying the TBT Agreement?**

**Answer**

Vietnam has not so far taken steps to this end. However, in this regard, preparatory work is implemented.

Please refer to the answer to question 394 for further information.

**Question 396**

**Are the substantive requirements and standards applicable to domestic products identical to these for imported goods?**

**Answer**

Yes. It is also an approach of Vietnam quality management agencies in order to harmonize Vietnam standards with the international and/or foreign country's standards and accelerate the process of quality improvement in Vietnam enterprises and quality control of the products in circulation.

**Question 397**

**Which agencies are responsible for the application of the requirements and standards applicable to domestic products?**

**Answer**

Please refer to Annex 5 (WT/ACC/VNM/3/Add.1).

**Question 398**

**Please indicate the number of cases, in the past three years, in which the Government of Vietnam has denied or significantly delayed entry of foreign goods on the ground that the goods did not satisfy regulations on standards, measurement or quality, or were not correctly documented under such regulations. Please provide a general description of the most significant problems that foreign goods have encountered in satisfying standards requirements.**

**Answer**

According to available statistics, in the last 3 years, the number of cases where inspected goods did not meet standards are as follows:

	Year 1994	Year 1995	Year 1996
Number of inspected lots	4,500	6,200	8,400
Number of lots not meeting standards	50	80	90
Percentage	1.1%	1.3%	1.1%

Goods that did not meet the set standards are mainly home electric appliances and devices, food and foodstuffs (wheat flour, cooking oil, milk powder and food additives) and some consignments of fertilizer and insecticide.

Standards which have not been met are:

- electrical safety requirements;
- food hygienic standards; and
- standards concerning maximum level of activators (fertilizers, insecticide).

**Question 399**

**Please identify the international norms referred to in the Memorandum. Are they the norms outlined by the Codex Alimentarius, Organization Of International Epizootics or the European Plant Protection Organization?**

**Answer**

International standards referred to in the Memorandum are mainly standards or guidelines of the International Standardisation Organisation (ISO), the International Electrical Committee (IEC) and the Codex Alimentarius Commission (CAC) in the following areas:

- product certification (ISO/ CASCO 228 - ISO/IEC Guide 40);
- certification of quality assurance systems (ISO 9000);
- recognition of testing laboratories (ISO/IEC Guide 25 and ISO/IEC Guide 58);
- recognition of inspection organizations (ISO/IEC Guide 39); and
- certification of food production (Codex 's HCAAP and GMP).

**Question 400**

**Does Vietnam anticipate any difficulties in applying the TBT Agreement in full at the latest from the date of accession to the WTO?**

**Answer**

The difficulties Vietnam anticipates in applying TBT Agreement from the date of accession to the WTO would be:

- formulating of internationally compatible standards due to lack of financial resources, expertise, and foreign language fluency;

- applying international standards due to low level of production technology, low technical expertise in product inspection and testing;
- applying assessment of conformity to standard regulations due to lack of facilities and experienced experts, and low supportive technical capacity.

#### **Question 401**

**Could Vietnam provide an overview of regulations relating to different products and product areas? This overview should identify for each product/product area:**

- (a) the applicable standard and legal requirements;**
- (b) what kind of the testing or certification procedure, if any, is required;**
- (c) the agency/ministry responsible for regulating the product; and**
- (d) the body which carries out the testing and certification where applicable.**

#### **Answer**

Technical regulations and standards relating to products are presented in section 1 of Annex 5 (WT/ACC/VNM/3/Add.1).

The State administration of product quality is carried out principally through the two following measures:

- "Registration of product quality" - applied to domestically-produced goods. Please see Section 2(b) of Annex 5 for the list of quality registration authorities;
- "State inspection on quality" - applied to exported and imported goods. Please see Section 2(b) of Annex 5 for the list of State export and import inspection authorities.

The Government of Vietnam promulgated Decree No. 86/CP dated 8 December 1995 Stipulating and Assigning the Responsibilities on State Quality Control Management of Goods among various governmental agencies.

Ministries have also issued inter-ministerial circulars and regulations concerning various activities of quality control (testing, certification, issuance of standards, inspection and certification authorities, etc.).

So far, Vietnam has issued about 4,000 national standards, of which 100 standards are mandatory. The mandatory standards are those related to environmental hygiene, safety and to products important to the national economy. Governmental agencies are empowered to announce the mandatory standards as for application to specific products within areas of their management.

Please refer to Appendix 5 of document WT/ACC/VNM/3/Add.1 for more details.

#### **Question 402**

**Are there specific technical regulations and/or specifications on any kinds of shoes, electrical and electronic goods, construction machinery, processed foodstuffs, chemicals and plastics?**

**Answer**

Yes. Domestic products are subject to Vietnam technical regulations.

Vietnam has developed the national standards (TCVN) and/or other technical regulations for the goods mentioned in the question in different degree. That means more attention is attached to goods which, in their usage and consumption, could cause damage or hazard to the people or the environment; so for these products, more thorough standards and/or technical regulations have been developed.

**Question 403**

**Are the standards used in Vietnam voluntary or mandatory?**

**Answer**

Vietnam's (national) standards have the two forms of application: voluntary and mandatory. Mandatory standards used in Vietnam are mainly those relating to safety, sanitary and environmental protection measures.

**Question 404**

**If standards are mandatory, please explain the reason for this.**

**Answer**

Vietnam's standards are mandatory in order to ensure the safety, human health and environmental protection.

**Question 405**

**The 25 August 1992 Regulation on Standardization Work specified in its Article 12(b) that all voluntary standards must be adjusted to become compulsory after a period of time. Please explain this further.**

**Answer**

Currently, most of standards are voluntary. Vietnam wishes to improve the management by introducing mandatory standards. The detailed plans, however, are not yet available.

**Question 406**

**Decisions Nos. 397-QD, 398-QD and 99-TDC collectively set out testing and certification procedures for imported goods: What rules apply to domestic products entering the Vietnamese market?**

**Answer**

For goods circulated in the domestic market, quality control is performed mainly through the quality registration in accordance with Decisions No. 2576-QD dated 28 October 1996 and No. 2577-QD dated 28 October 1996 of the Ministry of Science, Technology and Environment and specific regulations of line ministries. Re-registration is required every one year for consumer goods and every two years for industrial materials and equipment. Technical standards are uniformly applied to both domestic and foreign goods.

Please note that the above-mentioned Decisions Nos. 397-QD and 398-QD have been replaced by Decisions Nos. 2578-QD-TDC and 2579-QD-TDC, whereas Decision No. 88-TDC (not 99-TDC) has been abolished without replacement.

In addition, quality of goods circulating in the domestic market is subject to inspection by Market Monitoring Departments at central and local levels and inspectors of specific-sector ministries.

**Question 407**

**Please provide more in-depth information on the procedures and requirements connected with the mandatory and/or voluntary system of certification. For example: does the Vietnamese certification system contain the possibility of using a manufacturer's declaration? Does Vietnam use pre-market certification in any product areas?**

**Answer**

Concerning the certification and recognition system:

The Ministry of Science, Technology and Environment has issued Decision No. 1479/QD-TDC regulating Quality Certification and Recognition and Decision No. 77/TDC-QD stipulating the List of Goods Subject to Mandatory Standard Conformation Certification. Up to date, product certification under the GMP system is applied only to aquatic product export enterprises and to pharmaceutical production enterprises on the experimental basis. The HACCP system is under consideration for application to exported aquatic products.

Manufacturer's declaration of standard conformation is being under consideration for application in the near future.

**Question 408**

**Does Vietnam accept as equivalent certifications from third country certification bodies?**

**Answer**

Up to now, Vietnam has not accepted certifications from third country certification bodies. However, Vietnam is cooperating with ASEAN countries to develop a common approach to this issues.

**Question 409**

**Has Vietnam developed a quality assurance system?**

**Answer**

Vietnam did not develop its own quality assurance systems. However, Vietnam is preparing to apply quality assurance systems with technical assistance by ISO, Codex guides, etc. and by other countries such as New Zealand (Q-Base), Japan (TQM).

**Question 410**

**Please provide further information on this system or on any plans to develop such a system.**

**Answer**

Vietnam will provide the Working Party the required information as soon as it is in a position to do so.

**Question 411**

**Has Vietnam concluded any bilateral agreements with third countries in the field of standards and certification (e.g. mutual recognition agreements)?**

**Answer**

Vietnam has signed with China an agreement on quality assurance of exports and imports and on mutual recognition (in respect of certifications).

**Question 412**

**What is the reason for introducing the requirement (Please see Ministry of Health Circular of 30 May 1996) on foreign pharmaceutical companies importing products into Vietnam and who registered more than five years ago, to re-register their products to obtain the authorization to sell their products in Vietnam?**

**Answer**

Based on the current regulations on registration of drugs, a registration granted for a drug is valid for 5 years; 6 months prior to the expiry of the registration, the drug sponsor must submit an application for re-registration.

This regulation is similar to practice in other countries where registration of drugs are mostly time limited, to only as much as 2 years in some cases. Drug sponsors, therefore, are required to submit application for registration renewal.

A list of drugs which re-registration of foreign companies is not accepted is announced. The purpose of this measure is to regulate the pharmaceutical market in Vietnam corresponding to the real situation of local production and utilization and to reasonably protect domestic production.

This policy would be reviewed and adjusted in accordance with Vietnam's trade policy and development needs.

**Question 413**

**What period of time is given for this re-registration?**

**Answer**

Pursuant to the Regulations on Registration of Pharmaceuticals (enacted by Decision No. 1203/BYT-QD dated 11 July 1996), the period of time given to re-registration of pharmaceuticals is as follows:

- for application in which there are no changes to the old application, the Ministry of Health will inform the results of evaluation within 6 months;

- for application in which there are changes to the old application, the Ministry of Health will inform the results of evaluation within 1 year.

#### **Question 414**

**Please comment on the other aspect of the same Circular, which prohibits the importation of 62 basic molecules into Vietnam and limits to 15 the number of preparations for the same active ingredient.**

#### **Answer**

In order to encourage the domestic producers to invest in new production and expand existing medicament production, as well as encourage the foreign producers bringing the materials, and special medicament that are unable to produce domestically, the Ministry of Health issued Official Letter No. 4162/VD dated 30 May 1996 specifying 62 basic molecules which foreign producers are not allowed to register.

However, in order to stabilize the pharmaceutical market, the Ministry of Health issued the Official Letter No. 2608/QLD dated 21 April 1997 allowing the foreign companies who had pharmaceutical products registered in 1991-1992 falling into the list of temporarily non-accepted active ingredients to submit applications for re-registration. If approved, the registration numbers issued for those drugs under this category will be valid to the end of 1998.

The issue would be reviewed and adjusted in accordance with its trade policy and development needs.

#### **Question 415**

**Paragraph 2, page 28 and paragraph 5, page 45 note the State exercises management of the "measurement and qualities" of goods. Can Vietnam please provide a list (by HS tariff item) of products covered by such management and explain the rationale for the application of this system to these products?**

#### **Answer**

In the exercise of State management in respect of imports and exports quality, for reasons of product safety, human health and environment protection, the Government of Vietnam each year issues a list of imports and exports which are subject to mandatory quality inspection. This list is referred to in Annex 5 (WT/ACC/VNM/3/Add.1).

#### **(c) Sanitary and phytosanitary measures**

#### **Question 416**

**Does Vietnam anticipate any difficulties in applying the SPS Agreement?**

#### **Answer**

Vietnam anticipates that the following difficulties may arise in its application of the WTO's SPS Agreement:

- difficulties in respect of the application of CODEX standards due to limited facilities, infrastructures and processing techniques and technology in the agriculture sector;
- lack of experience and facilities in the inspection and control of the subject under the coverage of the SPS Agreement.

#### **Question 417**

**Please submit a response to the Questionnaire on Sanitary and Phytosanitary Measures.**

#### **Answer**

The Questionnaire on Sanitary and Phytosanitary Measures will be submitted in due course.

#### **Question 418**

**Please indicate the number of cases, in the past three years, in which the Government of Vietnam has denied or significantly delayed entry of foreign goods on the grounds that the goods did not satisfy regulations on sanitary and phytosanitary requirements, or were not correctly documented under such regulations. Please provide a general description on the most significant problems that foreign goods have encountered in satisfying the SPS requirements.**

#### **Answer**

In terms of plant quarantine: From 1994 to 1996, there have been 92 cases in which Vietnamese plant quarantine agencies found pests in imported goods. The numbers are broken down as follows:

In 1994: 22 cases in which

Kinds of pest:	Tribolium confusum Trogoderma granaria Trogodermaversicolor
Kinds of commodities:	Flour, malt
Importing Source:	China, SNG, France, Australia, Denmark, Belgium

In 1995: 30 cases in which

Kinds of pest:	Tribolium confusum Trogoderma granaria Trogoderma versicolour Acanthoscelides obtectus Pomacea canaliculata
Kinds of Commodities:	Flour, malt, cocoon, several kinds of bean, sesame, hand-luggage.
Importing Source:	China, SNG, France, Australia, Belgium, Denmark, Thailand, Chinese Taipei, Brazil, Holland, Myanmar, Czech Republic and Slovakia.



In 1996: 40 cases in which:

Kinds of pest:	Tribolium confusum Trogoderma granaria Trogoderma versicolour Trogoderma sp Acanthoscelides obtectus Pomacea canaliculata Zabrotes subfasciatus
Kinds of commodities:	Flour, cocoon, several kinds of bean,
Importing Source:	India, China, Japan, Thailand, Ireland, Uzbekistan and Hong Kong, China.

Regarding animal quarantine: During the past three years, there have been only two cases which has been denied importation for the SPS reasons. The first is importation of chicken meat from France, importation has been denied since the imported goods did not meet the animal quarantine standards. The another case is importation of milk powder from the Netherlands since the imported goods is infected with Clostridium perfringers.

#### **Question 419**

**Please provide specific details on the sanitary and phytosanitary requirement for all categories of imported animal and plant products. Also please provide a list of quarantine pests.**

#### **Answer**

According to Article 5 in Decree No. 93/CP dated 27 November 1993 of the Government on the implementation of the Ordinance on Veterinary, live animals and plants, products originated from animals and plants to be used for feeding domestic animals are subject to the control of the Ministry of Agriculture and Rural Development. Therefore, the Ministry is responsible for enacting the regulations regarding epidemiology and hygiene for the import of the above-mentioned products and the list of domestic animals that need to be separate for epidemiological control.

Paragraph 3, Article 5 provides that the Ministry of Fisheries is responsible for control and monitoring the veterinary hygiene for aqua-products.

The Ministry of Health is responsible for controlling the fresh foodstuff which is industrially processed (not being live animals or plants). The products of this category will not be subject to the epidemiological control when imported but regulated under the Regulation on State control on quality of imported foodstuff issued by the Ministry of Health in conjunction with Decision No. 1370/BYT-QD dated 17 July 1997.

As for the veterinary hygiene regulations for import/export of animals and products made from animals:

- all products made from animals imported to Vietnam must be originated from healthy animals and from the non-infected disease areas;
- all products made from animals imported to Vietnam can not be infected with any virus, bacteria during process of production, transportation and preservation;

The inspection certificate of veterinary hygiene agencies are required for products made from animals imported to Vietnam.

The regulations on sanitary - phytosanitary inspections and the list of pests to need be inspected are provided for in details in Decree No. 92/CP dated 27 November 1993 on Plant Inspection.

**Question 420**

**Does Vietnam ensure the consistency with the existing international standards when Vietnam introduces the standards for sanitary and phytosanitary measures?**

**Answer**

Vietnam's standards for sanitary and phytosanitary measures are developed with reference to international standards.

**Question 421**

- (a) **Could Vietnam explain the reasons why "transportation vehicles" are subject to phytosanitary inspection?**
- (b) **Is finished leather included on the list of products requiring sanitary certification? If so, does Vietnam have any plans to move it from the list?**

**Answer**

- (a) Only vehicles transporting goods subject to phytosanitary inspection are subject to phytosanitary inspection upon entry into Vietnam.
- (b) Leather (including tanned leather) imported to Vietnam is required SPS certificate certifying the origins of such a leather. Regarding importation of the tanned leather, Vietnamese border SPS agencies only check the SPS certificates from the origin, except when there are accurate reasons for thoroughly checking. Vietnam has, so far, no plan for modification.

**Question 422**

**Paragraph 5, page 46 refers. To what extent do Vietnam's current laws and regulations on sanitary and phytosanitary matters conform to international practice in these areas? Can Vietnam please provide information on the process being undertaken to bring them into conformity with international norms?**

**Answer**

The existing sanitary and phytosanitary regimes are explained in the answer to question 421. Vietnam is now taking the efforts to bring this regimes into consistency with international practices and rules.

**(d) Trade-related investment measures (TRIMs)**

**Question 423**

**Please list all existing measures that are inconsistent with the WTO Agreement on Trade-Related Investment Measures, listing products subjects to these measures by HS numbers. Will Vietnam eliminate all TRIMs-inconsistent measures prior to WTO accession?**

**Answer**

As Vietnam's economy is in the transitional period, there are TRIMs-inconsistent measures and policies.

Please refer to the answers to questions 107 and 222.

**Question 424**

**Are any of the benefits offered to investors contingent upon local content or export performance requirements? If so, please provide full details.**

**Answer**

Localization policies are formulating. The incentives, particularly incentives on the import/export duty would be taken into consideration.

The Law on Foreign Investment and Decree No. 12/CP making the detailed provisions for implementation of the Law on Foreign Investment provide for incentive policy relating to export percentage (as against production).

General profit tax rate is 25 per cent. However, If more than 50 per cent of production are exported, the enterprise will enjoy the profit tax rate of 20 per cent; more than 80 per cent the enterprise will enjoy tax rate of 15 per cent. The enterprises of export production zone export 100 per cent of production will enjoy profit tax rate of 10 per cent.

Enterprises who export more than 50 per cent of production will have the right to set up a "bonded warehouse" at a factory to facilitate production.

**Question 425**

**Does Vietnam restrict the rights of foreign investors to sell in Vietnam's domestic market? Please describe any conditions on the ability of foreign investors to import products used in or related to local production. Please describe any conditions on the ability of foreign exchange to be used for the importation of the products used in or related to local production.**

**Answer**

For certain sectors or commodities (in the list of conditional investment), investment is only allowed for production to be exported; Regarding investment in production of some goods, Vietnam encourages the investors to commit to export a reasonable percentage of production.

Foreign investors are allowed to import products in accordance with objective, licence and feasibility study of the investment project.

In addition, foreign-owned enterprises are abide by Vietnamese laws in respect of technology, environment protection, import-export procedures, etc.

With regard to exchange control measure, please refer to the answers to questions 75 and 78.

#### **Question 426**

**According to the Memorandum (WT/ACC/VNM/2), the Government is considering adjusting the regulation providing rights of enterprises manufacturing export goods or import substitution goods to be self-responsible to cover their needs in foreign currencies for their operation. This provision appears to violate TRIMs Article 2, because it restricts access to foreign exchange to satisfaction of performance criteria (Please see paragraph 2 of the Illustrative List).**

**What is the status of the implementation of these regulations? Will these new rights extend to the right to repatriate investment funds? Please explain how these regulations satisfy TRIMs requirements, or describe the remedial steps that Vietnam intends to take to bring them into conformity.**

#### **Answer**

In parallel with the process of liberalizing the foreign exchange transactions on current account, the Government has been deregulating and gradually eliminating the requirements for foreign-invested enterprises' self-balance of foreign exchange.

Please refer also to the answer to question 78.

#### **Question 427**

**Incentives related to certain performance requirements are prohibited under the WTO Agreement on Trade-Related Investment Measures (TRIMs). The TRIMs Agreement specifically prohibits: (a) relating imports to export commitments in terms of quantity or value; (b) relating foreign exchange access to foreign exchange earnings (i.e. export receipts); (c) relating to allowable local production levels to export targets.**

**What incentives does Vietnam have for foreign investors and are they compatible with the TRIMs Agreement?**

#### **Answer**

Vietnam is reviewing its policy system in order to find out TRIMs-inconsistent measures and policies. Particularly, Vietnam is evaluating how the following measures are consistent with TRIMs Agreement:

1. Regulation on self-responsible enterprises to cover needs in foreign currencies. Article 33 the Law on Foreign Investment in Vietnam dated 12 November 1996 providing:

"Foreign-invested enterprises, partners involved in a business cooperation contract shall self-guarantee demands of foreign currency for their operations.

The Vietnamese Government guarantees to balance foreign currency demands for projects on the construction of infrastructure works, production of goods to substitute essential imported goods and other important projects."

Please refer to the answer to question 78 for more details.

2. Requirements of buying or using local components:

- regarding projects of electronic appliances assembling and manufacturing: The value of local components, accessories produced in Vietnam in the first two years must represent at least 20 per cent of the value of finished products and annually increase (according to Circular No. 215 dated 8 February 1995, PLI 3);
- regarding projects of car assembling and manufacturing: The value of local components, accessories produced in Vietnam must represent at least 5 per cent of finished product value no later than fifth year since the date of starting production and annually increase to reach the percentage of 30 per cent at the tenth year of production. (Special privileges will be granted to projects with high-tech, large scale localization programs - According to Circular No. 215 dated 8 February 1995 PL21.3);
- regarding the projects of motorcycle and motorcycle components manufacturing: The value of local components, accessories produced in Vietnam must represent at least 5-10 per cent of finished product value no later than second year since the date of starting production and annually increase to reach 60 per cent in the fifth or sixth years. (Circular No. 215 dated 8 February 1995 PL 2 II3).

**Question 428**

**Does Vietnam have any trade-related investment measures which are inconsistent with the obligation of national treatment provided for in Article III.4 of the GATT 1994? These include performance requirements relating to local purchase requirement and import entitlement?**

**Answer**

Please refer to the answer to question 427.

**Question 429**

**What system will Vietnam introduce in order to notify non-compatible trade-related investment measures under the TRIMs Agreement provisions? Will this system also encompass sub-national authorities?**

**Answer**

Vietnam will inform WTO Secretariat all trade-related investment measures not yet in line with TRIMs Agreement, and work out the programme for gradually eliminating and adjusting these measures toward consistence with the Agreement, taking into account the flexibility, and privileges that may be granted for developing countries.

The unique central government exercises uniform administration over all economic activities in general, and investment activities in particular. Therefore, all policies, measures promulgated by the Government and commitments under international treaties are implemented consistently from the central to local level. Local authorities are obliged to implement the instructions from the central government, and do not have rights to oppose or do otherwise.

### Question 430

**What is the extent of national treatment in terms of pre-establishment of investment? Are there any particular regulation by sub-national authorities which favour domestic investors over foreign investors?**

#### Answer

The national treatment issue is under consideration. Vietnam will provide WTO Secretariat with the information in this regard as soon as it is in a position to do so.

The extent of national treatment in terms of pre-establishment is as follows:

1. Investment opportunities:

Both domestic and foreign investors have access to most of the economic sectors except otherwise clearly indicated as prohibited or conditional sectors and areas. These are the sectors and areas sensitive (vulnerable to) to national security, defense, historical, cultural relics, custom, and environment. The government is in charge of promulgating the list of prohibited or conditional investment sectors and areas.

2. Partners and forms of investment.

Both domestic and foreign investors are free to choose partners and forms of investment in line with Vietnamese laws and regulations. Foreign investments are only subject to limitations on investment forms. For details of these limitations, please refer to the answer to question 121.

3. Possibility of capital contribution:

Both domestic and foreign investors are allowed to make contribution by cash (foreign or Vietnamese currency), equipment, machines, factories, warehouses, other facilities, intellectual property rights, technical know-how. However, domestic investor may contribute by land, water and sea surface use rights, natural resources use right.

Local authorities are not allowed to grant any additional treatments related to domestic or foreign investors.

### Question 431

**It would appear that foreign joint-ventures in the car manufacturing sector are required to produce a minimum share of their components locally (starting with 5 per cent in the first five years and at least 30 per cent after 10 years) in order to continue to operate. Is our understanding on this matter correct?. Does Vietnam intend to maintain this scheme? Does Vietnam intend to notify this requirement under the TRIMs Agreement?**

#### Answer

Yes, this understanding is correct. Foreign joint-ventures in the car manufacturing sector are required to produce a minimum share of their components locally (starting with 5 per cent in the first five years and at least 30 per cent after ten years), as precondition for continuing their operation.

This scheme will be maintained and applied for the Vietnamese car manufacturing sector.

(e) State-owned enterprises

**Question 432**

According to the Memorandum (WT/ACC/VNM/2), certain State-owned enterprises that have been selected as focal point or those specialising in some line-management items mentioned in sections III.1(e) and 2(c)(iii).

Please identify these State-owned enterprises and the sectors in which they operate. What activities are required by these enterprises in order to carry out their responsibilities as "...a focal point or specialising in some line-management items"?

**Answer**

At present, only imports and exports of 4 products are conducted by focal point enterprises. They are: petroleum and fertilizer (for imports only), rice and coffee (for exports only):

Focal point petroleum import-export companies are (5 companies):

- Petro Vietnam;
- Petrolimex;
- Saigon Petro;
- Petexchim;
- Aviation Petroleum Company.

There are 31 companies which act as fertilizer import focal points. The major ones are:

- Ladffeco Long An;
- Long An Food Company;
- Dong Thap Agricultural Materials and Food Company;
- Dong Thap General Trading Company;
- An Giang Food Company;
- Tien Giang Food Company;
- Vinh Long Food and Foodstuff Company;
- Vinh Long Import Export Company;
- Tra Vinh Food Import Export Company;
- Soc Trang Food and Foodstuff Company;
- Can tho Food Company;
- Song Hau Plantation;
- Minh Hai Food Company;
- Ca Mau Food and Foodstuff Import-Export Company;
- Dong Nai Agricultural Materials Company;
- Hachimex Haiphong;
- Ha Anh General Material Company of Hanoi;
- Nghe An Agricultural Materials Company.

Sale, transfer of fertilizer quota in any form are prohibited. In case the enterprise is not able to use up the quota, it must promptly inform the Ministry of Trade and Ministry of Agriculture and Rural Development who will then report to the Government for quota allocation to other enterprises.

There are a large number of companies which act as focal points for rice and coffee export.

**Question 433**

**Please identify the State-owned enterprises and the sectors in which they operate. What activities are required by these enterprises in order to carry out their responsibilities as a focal point or specializing in some line management items? Please identify the items mentioned in sections III.1(e) and 2(c)(iii). Has the Government of Vietnam conferred any special or exclusive rights on these enterprises to enable them to meet their objectives of "maintaining and enlarging their market share, to reinforce their foothold in the market, while operating".**

**Answer**

Regarding the list of those goods subject to import prohibition in 1996, please refer to the Memorandum.

Regarding the list of those goods subject to import prohibition in 1997, please refer to the answer to question 432.

The above-mentioned companies are not given any preferential treatment.

**Question 434**

**Please describe the activities of each of the 19 A-category national corporations, identified in Appendix 5 of the Memorandum (WT/ACC/VNM/2), in the form of a response to the Questionnaire on State-Trading.**

**Answer**

Please refer to Annex 6 (WT/ACC/VNM/3/Add.1).

**Question 435**

**According to the Memorandum (WT/ACC/VNM/2), private enterprises are treated on an equal basis with State-owned enterprises except for fields stated in sections IV.1(e), IV.2(c) and Appendix 2.**

**Please describe how State-owned enterprises and private enterprises are treated differently in the field stated in sections IV.1(e), IV.2(c) and Appendix 2.**

**Answer**

Under Vietnamese Law in the fields referred to in the question, there are some measures which are aimed at creating a smooth and stable functioning of the market are applied differently to enterprises based on their performance, not their forms of ownership. These different treatments are diminishing and transparency is observed.

The Commercial Law provides that the Government will define and make public some of the fields where the State retains monopoly. In other fields, all enterprises are treated equally.

**Question 436**

**Please describe the mechanism used by the General Department of State-Owned Enterprises under the Ministry of Finance to monitor and administer State-owned enterprises.**



## Answer

The mechanism used by the General Department of State-Owned Enterprises under the Ministry of Finance to monitor and administer State-owned enterprises (referred to as General Department of Enterprises) is set out in Decree No. 34/CP dated 27 May 1996 of the Government. The mechanism is reflected in the responsibilities assigned by the Government to the General Department of State-owned Enterprises as follows:

1. Formulating laws, ordinances and other legal documents concerning the State management of State capital and assets in enterprises for the Minister of Finance to submit to the Government for decision or for the Minister of Finance to issue within his competence.
2. Assisting the Minister of Finance - the legitimate representative of State ownership - to uniformly monitor and administer the State capital and assets in enterprises, particularly:
  - to perform the procedures of capital assignment to State-owned enterprises, inspect and monitor the capital use and conservation;
  - to evaluate methods of capital mobilization, investment, and capital contribution by State-owned enterprises to joint ventures for approval by the Minister of Finance or the Prime Minister on a case-by-case basis;
  - to guarantee foreign borrows of State-owned enterprises pursuant to Prime Minister authority;
  - to inspect and monitor the State's capital and other assets in enterprises in cases of division, merger or dissolution.
3. Proposing transfer, lease or mortgage of the State's assets for approval by the Minister of Finance in cases where the enterprises are not empowered to do so in accordance with the Government's regulations.
4. Formulating or participating in the formulation of policies and regulations on financial management in State-owned enterprises; Directing and giving guidance on the financial and accounting management in enterprises with State-owned capital.
5. Monitoring, compiling and analysing the situation of the State financial and other assets in enterprises, and consolidating annual financial reports of State-owned enterprises.
6. Assisting the Minister of Finance to undertake equitization and diversification of ownership of State-owned enterprises.
7. Issuance, within its competence, of regulation concerning technical aspects of management of State's capital contributions and other assets in enterprises; requiring enterprises with State capital and assets to compile periodic reports on the management of the State's capital and assets, and other relevant information and data.

## Question 437

**We note under section IV.3(e) (pages 46-47, WT/ACC/VNM/2) that the State administers State-owned enterprises doing business independently and monitors its capital contribution in enterprises.**

**Do any of these State-owned enterprises have monopoly import or export powers?**

**Answer**

There are so far no definition of monopoly (e.g. what market share would constitute monopoly) in the provisions of existing Vietnamese laws. Details of conditions and methodology of application of the licensing regimes (in which monopoly may occur) can be found in Annex 3 (WT/ACC/VNM/3/Add.1).

**Question 438**

**Paragraph 4 says that in Vietnam there are 6,264 State-owned enterprises as of April 1994. About how many enterprises out of 6,264 are subject to notification obligation as State-trading enterprises with "exclusive or special privileges" under Article 17 of the GATT? In what circumstances are State-owned enterprises not regarded as State-trading enterprises?**

**Answer**

Among more than 6,000 State-owned enterprises, about 2,500 enterprises engage in trading and service activities. Most of these enterprises are not provided with any privilege.

The list of State-trading enterprises will be identified after the promulgation of the regulations implementing the Commercial Law of 10 May 1997 and will be provided to the Working Party.

**Question 439**

**On page 47, the Memorandum (WT/ACC/VNM/2) states that Vietnam has 6,264 State-owned enterprises. Please provide a list of State-owned enterprises involved in agriculture, with a description of their activities and privileges.**

**Answer**

The list of State-owned enterprises involved in agriculture is not fixed. Most of the trading enterprises are registered as importer-exporter of agricultural products. The list of State-owned enterprises whose major activities relating to agriculture is enclosed in Appendix 4 to document WT/ACC/VNM/3/Add.1.

**Question 440**

**Included in the list of national (State-owned and controlled) corporations are the Vietnam Southern Food Corporation, the Vietnam Northern Food Corporation, the Vietnam National Coffee Import/Export Corporation and the Vietnam National Tobacco Corporation.**

**Please provide a detailed description of the operation these and other State-run enterprises, including Vinalivesco, Vinafeco and Vinacafe. Please include details on the nature and extent of involvement of these enterprises in the import and export of food and agricultural commodities.**

**Answer**

The State provides to these enterprises the start-up capital which they are trust to maintain and amplify and is subject to State-capital-use tax. The activities of these enterprises must conform to the laws, including the Law on State-owned Enterprises which applies solely to State-owned

enterprises. These enterprises can import and export products within their lines of business. More than 95 per cent outputs of food, coffee and tobacco are produced by family households. These enterprises provide seeds, services and sign contract to purchase products from the households for processing.

Member enterprises of the General Corporations have independent accountability, are assigned with capital by the State, operate in competition with other enterprises in accordance with the General Corporation Charter, and are subject to the Law on Business Bankruptcy and other applicable laws.

#### **Question 441**

**Paragraph 5, page 5 and paragraph 5, page 47 refer to State-owned enterprises. It would be helpful to have clarification on the operation of State-owned enterprises, in particular whether they are required to act solely in accordance with commercial criteria, and the extent to which they have any special linkages with central or local government.**

#### **Answer**

State-owned enterprises are classified into two types: public interest enterprises and profit-oriented enterprises. All State-owned enterprises are subject to the Law on State-Owned Enterprises and are governed by other applicable laws. Profit-oriented enterprises which the majority of activities are aimed at profit making are equal to enterprises of other economic sectors. Public interest enterprises are those which engage in the production and provision of public services in accordance with the Government's policies.

In the market economy, profit-oriented State-owned enterprises have to be efficient and compete on equal footing with other enterprises.

There is no different between centrally managed and locally managed State-owned enterprises. They are all subject to the Law on State-Owned Enterprises, equal in terms of rights and obligations. They all may go bankrupt or be dissolved in accordance with the Law on Business Bankruptcy.

#### **Question 442**

**Paragraph 7, page 47 refers to the establishment of National Corporations. Do any of these National Corporations engage in importing or exporting activities?**

#### **Answer**

These Corporations as well as affiliated companies have the right to export and import.

**(f-g) Free zones and free economic zones**

#### **Question 443**

**Does Vietnam have any legislation relating to free zones?**

#### **Answer**

In Vietnam, there are only industrial zones and export-processing zones, not free economic zones.

**Question 444**

**Please confirm that free zones and free economic zones will be fully subjected to coverage of Vietnam's future commitments as a WTO Member.**

**Answer**

Vietnam will review this subject when those zones established in Vietnam.

**Question 445**

**Do the export processing zones and industrial parks referred to in this sector benefit from any special tax and/or tariff regimes?**

**Answer**

Investors operating in these zones can benefit from the preferences in respect of profit tax, profit remittance tax, tariff and management as follows:

1. Profit tax rate:
  - (a) Domestic enterprises: preferential rates are accorded as provided for in the Law on the Promotion of Domestic Investment.
  - (b) Foreign-invested enterprises:

Enterprises in export processing zones are beneficiary of the following taxation:

- 10 per cent of profits earned by production enterprises and exemption from payment of profits tax for a period of four years commencing from the first profit-making year;
- 15 per cent of profits earned by service enterprises and exemption from payment of profits tax for a period of two years commencing from the first profit-making year.

Enterprises in industrial zones:

- 15 per cent of profits earned by production enterprises which export less than 50 per cent of their products, exemption from payment of profit tax for a period of 2 years commencing from the first profit-making year; deduction of 50 per cent of profit tax for another 2 years for production enterprises which export from 50 to 80 per cent of their products; 10 per cent of profits earned by production enterprises which export at least 80 per cent of their products, exemption from payment of profit tax for a period of 2 years commencing from the first profit-making year and deduction of 50 per cent of profit tax for another 2 years;
- 20 per cent of profits earned by service enterprises and exemption from payment of profits tax for a period of one year commencing from the first profit-making year;
- 10 per cent of profits earned by infrastructure development companies of industrial and export processing zones and exemption from payment of profits tax for a period of four years commencing from the first profit-making year and deduction of 50 per cent of profit tax for another 4 years.

The above tax rates are applicable for the whole duration on the project of these companies.

2. Profit remittance tax rate:

5 per cent of the profit remitted.

3. Import and export duty:

Enterprises in export processing zones are exempted from import and export duties for goods which are imported from or exported to foreign countries.

For enterprises in industrial zones, the following items are exempted from import duties:

- machinery, equipment imported for capital construction establishing the joint-venture enterprise;
- specialized means of transport which are included in the technological line of production as required to establish the joint-venture enterprise or used for the transportation of the staff (i.e. cars with 24 seats or more, water-way means of transport);
- parts, spare parts, optional or supplementary parts accompanying the above specialized means of transport;
- equipment, machinery, specialized means of transport imported for the expansion, replacement or renovation of technology of the joint-venture enterprises;
- materials, parts, spare parts used for the production of exports are still subject to duty payment upon importation and duties are refunded later proportionate with the amount exported.

**Question 446**

**Do any specific performance requirements apply to the export processing zones or industrial areas?**

**Answer**

Operations of export processing zones and industrial areas must abide by laws, regulations on export processing zones and industrial areas and internal regulations of each zone.

**Question 447**

**Are exports of products to any countries with which Vietnam has a preferential trade agreement subject to export tariff and at the same export tariff rates?**

**Answer**

Yes.

**(h) Trade-related environmental policies**

**Question 448**

**Please provide more detailed information about the possible restrictions mentioned in this section, including details of the relevant laws and regulations where these restrictions can be found.**

**Answer**

Trade-related environment measures are:

- limitation on import of automobile;
- prohibition of import of used clothes;
- strict control of import of used equipment, vehicles;
- prohibition or strict control of sub-materials of inferior quality.

**Question 449**

**Are these restrictions applied with full respect to the national treatment and most-favoured-nation principles?**

**Answer**

Vietnam has issued the Law on Environment Protection, Decree No. 175/CP dated 18 October 1994 of the Government making the detailed provisions for the implementation of the Law on Environment Protection, Decree No. 26/CP dated 26 April 1996 of the Government stipulating administrative fines for the purpose of environment protection, etc. Vietnam has also joined a number of international conventions and agreements on environment. So far, trade-related environmental measures are applied with full respect to MFN and national treatment principles.

**Question 450**

**Please see also the questions we have raised under section IV.1.(d) (WT/ACC/VNM/2) regarding import restrictions in the vehicle sector.**

**Answer**

The measures affecting trade in motor-vehicles can be found in Annex 3 (WT/ACC/VNM/3/Add.1) and the answers to questions 247 and 248.

**(l) Government procurement**

**Question 451**

**Why does the Government of Vietnam not apply the transparency requirements of the Government Procurement Agreement to the acquisition of services and products for consumption by governmental agencies?**

**Answer**

At this level of development where the budget is allocated to the government agencies and localities in a piecemeal manner, Vietnam is not yet in a position to administer centrally all the government procurement activities.

**Question 452**

**Does Vietnam intend to apply to join the Government Procurement Agreement? If not, why not?**

**Answer**

As it is a new area, more time is required before Vietnam can come to a decision.

**Question 453**

**Could the Vietnamese Government provide a breakdown of the public sector procurement market both by contracting entity and by product type?**

**Answer**

These kinds of statistics are not available in Vietnam.

**Question 454**

**What is the overall value of public sector purchasing in Vietnam, and which are the major procuring entities?**

**Answer**

These statistics are not available.

**Question 455**

**What statistics does the Vietnamese Government collect on procurement?**

**Answer**

Government procurement is a new concept in Vietnam. Thus, the statistics are not collected.

**Question 456**

**Could the Vietnamese Government make these statistics available to the Working Party, as well as the copy of their most recent Law on Public Procurement?**

**Answer**

Statistics are not available.

An English version of the Decree on Tendering, which is the unique legal document related to this area, is available in the WTO Secretariat (Accessions Division, Room 1126) for consultation.

Question 457

What is the **management structure of Vietnam's system of government procurement?**

**Answer**

Government procurement is administered in accordance with the provisions of the applicable laws such as the Decree on Tendering (Decree No. 43/CP).

Article 43 of Decree No. 43/CP stipulates as follows:

"The Prime Minister shall approve the tendering plans for State funded projects in Group A (as stipulated in the Regulations on Management of Investment and Construction) and the results of the selection of tenderers for tender packages for consultants valued at 10 billion or more Vietnamese Dong and tender packages for procurement of materials and equipment or for construction and installation valued at 50 billion or more Vietnamese Dong on the basis of the proposal of the Minister of Planning and Investment.

Other tender packages shall be approved by ministers, chairmen of people's committees of provinces and cities under central authority, and heads of competent bodies on the basis of the proposal of the investors.

The authority making the investment decision for State funded projects in Group B (as stipulated in the Regulations on Management of Investment and Construction) shall employ its professional staff and may engage experts for advice in approving the results of the selection of tenderers for tender packages for consultants valued at between 500 million and 10 billion Vietnamese Dong and for tender packages for procurement of materials and equipment or for construction and installation valued at between 10 and 50 billion Vietnamese Dong on the basis of the proposal of the investors. Tender packages for consultants valued at 10 billion or more Vietnamese Dong and for procurement of materials and equipment or construction and installation valued at 50 billion or more Vietnamese Dong must be submitted to the Prime Minister for approval before the tendering results may be approved. An authority at the immediately lower level may be authorized to approve other tender packages valued at lower than the above amounts.

In respect of projects in Group C (as stipulated in the Regulations on the Management of Investment and Construction), the authority making the investment decision and the head of the body authorized to make the investment decision shall approve the results of the selection of tenderers for all tender packages in respect of a project."

**Question 458**

**How are upcoming tenders notified? Do the requests for tenders specify whether or not foreign enterprises are eligible to be awarded the contracts? What deadlines are given for submission of documents? Are specifications based on performance, rather than design, descriptive characteristics, or trade name?**

**Answer**

The notification procedures, as provided for in Part II, section II of the Circular No. 2/TTLB dated 25 February 1997 making provisions for the detailed implementation of the Regulations on Tendering, vary for each form of tendering:



Tender invitation notices.

- tender invitation notices shall be applicable in the case of open tendering. Tender invitation notices shall be published widely in order to supply preliminary information to tenderers wishing to participate in tenders. Where prequalification is to be conducted, prior to the official tender, the party calling for tenders must issue prequalification notices. Forms for prequalification notices and tender invitation notices are provided in the appendices of the Regulations on Tendering;
- the party calling for tenders must cause the notices to be published in the mass media in a manner which is appropriate to the scale and nature of the particular tender package (daily newspapers, audio visual broadcasting media, etc.) provided that the notices are published at least three consecutive times. In the case of international tendering, the party calling for tenders must, in addition to the above requirements, cause notices to be published in at least one English language newspaper widely published in Vietnam.

Sending tender invitation letters:

- in the case of limited tendering, the party calling for tenders shall send tender invitation letters directly to each tenderer in the approved list of tenderers to be invited. The forms of tender invitation letters for the specific types of tendering are provided in the appendices.

The time-limit for tender submission shall depend on the size and complexity of the relevant tender package, but must not exceed 60 days in the case of tenders for consultants and procurement of material and equipment, and 90 days in the case of tenders for construction and installation, as from the date of issuance of tender invitation documents.

Criteria for evaluation of tendering proposals vary for different types of procurement (i.e., consultancy services, materials and equipment, construction and installation). However, specifications are generally based on performance. Please refer to sections V, VI and VII, Part II of the Circular No. 2/TTLB dated 25 February 1997 making provisions for the detailed implementation of the Regulations on Tendering.

Please also refer to Articles 22 and 33 of Decree No. 43/CP which is available in the WTO Secretariat (Accessions Division, Room 1126) for consultation.

#### **Question 459**

**Are there any prospects that Vietnam would enact national regulations by which government procurement of all products and services are covered? If so, what kind of treatment is to be granted to foreign products and foreign suppliers under such regulations?**

#### **Answer**

On 16 July 1996, the Government of the Socialist Republic of Vietnam enacted Decree No. 43/CP which promulgates regulations on tendering. Under these regulations, tendering must be applied for all government-funded projects valued at 500 million Dong upward.

A domestic tenderer participating in an international tender (as an individual tenderer or in partnership) shall be given priority in cases where its tender is considered to be equal to the tender of a foreign tenderer.

Acquisition and purchase of equipment and goods by the administrative bodies is subject to the Regulations on Tendering enacted by Decision No. 20TC/KBNN on 17 January 1997 of Ministry of Finance.

**Question 460**

**What procedures exist for challenges to the award of contracts and dispute settlement? According to the Memorandum (WT/ACC/VNM/2), "...procurement by official loans (ODA) is often made by open tenders. Employer and line ministries or provincial people's committee shall offer open tender in accordance with international practices". Please describe the open tendering procedures that are applied to ODA-funded procurement. For each of the past three years, what proportion of ODA-funded procurement were made by open tender? What is the criteria for determining whether or not open tendering will be used for ODA-funded procurement?**

**Answer**

The procedures for contract signing and open bidding applied to ODA-funded procurement are specified in each loan agreement signed between the Vietnamese Government and the donor (international organisations or foreign governments). The terms and conditions vary widely on the case by case basis.

Statistics of the ratio of ODA funded procurement made by open tenders are not available.

**Question 461**

**Is it correct to understand that Vietnam has, at present, national regulation regarding government procurement which relates only to purchase of machinery and equipment by financing from the government budget? If so, all institutions which purchase such machinery and equipment are subject to application of the said national regulation?**

**Answer**

The Vietnamese Government requires that all budget-funded procurement of equipment and machinery must be implemented through tendering.

The Regulations on Tendering apply to all investment projects which are funded by the State or have loans guaranteed by the Government.

**Question 462**

**What kind of treatment is granted to foreign products and foreign suppliers when purchase of machinery and equipment by financing from government budget are conducted through bidding, etc.?**

**Answer**

According to the Regulations on Tendering enacted by the Decree No. 43/CP dated 16 July 1996 of the Government of Vietnam, partly or wholly State-funded procurement of consultancy services, materials and equipment or construction and installation must be implemented pursuant to the Regulations on Tendering. A foreign tenderer participating in an international tender organized in Vietnam must undertake to enter into a partnership with a Vietnamese contractor, or undertake to use sub-contractors for construction and installation and to procure suitable materials and

equipment manufactured or produced in Vietnam. A domestic tenderer participating in an international tender (as an individual tenderer or in partnership) shall be given priority in cases where its tender is considered to be equal to the tender of a foreign tenderer.

**Question 463**

**Is there a central agency that purchases on behalf of all central government agencies, or do individual government departments hold their own procurement budgets?**

**Answer**

In Vietnam, there is no central agency which is responsible for purchases on behalf of all government agencies. The agency responsible for administration of tendering activities is the Ministry of Planning and Investment which assists the Prime Minister in supervising the implementation of the Regulations on Tendering.

**Question 464**

**How is purchasing managed for local government agencies and for other publicly-controlled bodies such as State-trading enterprises?**

**Answer**

Article 43 of Decree No. 43/CP stipulates as follows:

"The Prime Minister shall approve the tendering plans for State funded projects in Group A (as stipulated in the Regulations on Management of Investment and Construction) and the results of the selection of tenderers for tender packages for consultants valued at 10 billion or more Vietnamese Dong and tender packages for procurement of materials and equipment or for construction and installation valued at 50 billion or more Vietnamese Dong on the basis of the proposal of the Minister of Planning and Investment.

Other tender packages shall be approved by ministers, chairmen of people's committees of provinces and cities under central authority, and heads of competent bodies on the basis of the proposal of the investors.

The authority making the investment decision for State funded projects in Group B (as stipulated in the Regulations on Management of Investment and Construction) shall employ its professional staff and may engage experts for advice in approving the results of the selection of tenderers for tender packages for consultants valued at between 500 million and 10 billion Vietnamese Dong and for tender packages for procurement of materials and equipment or for construction and installation valued at between 10 and 50 billion Vietnamese Dong on the basis of the proposal of the investors. Tender packages for consultants valued at 10 billion or more Vietnamese Dong and for procurement of materials and equipment or construction and installation valued at 50 billion or more Vietnamese Dong must be submitted to the Prime Minister for approval before the tendering results may be approved. An authority at the immediately lower level may be authorized to approve other tender packages valued at lower than the above amounts.

In respect of projects in Group C (as stipulated in the Regulations on the Management of Investment and Construction), the authority making the investment decision and the head

of the body authorized to make the investment decision shall approve the results of the selection of tenderers for all tender packages in respect of a project."

**Question 465**

**Similarly, how is procurement managed by utilities (entities operating in the oil and gas, electricity, transportation and water sectors)?**

**Answer**

As it is a new area, Decree No. 43/CP of 16 July 1996 is the major legal document which governs procurement of utilities.

**Question 466**

**Is there a central agency which controls the application of the legal system or monitors infringements of procurement law?**

**Answer**

The central agency which monitors the application of the legal system concerning government procurement is the Ministry of Planning and Investment.

**Question 467**

**Can suppliers who dispute the award of a contract seek redress through national courts or a tribunal system?**

**Answer**

In accordance with the current regulations, disputes arising from economic contracts between legal entities (including those who are not economic organisations) can be settled in economic courts or arbitration boards.

**Question 468**

**What remedies (for example, damages or re-tendering of contract) are available?**

**Answer**

Under Article 45 of Decree No. 43/CP, any acts in breach of the Regulations on Tendering, shall be deemed to be acts that cause economic losses and shall be dealt with as follows:

- where a tenderer is in breach, it shall be removed from the list of participating tenderers and shall not be entitled to a refund of the tender guarantee. If the tenderers conspire in pricing, they shall be dealt with in accordance with law;
- where the party calling for tenders is in breach, the tendering results shall be nullified and the authority making the investment decision shall direct the reorganization of the tendering. The party calling for tenders shall be liable to reimburse the expenses incurred by the tenderers. If any members of a professional organization assisting in a tendering process commit a breach,

they shall be removed from the organization and shall, depending on the seriousness of the breach, be dealt with in accordance with law;

- where the person who has, or is delegated with, the authority to approve tendering results is in breach, he or she shall, depending on the seriousness of the breach, be dealt with in accordance with law.

**Question 469**

**Do detailed rules exist on the requirement to publish tender and contract award notices?**

**Answer**

Yes. Please refer to the answer to question 470.

**Question 470**

**If so, what information must this notice contain, and where are they published?**

**Answer**

Bidding procedures are stipulated in Decree No. 43 dated 16 July 1996 of the Government issuing the Tendering Regulations and the Inter-ministerial Circular jointly issued by the Ministry of Planning and Investment, the Ministry of Construction and the Ministry of Trade dated 25 February 1995 governing the implementation of the bidding Regulation.

Section IX.3.1 of this Circular provides that: Following the approval of tendering results by the competent body, the party calling for tenders must send a written notice of successful tenderer by registered mail or by telegram, telex or fax to the successful tenderer together with the draft contracts showing the necessary additions (if any) required by the party calling for tenders.

The party calling for tenders shall also send to the successful tenderer the timetable for negotiations, deposit of performance guarantee, and signing of the contract.

**Question 471**

**Does the current procurement law stipulate requirements for pre-selection of candidate suppliers? If so, what are they?**

**Answer**

(a) Pre-selection of potential contractors for construction projects (not applied to bidding for construction consulting services and equipment procurement) is required in the following cases:

- construction contracts of value more than 100 billion Dong;
- tendering package in which the value of materials and equipment is more than 200 billion Dong or technologically complex tendering package;
- pre-selection for contracts with a value below the above stipulated levels can also be undertaken if the bid calling party considers as necessary.

(b) Procedures of the pre-selection:

- preparation of tender invitation documents including the tendering invitation letter, guidance on criteria for evaluation, and annexes;
- notice or invitation for tendering;
- receipt of bidding proposals;
- evaluation of the bidding proposals;
- announcement of the results of pre-selection.

**Question 472**

**Similarly, does the law stipulate procedures and conditions for different forms of contract award procedures (for example, limited, open or negotiated tendering procedures)? Again, if so, what are they?**

**Answer**

The law does not stipulate different procedures and conditions for different forms of bidding.

**Question 473**

**How are bids evaluated? Is price the only criterion, or are contracts also evaluated by reference to an "economically most advantageous offer" approach? If so, under what conditions are the different evaluation methods used?**

**Answer**

The offered bidding price is not the only criterion for bid evaluation. Besides the rating method based on a scheme of grades, the Regulations on Tendering also stipulates the price equivalent method or the "economically most advantageous offer" approach.

After opening bidding packages, the bid calling party undertakes detailed evaluation in which tendering packages are compared and ranked on the basis of the prescribed requirements and criteria which have been approved by competent investment authorities prior to the bidding.

The inter-ministerial circular stipulates detailed criteria for evaluation of bidding for consulting services, material and equipment procurement and construction.

**Question 474**

**Does Vietnamese Procurement Law make provision for a system of domestic and price preferences?**

**Answer**

Please refer to the answers to questions 462, 470 and 476.

**Question 475**

**(a) Are these mandatory or optional? How, precisely, do they operate?**

**(b) How are they managed?**

**Answer**

Please refer to the answer to question 476.

**Question 476**

**Offset discrimination of foreigners:**

- (a) **Are there any provisions in Vietnamese Law which discriminate against the participation of foreigners in public procurement contracts?**
- (b) **Does the Vietnamese Procurement Law make provision for any offset requirements, such as technology transfer or buy-back arrangements?**

**Answer**

1. Article 7 of Decree No. 43/CP of the Government of Vietnam, stipulates conditions for international tendering and preferences accorded to domestic bidders as follows:

An investor may only conduct an international tender in the following cases:

- not any, or only one, domestic tenderer satisfies the requirements of the tender package in respect of the project;
- the project is sponsored with aid from international or foreign organizations pursuant to an agreement which requires an international tender.

2. A domestic tenderer participating in an international tender (as an individual tenderer or in partnership) shall be given priority in cases where its tender is considered to be equal to the tender of a foreign tenderer.

3. The successful domestic tenderer in an international tender shall be entitled to preferential treatment as provided for in separate regulations of the State.

4. A foreign tenderer participating in an international tender organized in Vietnam must undertake to enter into a partnership with a Vietnamese contractor, or undertake to use sub-contractors for construction and installation and to procure suitable materials and equipment manufactured or produced in Vietnam.

5. At present, there is no regulation governing buy-back arrangement.

**Question 477**

**Are there any plans to set up such an information technology system with respect to public procurement (electronic advertising, Internet, etc.)?**

**Answer**

So far, there are no such plans.

**Question 478**

**Does Vietnam have any existing purchasing agreements with third countries? If so, with which countries? Could the Vietnamese side also provide the Working Party with copies of those agreements?**

**Answer**

No. Vietnam formerly had purchasing agreements with several countries, but this form of trade has been abolished since 1991.

**(m) Regulation of trade in transit**

**Question 479**

**What is the reason for restricting the nationality of carriers able to transport goods in transit through Vietnam to Vietnam, China, Laos, and Cambodia? Please explain how this restriction is compatible with WTO rules of national and MFN treatment.**

**Answer**

Under the regulations of Vietnam, only carriers from countries which have signed agreement on transit with Vietnam (China, Laos and Cambodia have signed such agreement) are allowed to transport goods in transit through Vietnam's territories. If other country signs such agreement with Vietnam, these rights will also be extended to people from that country.

In the conditions of Vietnam, such regulation is applied to strengthen management against smuggling.

**4. Policies Affecting Foreign Trade in Agricultural Products**

**(a) Imports**

**Question 480**

**Please provide additional details on the coffee stabilization fund that Vietnam administers during periods of volatility in the international coffee market. Please describe the surcharge to establish the price stabilizing fund for coffee. Does this surcharge apply to imported coffee? How is the amount of the surcharge determined for imported products?**

**Answer**

Imported coffee is subject to import duties only.

Please refer to Annex 9 (WT/ACC/VNM/3/Add.1) for the price regulating mechanism which is also applicable to coffee.

**(b) Exports**

**Question 481**

**Please describe the mechanism used by the coffee stabilization fund for the support of coffee export prices. Is the amount of fund granted to coffee producers contingent or conditioned on**



**export volumes? What were the total amount of funds disbursed by the Stabilization Fund to support coffee export prices for each of the past three years? Does the Government of Vietnam provide funds directly to the stabilization fund, or are all fund proceeds raised from the coffee surcharge?**

**Answer**

Please refer to Annex 9 (WT/ACC/VNM/3/Add.1) which provides the requested information. The amount of fund granted to coffee producers is not contingent or conditioned on export volumes.

**Question 482**

**Please provide the information requested in WT/ACC/4 on domestic support and export duties.**

**Answer**

The information relating to domestic support and export duties will be submitted at a later date in the form of Annex 4 to WT/ACC/1.

**Question 483**

**Under section IV.4(b) (page 49, WT/ACC/VNM/2) Vietnam states that it "...reserves its right to introduce subsidies in line with the WTO provisions and practices". According to the WTO Agriculture Agreement, commitments are to be based on current levels which are to be reduced. It is not intended to provide freedom to introduce such subsidies. As Vietnam indicates that it does not currently have export subsidies then our expectation is that Vietnam's commitment in the WTO on export subsidies will be zero.**

**Could Vietnam complete the questionnaire on agricultural export subsidies and domestic support in accordance with the WT/ACC/4 format?**

**Answer**

At the present, Vietnam does not provide any export support in the form of direct transfers from the State budget. Other measures will be informed to the WTO Secretariat in due course. Vietnam is requesting to be included into List 7 of the Agreement on Agriculture when it accedes to the WTO.

**Question 484**

**It is stated (on page 4, WT/ACC/VNM/2) that "...2.3 million hectares (are) for other crops, of which 1.51 (million, we suppose) hectares (are) for long and short term cash crops". Which type of crops are covered by the expression "cash crops".**

**Answer**

Long term cash crops which include rubber, coffee, tea, pepper, etc., are plants supplying materials for industries in multiple cultivation.

Short term crash crops are plants such as pea-nut, soyabean, sugar cane, tobacco, jute, cotton, etc., which can be cultivated in only one crop or one year.

#### **Question 485**

**Also on page 4 (WT/ACC/VNM/2) it is stated that "...now agricultural production only depends on the rapport between supply and demand in the market". On the other hand it is said that rice and sugar are subject to a strict mechanism of price supervision and control, and stabilization funds are used to subsidized prices for coffee. It is also said that 56 per cent of all arable land is occupied by rice production, and that it is the Government which is setting the export price for rice. We would therefore like to know the share (or the percentage) of agricultural production which is not subject to any State intervention.**

**Please provide a more detailed explanation on how the "...strict mechanism of price supervision and control for rice and sugar" operates?**

#### **Answer**

The Government authorizes the Government Pricing Committee to collect data and set the "guidance price" for rice and sugar. The guidance price should cover cost of inputs and reasonable returns for the farmers. At time of good crops when market price falls below the guidance price, money from the price stabilization fund would be used to finance part of interest payment of rice/sugar trading enterprises or rice processing mills/sugar refinery to purchase a set quantity for the purpose of increasing market price. The Government only intervenes in situation where market price falls too low and in practice just applies to rice and sugar. Therefore, it is not possible to calculate the share of products which is subject to Government's intervention.

Please refer to the answer to question 52.

#### **Question 486**

**Could Vietnam explain what "rice business" means? It says that rice businesses receive loans to purchase rice for stabilising the market price. Could Vietnam explain more about this? Who finances the loans? Is it the Government? How does this relate to rice export policy?**

#### **Answer**

"Rice business" refers to enterprises who have item "rice" registered in their registration and business licences.

The Government allows State-owned food enterprises to borrow from the State-owned commercial banks to purchase rice during certain harvest periods. The preferential margin is covered by the Price Stabilisation Fund. The policy enables food enterprises to buy up the amount of rice from farmers for export processing, domestic distribution and State reserves with the aim of domestic prices stabilisation, protecting interests of producers and consumers.

#### **Question 487**

**Please describe in detail the system for providing priority loans to rise businesses to purchase rice in order to stabilize market prices.**

#### **Answer**

Please refer to the answers to questions 486 and 488 herein and Annex 9 (WT/ACC/VNM/3/Add.1).

**Question 488**

**Under section IV.4(b) of WT/ACC/VNM/2 there is a reference to rice businesses being given priority in getting loans at market interest to purchase rice for stabilizing the market price. How is rice purchased for stabilizing the market price, and disposed of? Is the disposal on a commercial basis?**

**Answer**

State-owned food enterprises purchase rice directly from farmers or through agents. Purchases come to an end as soon as the market price has reached the indicative level set by the Government. Part of the purchased rice may be processed for export and the rest is sold to areas where there are shortages of rice and to urban areas. Sales are undertaken solely on the basis of the market mechanism.

The Price Stabilization Fund supports part of the loan interest incurred by enterprises that are assigned the duty of purchasing rice from farmers at harvest time for export and domestic consumption, with the objective of stabilizing the market price (not permitting the rice price to fall too low during the harvest time and rise too high during the pre-harvest time), limiting losses to producers, hence the reduction of cultivating areas.

Please refer to Annex 9 (WT/ACC/VNM/3/Add.1).

**Question 489**

**We note that under sections V.4(c) and (e) (page 49 of WT/ACC/VNM/2) Vietnam has domestic support which would be considered as "green box" policies under the WTO Agriculture Agreement.**

**Could Vietnam confirm that the Government provides assistance either on a product-specific or non-product specific basis, for example, on rice and sugar?**

**Answer**

Vietnam maintains some measures which would be considered as "green box" policies under the WTO Agriculture Agreement on both product-specific and non-product specific basis. They are:

(a) Regional support programmes:

- construction of irrigation works;
- assistance for settlement, migration to new economic areas;
- infrastructures construction and clean water programmes for rural areas;
- planting in barren hills and land;
- restructuring of crops to do away from poppy plants;
- development programmes for the Central Highland, Mekong Delta, Northern Mountainous Area and Central Area;
- natural disaster relief programmes.

(b) Product-specific assistance:

- scientific and technical researches;
- agricultural and forestry expansion;
- subsidies for transport costs of fertilizers and salts to the mountainous areas, etc.

**(c) Export prohibitions and restrictions**

**Question 490**

**Will Vietnam notify its rice export quota and its export licensing requirements for aqua-culture breeds lobsters and sea cods to the WTO Committee on Agriculture, immediately upon accession to the WTO, in accordance with Article 12 of the Agreement of Agriculture?**

**Answer**

Vietnam will notify the requirements for granting export licences with respect to its rice export quota and aqua-culture breeds, lobsters to the WTO Committee on Agriculture as soon as possible after the accession to the WTO.

**(d) Export credits, export credit guarantees and export insurance programmes**

**Question 491**

**Could Vietnam provide details on the proposed systems that may be implemented in the event that Vietnam accedes to the WTO?**

**Answer**

Vietnam is considering the experiences of other countries. Vietnam will provide, as soon as possible, the requested information.

**Question 492**

**Please describe your domestic agriculture policies by submitting a response to WT/ACC/4, "Information to be provided on domestic product and export subsidies in agriculture".**

**Answer**

The information in the format of WT/ACC/4 questionnaire will be provided in due course.

**VII. INSTITUTIONAL BASE FOR TRADE AND ECONOMIC RELATIONS WITH THIRD COUNTRIES**

**1. Bilateral or Plurilateral Agreements**

**Question 609**

**We seek Vietnam's adherence to the WTO Agreement on Trade in Civil Aircraft from the date of WTO accession.**

**Answer**

Vietnam has been studying the possibility of accession to the WTO plurilateral Agreement on Trade in Civil Aircraft from the date of accession to WTO. The issue will be addressed in the course of negotiation for Vietnam's official accession to the WTO.

## 2. Economic Integration, Customs Union and Free Trade Area Agreements

### Question 610

- (a) On page 49 of WT/ACC/VNM/2 it is stated that "...within the framework of ASEAN, the majority of agriculture products are located in tariff concession schedules". We understand this to mean that ASEAN countries have preferential access to the Vietnamese market. Is this understanding correct?
- (b) If so, could Vietnam provide a complete list of all products (whether or not agricultural) covered by the preferences, indicating both the MFN rate and the preferential rate(s) that apply for each product?
- (c) What is the WTO justification for maintaining these preferences? Please provide the list of trade and cooperation agreements which Vietnam will have to implement as a result of its ASEAN membership.

### Answer

As a full ASEAN membership, Vietnam has joined ASEAN Free Trade Area which mainly aim at implementing Common Effective Preferential Tariff Agreement for realizing AFTA. Under this Agreement, ASEAN countries commit to grant each other tariff and non-tariff preferences. At present, some agricultural items has been included in preferential tariff scheme. Therefore, agricultural goods from ASEAN shall be treated more preferentially when accessing Vietnamese market.

Vietnam is preparing a general list of tariff reduction under CEPT scheme which is planned to publish.

The establishment of AFTA is consistent with Article XXIV of the GATT 1994 and recognized by the WTO as an exception to the MFN rule of GATT/WTO.

The list of ASEAN agreements which Vietnam implement as a ASEAN membership is as follows:

1. Multilateral Agreement on Commercial Rights of Non-Scheduled Services among ASEAN Manila, 13 March 1971;
2. Agreement on ASEAN Preferential Trading Arrangements, Manila, 24 February 1977;
3. Agreement on the ASEAN Food Security Reserve, New York, 4 October 1979;
4. Basic Agreement on ASEAN Industrial Projects;
5. Supplementary Agreement of the Basic Agreement on ASEAN Industrial Projects, ASEAN Urea Project (Indonesia), Kuala Lumpur, 6 March 1980;
6. Supplementary Agreement of the Basic Agreement on ASEAN Industrial Projects, ASEAN Urea Project (Malaysia), Kuala Lumpur, 6 March 1980;
7. Basic Agreement on ASEAN Industrial Complementation, Manila, 18 June 1981;
8. Protocol to Amend the Agreement on the ASEAN Food Security Reserve, Bangkok, 22 October 1982;

9. Basic Agreement on ASEAN Industrial Joint Ventures, Jakarta, 7 November 1983;
10. Agreement on the Preferential Short-listing of ASEAN Contractors, Jakarta, 20 October 1986;
11. Supplementary Agreement to Amend the Basic Agreement on ASEAN Industrial Joint-Ventures Singapore, 16 June 1987;
12. Revised Basic Agreement on ASEAN Industrial Joint-Ventures, Manila, 15 December 1987;
13. Agreement among the governments of Brunei Darussalam, the Republic of Indonesia, Malaysia, the Republic of the Philippines, the Republic of Singapore, and the Kingdom of Thailand for the Promotion and Protection of Investment, Manila, 15 December 1987;
14. Protocol on Improvements on Extension of Tariff Preferences under the ASEAN Preferential Trading Arrangement, Manila, 15 December 1987;
15. Agreement on the Establishment of the ASEAN Tourism Information Centre, Kuala Lumpur, 26 September 1988;
16. Protocol to Amend the Revised Basic Agreement on ASEAN Industrial Joint-Ventures, 1 January 1991
17. Agreement on Common Effective Preferential Tariff Scheme for the ASEAN Free Trade Area, Singapore, 15 December 1995;
18. Framework Agreement on Services, Bangkok, 15 December 1995;
19. Framework Agreement on Intellectual Property Cooperation, Bangkok, 15 December 1995;
20. Basic Agreement on ASEAN Industrial Cooperation, Singapore, 26 April 1996;
21. The ASEAN Agreement on Customs was signed on 1 March 1997 in Phuket, Thailand

Memoranda of Agreement/Understanding

22. Memorandum of Understanding on the ASEAN Swap Arrangements, Kuala Lumpur, 5 August 1977;
23. Memorandum of Understanding on Brand-to-Brand Complementation in the Automotive Industry Under the Basic Agreement on ASEAN Industrial Complementation (BAAIC), Pattaya, Thailand, 18 October 1988.

**Question 611**

**Could Vietnam provide some detail of the MFN treatment granted to non-ASEAN countries pursuant to bilateral agreement, as mentioned under section VI.4 (WT/ACC/VNM/2)? The Memorandum states that in essence, Vietnam has not adopted discriminatory treatment to any specific country or region in implementing governmental policies or tariff and non-tariff measures. Could Vietnam clarify what is meant here by "in essence". Are there instances where such discrimination exists and, if so, can details be provided?**

**Answer**

Part IV of Memorandum states that: "...in essence, Vietnam has not adopted discriminatory treatment to any specific country or region in implementing governmental policies or tariff and non-tariff measures". This phrase means:

1. Vietnam will extend MFN status for any countries, which has signed commercial bilateral agreement with Vietnam, under which the reciprocal MFN exchange is provided for.
2. Where Vietnam joins the Regional Trading Arrangements, the extension of MFN will be applied in consistence with provision of Article XXIV of GATT.
3. In the centrally-planned economy, Vietnam has not applied the tariff schedule with MFN, non-MFN rate or preferential rate for regional trading arrangement. In the transitional period Vietnam will restructure the tariff system and apply the MFN and non-MFN rate.

**Question 612**

**Does Vietnam participate or intend to participate in the ASEAN advanced industrial cooperation scheme, which provides for low tariffs on the shipment of parts manufactured in one ASEAN member country to another ASEAN member for use in processing or assembly?**

**Answer**

Vietnam is one of seven ASEAN countries and one of the founders of the ASEAN Industrial Cooperation Agreement (AICO). It signed this Agreement on 24 April 1996. Vietnam is ready to implement this Agreement when it comes into force. The Ministry of Industry is responsible for review and implementation of this Agreement as well as cooperation with other ASEAN member countries in this area.

**Question 613**

**Vietnam bound 857 preferential tariff items effective from 1996, pursuant to the CEPT Agreement, in order to establish the ASEAN Free Trade area. Vietnam will gradually increase to 2,000 the number of preferential tariff items by the year 2006.**

**What is the weighted average tariff rates and customs duties collected applicable to all imports from countries that are signatories to the CEPT Agreement? What is the weighted average tariff rates and customs duties collected applicable to the 857 items currently entitled to preferential tariffs?**

**Answer**

Products which Vietnam puts into the CEPT Scheme will be gradually added to the Inclusion List with tariff reduction schedules. Import tariff for the products which have not been transferred to the Inclusion List are maintained at the rates applied to non-ASEAN countries. For 857 items on the Inclusion List in 1996, the tariff rates have been maintained at the current levels because such applied rates meet the target of the CEPT Scheme of reductions to the range of 0-5 per cent.

Details on the weighted tariff are not available.

**Question 614**

**How many preferential tariff items are currently bound at zero tariffs? Will all 2,000 preferential tariff items be bound at zero tariffs by the year 2006?**

**Answer**

At present, there are approximately 1000 items with the applied rates of 0 per cent. However, the rates for any of those items could be increased from 0 to 5 per cent.

By the year 2006, duties on all products imported into Vietnam under the CEPT Scheme are to be reduced to a range of between 0-5 per cent.

**Question 615**

**Please provide the Working Party with a list of the items, including HS numbers, that Vietnam excluded from preferential tariff treatment under the CEPT Agreement.**

**Answer**

Vietnam has not completed establishing the HS list in line with the common standard. It will be provided to countries concerned when available.

**Other related issues**

**Question 616**

**The statistics referred to in the Memorandum (WT/ACC/VNM/2) date from 1993-1994. Could more recent statistics be made available?**

**Answer**

The data is updated in these answers. Please refer to Appendix 2 on the social-economic indicators for 1991-1996 (WT/ACC/VNM/3/Add.1).

**Question 617**

**We find it difficult to obtain accurate, comprehensive and up-to-date statistics on Vietnam's foreign trade. This is an area which will need to be addressed by Vietnam if transparency is to be improved.**

**We would appreciate more information on the steps Vietnam is taking to improve the situation in relation to the collection and availability of statistical information.**

**Answer**

From a methodological point of view, collection of foreign trade statistics has been gradually adjusted to meet international standards of statistical reporting.

The particular steps that Vietnam has taken to improve the situation relating to the collection and provision of statistical information are as follows:



In 1990, a preliminary statistical reporting system was developed (based on customs declarations and commodities lists and custom statistical reporting system were developed.

Subsequently in 1991, the General Statistics Office promulgated a customs statistics reporting system.

From 1994, the computerization of customs statistical information was commenced. As of the end of 1996, there were 26 customs offices at the city and provincial levels that had been integrated into the statistical information system of the General Statistics Office.

In February 1996, the Government assigned the General Customs Office to take official responsibility for the collection and dissemination of data on foreign trade. The General Customs Office has coordinated with the General Statistics Office, the Ministry of Trade and the Ministry of Planning and Investment to uniform the standard reporting forms for use by governmental and other agencies. The methodology for the processing and compilation of data is principally based on the regulations of the "Statistical Reporting System of the Customs Sector".

The General Statistics Office is currently in the process of improving this methodology and reorganizing the Vietnamese foreign trade statistics on the basis of the data provided by the General Customs Office.

The proposed model for organization of work is described now as follows:

- General Customs Office:

Inputs of the data collected into the computer system; examines and processes of data related to customs techniques and export- import duties. This data will be reported periodically to statistical focal points.

- General Statistics Office:

Receives the data from the General Statistic Office. Examines the data related to statistical techniques; Processes the data and collects data from resources other than the General Customs Office; Edits and publish statistics of import-export data.

This kind of model is similar to the Australian model of statistical data reporting.

Statistics including methodology, technical equipment and facilities to collect and process data should be improved.

### **Question 618**

**In the Appendices on imports and exports (WT/ACC/VNM/2), individual European Communities' Member States are shown. We would like to see the European Communities as an entity included in the tables as well.**

### **Answer**

Please refer to Appendix 6 of document WT/ACC/VNM/3/Add.1.

**Legal documents**

**Question 619**

**According to the Foreign Trade Memorandum (WT/ACC/VNM/2), the Law on Import-Export Duties was recently amended.**

**Please provide to the Working Party a translated copy of the amended Law on Import-Export Duties. Are the amendments currently in effect?**

**Answer**

The amended Law on Import-Export Duties dated 26 December 1991 is available in the WTO Secretariat (Accessions Division, Room 1126) for consultation.

**Question 620**

**Please provide to the Working Party a translated copy of the Law on Import-Export Duties.**

**Answer**

The translated copy of the Law is available in English in the WTO Secretariat (Accessions Division, Room 1126) for consultation.

**Question 621**

**Please provide the Working Party with a translated copy of the Law on Foreign Investment in Vietnam, adopted by the National Assembly on 29 December 1997.**

**Answer**

The translated copy of the Law is available in English in the WTO Secretariat (Accessions Division, Room 1126) for consultation.

**Question 622**

**Are there any joint-venture requirements?**

**Answer**

Please refer to the answer to question 124 and the Law on Foreign Investment dated 12 November 1996 and Decree No. 12/CP dated 18 February 1997. These documents are available in English in the WTO Secretariat (Accessions Division, Room 1126) for consultation.

**Question 623**

**Please provide the Working Party with a translated copy of the Law on State-owned Enterprises.**

**Answer**

The translated copy of the Law is available in English in the WTO Secretariat (Accessions Division, Room 1126) for consultation.

**Question 624**

**Please provide to the Working Party a translated copy of the proposed Law on Value-Added Tax.**

**Answer**

The Law on Value Added Tax was approved by Vietnam National Assembly in May 1997. The translated copy of the Law is available in English in the WTO Secretariat (Accessions Division, Room 1126) for consultation.

**Question 625**

**Please provide to the Working Party a translated copy of the Law on Turnover Tax and a copy of the Turnover Tax table.**

**Answer**

The Law on Turnover Tax is available in the WTO Secretariat (Accessions Division, Room 1126) for consultation.

**Question 626**

**Please provide to the Working Party a translated copy of the Law on Agricultural Land Use Tax.**

**Answer**

The Law on Agricultural Land Use Tax is available in the WTO Secretariat (Accessions Division, Room 1126) for consultation.

**Question 627**

**Please provide the Working Party with a translated copy of the Law on Land Use Right.**

**Answer**

The translated copy of the Law is available in English in the WTO Secretariat (Accessions Division, Room 1126) for consultation.

**Question 628**

**Please provide to the Working Party a translated copy of the Law on Import-Export Duties, 26 December 1991, by the National Assembly of the Socialist Republic of Vietnam and Decree No. 54/P, dated 28 August 1993, which provides the general principles for customs valuation.**

**Answer**

The translated copies of these Laws are available in English in the WTO Secretariat (Accessions Division, Room 1126) for consultation.

**Question 629**

**Please provide to the Working Party a translated copy of the Law on Excise Tax.**

**Answer**

The translated copy of the Law is available in English in the WTO Secretariat (Accessions Division, Room 1126) for consultation.

**Question 630**

**Please provide the Working Party with a copy of the Law on Private Business/Law on Companies.**

**Answer**

The Law on Private Enterprises dated 21 December 1990, and Law on Companies are available in English in the WTO Secretariat (Accessions Division, Room 1126) for consultation.

**Question 631**

**Please provide the Working Party with a translated copy of Law on Company Profits**

**Answer**

The translated copy of the Law is available in English in the WTO Secretariat (Accessions Division, Room 1126) for consultation.

**Question 632**

**Please provide the Working Party a translated copy of Law on Encouragement for Domestic Investment.**

**Answer**

The translated copy of the Law is available in English in the WTO Secretariat (Accessions Division, Room 1126) for consultation.

**Question 633**

**Please provide the Working Party a translated copy of Law on Procedures for Promulgation of Legal Documents.**

**Answer**

The translated copy of the Law is available in English in the WTO Secretariat (Accessions Division, Room 1126) for consultation.

**Questions 634**

**Please provide the Working Party a translated copy of the Law on Bankruptcy.**

**Answer**

The translated copy of the Law is available in English in the WTO Secretariat (Accessions Division, Room 1126) for consultation.

**Question 635**

**Please provide to the Working Party translated copies of the Law on Profit Tax and the Law on Foreign Investment in Vietnam.**

**Answer**

The Law on Foreign Investment in Vietnam and the Law on Profit tax are available in English in the WTO Secretariat (Accessions Division, Room 1126) for consultation.

**Question 636**

**Please provide the Working Party the translated copy of Labour Code.**

**Answer**

The translated copy of Labour Code is available in English in the WTO Secretariat (Accessions Division, Room 1126) for consultation.

**Question 637**

**Please provide the Working Party with a translated copy of the Ordinance On Income Tax.**

**Answer**

The Ordinance on Income Tax for High Income earners dated 19 May 1994, as amended is available in English in the WTO Secretariat (Accessions Division, Room 1126) for consultation.

**Question 638**

**Please provide to the Working Party translated copies of the Ordinance on Phytosanitary, promulgated on 15 February 1993 and Regulations on Phytosanitary issued under Decree No. 92-CP, dated 27 November 1993. Please identify, including HS numbers, all products subject to phytosanitary restrictions.**

**Answer**

The translated copy of the Ordinance will be submitted to the WTO Secretariat in the near future. The product List with HS number is not available.

**Question 639**

**Please provide the Working Party with a translated copy of the Ordinance On Natural Resource Tax and a copy of the Law On Natural Resource Tax (or the draft amendments to the ordinance on natural resource tax).**

**Answer**

The translated copy of the Ordinance will be submitted to the WTO Secretariat in the near future.

**Question 640**

**Please provide the Working Party with a translated copy of the Ordinance on Standards of Merchandise, dated 6 July 1990.**

**Answer**

There is no Ordinance on Standards of Merchandise. There is only the Ordinance on Measurement dated 16 July 1990 and the Ordinance on Good Quality dated 2 January 1991. The translated copy of the Ordinance on Measurement dated 16 July 1990 is available in English in the WTO Secretariat (Accessions Division, Room 1126) for consultation.

**Question 641**

**Please provide the Working Party with the translated copy of the Ordinance on Signing and Implementing the International Conventions.**

**Answer**

The translated copy of the Ordinance is available in English in the WTO Secretariat (Accessions Division, Room 1126) for consultation.

**Question 642**

**Please provide the Working Party the translated copy of the Ordinance on Procedures for Economic Dispute Settlements dated 1 July 1994.**

**Answer**

The translated copy of the Ordinance is available in English in the WTO Secretariat (Accessions Division, Room 1126) for consultation.

**Question 643**

**Please provide the Working Party the translated copy of Decree No. 43/CP dated 16 July 1996 on Bidding Producers in Vietnam.**

**Answer**

The translated copy of the Decree is available in English in the WTO Secretariat (Accessions Division, Room 1126) for consultation.

**Question 644**

**Please provide the Working Party the translated copy of Decree No. 18/CP dated 4 April 1996.**

**Answer**

The translated copy of the Decree is available in English in the WTO Secretariat (Accessions Division, Room 1126) for consultation.

**Question 645**

**Please provide the Working Party the translated copy of Decree No. 54/CP dated 28 August 1993 on Import-Export Duty.**

**Answer**

The translated copy of the Decree is available in English in the WTO Secretariat (Accessions Division, Room 1126) for consultation.

**Question 646**

**Please provide a list of prohibited exports and economic areas under sectoral management.**

**Answer**

The list of prohibited imports and exports is provided to the working party as Appendix 2 to the Memorandum (WT/ACC/VNM/2).

The list of imports and exports subject to sectoral management agencies is available in the WTO Secretariat (Accessions Division, Room 1126) for consultation.

**Question 647**

**Please provide the full list of items which require approval before importation?**

**Answer**

Please refer to Division No. 28/TTg dated 13 January 1997 of the Prime Minister and Circular No. 02/TM/XNK dated 21 February 1997 of the Ministry of Trade. These documents are available in the WTO Secretariat (Accessions Division, Room 1126) for consultation.

**Question 648**

**GATT Article XI provides that import or export licences may not be used to prohibit or restrict imports or exports. The stringent import licensing procedures used by Vietnam act as a barrier to trade and appear to violate Article XI.**

**Please provide to the Working Party a translated copy of Decision No. 864/TTg, dated 30 December 1995, by the Prime Minister, regulating import licensing.**

**Answer**

The translated copy of the Decision is available in the WTO Secretariat (Accessions Division, Room 1126) for consultation.

**Question 649**

**Please provided the Working Party with a translated copy of Circular No. 98TC/TCP dated 30 December 1995?**

**Answer**

The translated copy of this Circular is available in the WTO Secretariat (Accessions Division, Room 1126) for consultation.

**Question 650**

**Please provide a complete list of products to HS 6 digits that are subject to excise tax. This list should include the tax rates for both domestically and imported products and-where appropriate-the unit used.**

**Answer**

The list of products with HS 4 and 6 digit that are subject to excise tax is included in the Detailed Guidance on Application of Excise Tax that is an annex to Circular No. 98/TC/TCP dated 30 December 1995 by the Ministry of Finance. The translated copy of this Circular is available in the WTO Secretariat (Accessions Division, Room 1126) for consultation.

**Question 651**

**Please provide a translated copy of Regulation No. 296/TMDL/XNK, dated 9 April 1992, by the Ministry of Trade and Tourism, governing the issuance of export-import business licences, to the Working Party.**

**Answer**

The translated copy of the Regulation is available in the WTO Secretariat (Accessions Division, Room 1126) for consultation.

**Question 652**

**Please provide to the Working Party a translated copy of Regulation No. 297/TMDL/XNK, dated 9 April 1992, by the Ministry of Trade and Tourism, regulating the shipment of imported products.**

**Answer**

The translated copy of the Regulation is available in the WTO Secretariat (Accessions Division, Room 1126) for consultation.

**Question 653**

**Please provide the Working Party with a translated copy of Decision No. 280/TTg, dated 28 May 1994, by the Prime Minister, which governs the export tariff.**

**Answer**

The translated copy of the Decision will be submitted to the WTO Secretariat in the near future.

**Question 654**

**Please provide to the Working Party a translated copy, in electronic format, of the import and export tariff schedules.**



**Answer**

The tariff schedule shall be translated and provided as soon as completed.

**Question 655**

**Please provide to the Working Party Decree No. 89/CP dated 8 December 1995.**

**Answer**

The translated copy of the Decree is available in the WTO Secretariat (Accessions Division, Room 1126) for consultation.

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