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**Vietnam's Integration with ASEAN:
Survey of non-tariff measures affecting trade
[Volume 1: Main Report]**

A Report Prepared for the Office of the Government

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Preface

This report is very much the product of a team effort. It is the summary of findings and research conducted between September and November, 1998, by the international project consultants, and by local consulting inputs from the Vietnamese Chamber of Commerce and Industry (VCCI) and the Ministry of Trade. The research upon which this report is based includes an open-ended interview survey, a database of relevant legal documents, and three background research papers.

Professional and comprehensive assistance from VCCI, coordinated by Mr. Nguyen Duy Khien, General Director of the VCCI ASEAN Department, enabled successful implementation of the survey and construction of the legal database. This legal database has been printed as volume two of the NTB survey report. Thanks must also be extended to Nguyen Van Hai, who organised and assisted in the survey, and to the VCCI Business Consultancy Department, who constructed the legal database. The Consultancy Department, led by Mr. Nguyen Gia Hao, searched some thousands of legal documents to determine exactly which ones were related to non-tariff measures (NTMs). Tran Hong Truong, Nguyen Huy Thang and the others who implemented this search deserve special thanks for their patience and effort.

Mr. Tran Dong Phuong, from the Ministry of Trade, produced two valuable background papers. The first, on Vietnam's present and pending NTM commitments, and the second detailing the policies and processes concerning quantitative import controls in Vietnam. Neal Forster, the Project Economist, prepared the third background paper about Vietnam's finance-related NTMs. The support and advice from Mr. Forster was a significant contribution towards this report.

This report draws heavily on the inputs noted above. These inputs give the report substance and depth towards understanding this complex policy area. Nevertheless, the report is written entirely by the author¹, who remains responsible for all arguments, conclusions and any factual errors.

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List of Acronyms and Abbreviations

AFTA	ASEAN Free Trade Area
AHTN	ASEAN Harmonised Tariff Nomenclature
APEC	Asia-Pacific Economic Cooperation
ASEAN	Association of SouthEast Asian Nations
CEPT	Common Effective Preferential Tariff scheme
CIE	Centre for International Economics (Canberra)
EIU	Economist Intelligence Unit
EU	European Union
FDI	Foreign Direct Investment
FIE	Foreign-Invested Enterprises
GATT	General Agreement on Trade and Tariffs
GDC	Government Department of Customs (Vietnam)
GoV	Government of Vietnam
IL	Inclusion List
LoC	Letter of Credit
MARD	Ministry of Agriculture and Rural Development
MFN	Most-Favoured Nation status
MoC	Ministry of Construction
MoF	Ministry of Finance
MoH	Ministry of Health
MOLISA	Ministry of Invalids and Social Affairs
MOSTE	Ministry of Science, Technology and Environment
MoT	Ministry of Trade
MPI	Ministry of Planning and Investment
NTB	Non-Tariff Barrier to trade
NTM	Non-Tariff Measure
OECD	Organisation for Economic Co-operation and Development
PECC	Pacific Economic Cooperation Council
QR	Quantitative Restriction on trade
SOE	State-Owned Enterprise
TRAINS	Trade Analysis and Information System (UNCTAD)
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
VAT	Value-Added Tax
VCCI	Vietnam Chamber of Commerce and Industry
WCO	World Customs Organisation
WTO	World Trade Organisation

NOTE: This report and the accompanying database of legal documents may be downloaded from <http://www.undp.org.vn/projects/vie95015>

Introduction

This report is a small step towards assisting Vietnam's ongoing integration into ASEAN and, more generally, into the international trading community. It was commissioned as a survey of a complex policy area, nothing more. As such, it is more of a policy "stock-take", than a prescriptive set of recommendations. The main purpose is to raise awareness about exactly what are non-tariff measures (NTMs) and non-tariff barriers (NTBs) to trade, so that the implications of present and pending regional and international trade policy commitments can be fully understood.

The initial research plan centered upon a quantitative survey of businesses, using a closed-questions questionnaire, to identify and determine the relative prevalence and importance of NTMs. This approach was rejected because the information collected would not have been particularly useful. A questionnaire that asked about all NTMs would have been too long, and it would have missed much of importance as our prior knowledge of what NTMs existed, and how they were implemented, was very rudimentary. A baseline study – this report – was required before quantitative exercises.

The approach has therefore been to conduct a thorough search of legal documentation relating to NTMs, while also interviewing business people and officials to understand how NTMs operate in practice. The survey was thus a series of open-ended, but structured interviews, and the list of those visited is attached as an appendix. The author conducted all the interviews, with the assistance of VCCI. The legal documentation search, supplemented by the interview information and the background research papers provide the data upon which this baseline study is based. After this study, quantitative surveys about particular NTMs could be a useful and valuable additional piece of research.

This study covers all NTMs as defined in Chapter one, including those relating to both imports and exports. The definition, and hence the scope of the study is broad. Emphasis, however, has been given to understanding those NTMs covered by Vietnam's ASEAN commitments, which involves a narrower definition than the conventional UNCTAD one.

Executive Summary

"Non-tariff barriers (NTBs) are the scourge of any trade bloc which has committed itself to trade liberalisation. The eradication of these impediments is the next most pressing issue that ASEAN faces if AFTA is to become a truly effective trading area." (EIU 1997, p.58)

The purpose of this non-tariffs measures (NTM) survey was to produce a baseline descriptive study of existing trade regime. This was to be an input for assisting Vietnam's global integration process which, more specifically, involves existing and pending commitments about trade liberalisation to ASEAN, APEC, and the WTO.

The report has therefore sought to clarify the understanding and definition of NTMs and NTBs. In doing so, we also try to understand the reasons and relevance of Vietnam's NTMs. The study tries not to be a prescriptive policy document, but rather something upon which policy makers can build.

The research methodology involved a series of 31 interviews (list in appendix); construction of legal documents database; a literature survey, including newspapers; and the commissioning of background working papers about trade liberalisation commitments, and about Vietnam's quantity control, and financial NTMs. The analysis of NTMs is based upon the UNCTAD classification scheme, although this has been modified to include certain policies relating to the legacy of central planning in Vietnam. The UNCTAD definition has also been extended to include discussion of administrative efficiency and internal policy measures that distort trade flows.

Achievements of the study include systematically placing Vietnam's NTMs within an internationally defined framework (UNCTAD); improving the understanding about what exactly are NTMs and NTBs; and thereby laying the ground for a systematic approach to be developed for VN to meet its international NTM and NTB liberalisation commitments.

So what are non-tariff measures (NTMs) and non-tariff barriers (NTBs)? In short, they are defined by what they are not – tariffs – which is not a very satisfactory start. Some research on the topic distinguishes between border and non-border non-tariff measures, but this is a pragmatic and functional distinction, and not satisfactory as a conceptual definition. Possibly Baldwin (1970) presents the best working concept:

“Any measure (public or private) that causes internationally traded goods and services, or resources devoted to the production of these goods and services, to be allocated in such a way as to reduce potential real world income.”

NTBs are a sub-set of NTMs. That is, not all NTMs are also NTBs. NTBs must have an intent to protect domestic production, and they must not be internationally accepted as a legitimate regulatory device (such as quarantine restrictions). Precise definitions of exactly what constitute NTBs differ. The ASEAN definition (list) is much shorter than that of UNCTAD, for example.

Vietnam's commitments under AFTA are, firstly, that all tariffs will be reduced to 5 percent or less by year 2006. The initial CEPT scheme lists have been submitted, and a tariff reduction schedule announced. Secondly, as products enter the Inclusion List:

“ASEAN Member States will have to eliminate all quantitative restrictions in respect of products under the CEPT Scheme immediately when the products start to enjoy the concessions applicable to those products.” (Article 5:A.1)

And after being on the Inclusion List:

“ASEAN Member States shall phase out other non-tariff barriers within a period of five years after the enjoyment of the concessions applicable to their products.” (Article 5:A.2)

That would seem to leave Vietnam until 2011 to finally remove all ASEAN-defined NTBs. In December 1995, however, the ASEAN Council agreed to accelerate NTB phasing out:

"Member States should aim to eliminate NTBs earlier than currently allowed for and no later than the year 2003". [Vietnam to 2006].

Progress in eliminating NTBs to 1998 has been very limited. Vietnam's present CEPT inclusion list has few NTM-related products. Temporary Exclusion List goods, however, start moving on to the Inclusion List in 1999, and so the removal of NTBs will be required shortly thereafter. In the meantime, ASEAN has also pursued harmonisation of: Customs procedures, including developing common phytosanitary measures (14 products), agreed maximum residual limits (e.g. pesticides), and product standards (20 products). A common harmonised system (HS) of tariff lines has been developed and will be introduced by all ASEAN countries by the year 2000.

Vietnam's NTMs identified and discussed in this report are as follows:

NOTES: Items in italics are "core NTBs" as identified by UNCTAD (see PECC 1995a, p.42).
The author for this study has added items or words underlined.
Lines labelled "not in ASEAN" refer to UNCTAD NTMs not included in the ASEAN working definition of NTMs for implementing the CEPT agreement (ASEAN 1995b, pp.10-14).

Para-Tariff Measures (2000)

Customs surcharges (2100)

Additional taxes and charges (2200) [not many]

Internal taxes and charges levied specifically on imports (2300)

[Special sales tax, value-added tax - 2300 not in ASEAN]

Decreed customs valuations (2400) [not significant]

Price Control Measures (3000)

Administrative pricing of import prices (3100)

Minimum import prices (3110)

Maximum import prices (3120)

Minimum export prices (3130)

Anti-dumping measures (3400)

[Vietnam contemplating - 3400 not in ASEAN]

Countervailing measures (3500)

[Vietnam contemplating - 3500 not in ASEAN]

Finance Measures (4000)

Advance payment requirements (4100)

Cash margin requirement (4120) [*for consumer goods imports*]

Restrictive official foreign exchange allocation (4300)

[Priority foreign exchange access lists - 4300 not in ASEAN]

Surrender requirements (4400) [Decree 173; 80 percent rule - 4400 not in ASEAN]

Regulations concerning terms of payments for imports (4500) [maybe soon]

Automatic Licensing Measures (5000) [5000 not in ASEAN]

Import Monitoring (5200)

Retrospective surveillance (5210)

Quantity Control Measures (6000) [6000 not in ASEAN, but required to be abolished]

Non-automatic licensing (6100) [some, but largely abolished]

Quotas (6200)

Global quotas (6210)

Seasonal quotas (6230) [rice exports]

Quotas linked with purchase of local goods (6250) [foreign direct investment]

Quotas linked with local production capacity (6260) [“Strategic” products]

Prohibitions (6300)

Export Restraints Arrangements (6600)

Export restraint arrangements on textiles outside MFA (6640) [mostly EU]

Enterprise-specific Restrictions (6700)

Monopolistic Measures (7000)

Single or limited number of channels for imports (7100)

Technical Measures (8000)

Technical Regulations (8100) [many but mostly reasonable, except pharmaceuticals]

Customs formalities² (8300)

Special formalities (8310) [stamping]

Customs efficiency (8320)

Corruption (8350) [a problem]

Internal Measures (9000)

[all 9000 not in ASEAN]

Investment measures (9100)

Export promotion (9110) [soft credit]

Industrial policy (9120)

Taxation concessions (9200) [exemptions]

Procurement (9300)

Most of the above NTMs have been utilised in Vietnam for some years, although Finance Measures (4000) became more prominent and expanded in 1998. For this reason, the discussion of finance measures has been quite detailed and the interviews focused on understanding these. An indication of this modified approach can be seen by comparing the Government’s trade management instructions of 1997 and 1998:

13 January 1997:

“Proceeding from the need of protecting domestic production, efficiently using foreign currencies and restricting the import of non-essential and luxury commodities ... [the government] shall adjust in time the import duties at appropriate rates and restrict to the minimum the granting of import permits”.
[Decision 28/1998/QD-TTg, Import-Export Management Mechanism in 1997. Article 5: “On the import of Consumer Goods”].

² “Customs formalities” has replaced “Special Customs formalities” to incorporate more considerations about Customs efficiency and procedures.

23 January 1998:

“The imported consumer goods shall be regulated by taxes and payment modes of banks ... along the direction of restricting to the minimum the import of consumer goods which are not really necessary and goods which are produced in the country. [*Decision 11/1998/QĐ-TTg, Import-Export Management Mechanism in 1998. Article 5: “On the import of Consumer Goods”*].

So why does Vietnam have so many non-tariff barriers? Much of the explanation lies in understanding the logic behind Vietnam’s trade policies and the legacy of central planning. Some insight into understanding Vietnam's trade policy regime can be gained by considering six inter-related propositions:

- **Vietnam is still an economy "in transition" and a "developing economy"**
 - monopoly-based export-led protectionism;
 - role of government to control and to "fine-tune" supply and demand;
 - need to use crude trade policy measures to control state enterprises:

“As is the case in other areas of policy, the retention of controls on foreign exchange access seems to reflect the absence of stronger and more direct disciplines on SOEs. For example, it is widely reported that some SOEs took advantage of their Government backing to negotiate long-term letters of credit and used the proceeds for speculative purposes have lost heavily and are defaulting. This suggests that financial and budgetary discipline on SOEs are still weak.” (CIE 1998, p.10).

- **Policy making is largely Ministry-specific**
 - Ministry put important detail into vaguely worded Laws;
 - Fiefdoms of regulatory control and policy making (“compartmentalisation”);
 - leads to mixed reform directions, piecemeal responses and uncoordinated policy reforms.
- **Excessive numbers of policy objectives for each policy instrument**
 - Due to lack of awareness about costs of price distortions, and uncoordinated policy formulation process.
- **Many policy instruments are changed frequently for "fine-tuning" purposes.**
 - Legacy of planning role of government.
- **The language of legal documents remains unclear.**
 - Lack of clarity in language with frequent exemptions and “escape clauses”.
- **Not all legal documents are systematically collected and published.**
 - Particularly various implementing Official Letters;
 - excessive secrecy about trade and other data.

The legacy of central planning and its development model remain strong. Import substitution linked to state control and protection are dominant economic ideas. Countering this thinking has been the advice of international experts, and the desire of Vietnam to meet its trade liberalisation commitments to organisations like ASEAN. But Vietnam is not alone in having to remove many strong NTBs under AFTA:

Table 1: Summary of main non-tariff barriers in major ASEAN countries

Indonesia	Licence for selected importers; prohibitions; state import monopolies.
Malaysia	Licences for normally prohibited goods; import licences for non-commercial reasons.
Philippines	Import authorisations and licences for selected purchasers; global quotas; prohibitions for health and sanitary reasons; bank authorisation; state import monopolies.
Singapore	Prohibitions for health and sanitary reasons.
Thailand	Import licences, including links to local goods purchases; prohibitions; sole import agency.
Vietnam	Para-tariffs; foreign exchange rationing; prohibitions; quotas.

Source: EIU 1997. p.58 (Vietnam added by the author).

The challenge of trade liberalisation is a daunting one, and progress to date has been fairly marginal. A quick summary of the direction of trade policy is presented below. Aside from the liberalisation of trade licences, most other NTMs have tended to become stronger in recent years. The minimum price lists have become shorter, and the publication of the CEPT tariff reduction schedule counts as a liberalising move – but only just, as actual tariff protection has probably increased a bit. On the other hand, the use of para-tariffs, foreign exchange controls, and prohibitions have definitely strengthened. It seems, overall, to be a case of “one step forward, and two steps backwards”.

Table 2: Actual policy changes since about 1996 reveal a mixed picture

Type of NTB/NTM	Stronger	Much the same	Weaker
Customs surcharges	X		
Special consumption tax, internal taxes	X		
Minimum price lists		X	
Restrictive foreign exchange	X		
Foreign exchange surrender requirement	X		
Trade licensing			X (Decree 57)
Quotas and prohibitions	X		
Monopolistic measures			X (rice)
Special customs formalities	X (stamping)		
Tariff protection		X (CEPT)	

It is hard, therefore, to say that Vietnam is firmly on the path to fulfilling its AFTA and APEC trade liberalisation commitments. Fundamental to the liberalisation challenge is the ongoing role of the State in commercial activities. State enterprises continue to dominate corporate sector activity, and still in an environment of poor accounting and financial controls. This causes the State to rely on blunt policy instruments for control and micro-management:

“As is the case in other areas of policy, the retention of controls on foreign exchange access seems to reflect the absence of stronger and more direct disciplines on SOEs. For example, it is widely reported that some SOEs took advantage of their Government backing to negotiate long-term letters of credit and used the proceeds for speculative purposes have lost heavily and are defaulting. This suggests that financial and budgetary discipline on SOEs are still weak.” (CIE 1998a, p.10).

In summary, this NTMs survey shows us that:

- Vietnam's NTMs and NTBs are strong and numerous.
- The general direction of trade reforms is unclear, but possibly increasingly protectionist.
- Vietnam is committed to both protectionism and trade liberalisation; i.e. it is committed to a "policy headache".
- Removing NTBs is linked to other sectoral reform, particularly of state enterprises.

This report lays the foundation for further trade policy liberalisation. The next steps, however, are Vietnamese steps. Vietnam should formulate and make public a detailed timetable for removing NTBs covered by the AFTA agreement to the year 2006 (as it has done with the CEPT tariff reduction schedule). There is also work required to identify, draft and enact the legislative reforms required to implement that AFTA-related NTB removal schedule. In parallel, Vietnam should develop an internal strategy for the progressive removal of all NTBs in coordination with other sectoral and macroeconomic reforms.

At the same time, Vietnam should study more closely the reasons for existing NTMs. The economic costs and benefits of NTMs and NTBs need to be understood and measured. A consensus to support trade liberalisation *because it is best for Vietnam* is lacking.

Chapter 1: A matter of definition; NTBS and NTMs

When is a non-tariff measure also a non-tariff barrier?

A basic difficulty in identifying and analysing NTBs is that they are defined by what they are not. The OECD (1997, p.69) chose to define NTBs as “those border measures other than tariffs that may be used by countries, usually on a selective basis, to restrict imports” for one of their studies. Similarly, the UNCTAD Trade Analysis and Information System (TRAINS) database includes mainly only border measures³. This approach largely ignores export-related measures and internal measures (such as local content rules, subsidies, tax concessions, discriminatory government procurement and anti-competitive private practices). In fact, the border measures approach is adopted more for reasons of expediency than intellectual rigour. If the subject of investigation is NTBs (or NTMs), then whether they are border measures or otherwise should not be relevant.

The PECC study described NTBs as “any non-tariff instrument that interferes with trade, thereby distorting domestic production.” (PECC 1995a, p.39). Baldwin (1970, quoted in Laird 1996, p.5), however, probably provides the most conceptually acceptable definition of a “non-tariff distortion” as “any measure (public or private) that causes internationally traded goods and services, or resources devoted to the production of these goods and services, to be allocated in such a way as to reduce potential real world income.” The problem with adopting such a broad definition is in then developing a precise definition for analytical purposes. As Deardorff and Stern note: “In view of the vast array of formal and/or informal NTBs that may exist, there may not be a single analytical methodology capable of dealing completely with the entire spectrum of NTBs” (p.6).

NTBs should not be viewed as a synonym for NTMs, but rather as a sub-set of NTMs. All NTBs are also NTMs, but not all NTMs are NTBs. NTMs can include measures that promote exports, which are not “barriers” to trade at all. This more neutral sounding term is also preferred by governments to describe measures used to monitor imports for legitimate purposes (e.g. internationally recognised plant quarantine procedures). Further, for example, if quotas are non-binding (above what a non-quota market would import or export anyway), then it is difficult to characterise them as “barriers”.

In practice, deciding which NTMs are also NTBs can be difficult. The intent of the policy instrument is important, but “there are regulations whose intent cannot be determined without a difficult and potentially inconclusive investigation of their nature and actual operation.” (Laird & Yeats 1990, p.16). This report provides insight into this “barrier or not” issue concerning Vietnam’s NTMs, but it is not the purpose of the report, which is to simply survey the existing regime of Vietnamese NTMs.

³ See <http://www.unicc.org/unctad/en/techcop/trad109.htm> for information about TRAINS.

This report adopts the broad Baldwin definition of a trade distortion (NTM), but concentrates on ensuring that coverage of border measures is complete. Non-border measures are surveyed, but there is scope for more detailed investigation in this area. The reason for the focus on border measures is because a sub-set of these constitutes the ASEAN definition of NTMs (discussed below). We now turn to provide a more detailed definition of NTMs covered by this survey.

Box 1: An NTM in practice.

A Vietnam News article (5/7/98, p.2) tells the story of an NTM which existed only in theory, but then became an NTB for a while, and is probably now no longer an impediment.

“It took the intervention of Deputy Prime Minister Nguyen Tan Dung to clear up a misunderstanding about import-export clearance procedures in Lang Son Province.

It all started on the afternoon of Thursday, June 4, when the Customs Offices in Lang Son received a circular sent to the General Department of Customs by the Ministry of Trade (MoT). The Circular reminded the Customs Office about documentation required for customs clearance by importers and exporters who were subsidiaries of corporations and major companies.

The Circular laid down two criteria for granting clearance to such importers and exporters – authorisation from the mother companies, and written consent from the MoT. A hurriedly scribbled footnote was regarded as a formal suggestion by the MoT that the Customs Office should act according to the provisions in the Circular. The Lang Son Customs Department immediately suspended the clearance process for those subject to the MoT Circular.

The importers and exporters protested saying that they had been doing business for years without knowing such a regulation existed. Their plight found its way to the Deputy Prime Minister who asked the MoT to find a solution. The MoT said that the Lang Son border delays were not its fault. The Circular, they said, had been no more than a reminder of existing long-standing regulations governing export-imports. The MoT blamed local customs offices for the problem saying: ‘For a long time, local customs offices at some border checkpoints have taken the liberty to clear goods for those subsidiaries that had not obtained written approval from the MoT.’

It was the footnote of the MoT that caused the Lang Son Office to suddenly become strict about a rule which had been forgotten long ago.”

There would seem to be stories within this story, but the point to observe is that an “NTB on paper” may or may not be an NTB in practice. An understanding of the regulatory framework and its implementation are required to evaluate a trade policy regime.

Drawing the boundaries on a definition

WTO member countries sent over 1,500 questions in response to the *Memorandum on Vietnam's Foreign Trade Regime*, (GoV 1996) which was submitted to the WTO in September 1996. The wealth of inquisition countervailed against one question Vietnam might have liked an answer to: "What are the minimum trade policy regime requirements for joining the WTO?". There is no answer to this question because any reasonable and precise answer would automatically exclude many countries that are already WTO members. This lack of clear membership criteria possibly makes WTO accession more of a political process than it should be. It may also have stifled research into developing a comprehensive and systematic approach to understanding and defining NTMs and NTBs.

Consequently, UNCTAD provide possibly the only comprehensive definition of NTMs. This definition was used for APEC research (Pacific Economic Cooperation Council, 1995) because "although researchers and officials at times express reservations about the appropriateness of UNCTAD's classification of NTBs ... no other system currently exists" (APEC 1995).

The UNCTAD classification has therefore been used and modified for our purposes in this report. The UNCTAD definition does not include internal border measures, so we have included those relevant to Vietnam. We have also identified and included some NTMs peculiar to Vietnam (and most transitional economies). An aggregated classification scheme is presented in the next section. Then, at the start of subsequent chapters, the detailed and annotated definitions are presented in boxes. A full list of the detailed classification used is also in the appendix.

The UNCTAD definition

UNCTAD Trade Control Measures Classification [see Appendix for more details on classification]

NOTES: Items in italics are "core NTBs" as identified by UNCTAD (see PECC 1995a, p.42).
The author for this study has added items or words underlined.
Lines labelled "not in ASEAN" refer to UNCTAD NTMs not included in the ASEAN working definition of NTMs for implementing the CEPT agreement (ASEAN 1995b, pp.10-14).

Para-Tariff Measures (2000)

Customs surcharges (2100)

Additional taxes and charges (2200)

Internal taxes and charges levied specifically on imports (2300) [**not in ASEAN**]

Decreed customs valuations (2400)

Price Control Measures (3000)

Administrative pricing of import prices (3100)

Voluntary export price restraint (3200)

Variable charges (3300)

Anti-dumping measures (3400) [not in ASEAN]

Countervailing measures (3500) [not in ASEAN]

Finance Measures (4000)

Advance payment requirements (4100)

Multiple exchange rates (4200) [not in ASEAN]

Restrictive official foreign exchange allocation (4300) [not in ASEAN]

Regulations concerning terms of payments for imports (4500)

Transfer delays, queuing (4600)

Automatic Licensing Measures (5000) [not in ASEAN]

Automatic License (5100)

Import Monitoring (5200)

Surrender Requirements (5700)

Quantity Control Measures (6000) [all not in ASEAN]

Non-automatic licensing (6100)

Quotas (6200)

Prohibitions (6300)

Export Restraints Arrangements (6600)

Enterprise-specific Restrictions (6700)

Monopolistic Measures (7000)

Single or limited number of channels for imports (7100)

Compulsory national services (7200)

Technical Measures (8000)

Technical Regulations (8100)

Pre-shipment Inspection (8200)

Customs formalities⁴ (8300)

Internal Measures (9000) [all not in ASEAN]

Investment measures (9100)

Export promotion (9110)

Industrial policy (9120)

Taxation concessions (9200)

Procurement (9300)

⁴ "Customs formalities" has replaced "Special Customs formalities" to incorporate more considerations about Customs efficiency and procedures.

The ASEAN definition

The ASEAN working definition on NTBs closely reflects the UNCTAD classification (ASEAN Secretariat 1995b, pp.11-15). There are, however, noteworthy omissions in the ASEAN definition which are need to be highlighted. Some finance and price control measures are excluded by ASEAN, as are all quantity control and internal policy measures. The absence of quantity control measures is unsettling, and is probably due to political reluctance to embrace reform in this area. The absence of internal measures, including those that explicitly discriminate against imports (2300) is also a serious omission.

The ASEAN working definition is not conceptually satisfactory, and so this report has taken the chance to examine a broader and more interesting definition of NTMs as outlined above. Nevertheless, particular research attention has been given to understanding and explaining those NTMs covered by the ASEAN definition, as that is an important purpose of this survey.

The modifications to the UNCTAD definition

This study has modified the UNCTAD classification as necessary. In particular, several new codes have been added to account for policies that seem to be largely the legacy of the central planning period. The changes and their explanations are as follows:

- “Internal taxes and charges levied on imports (2300)” is now “Internal taxes and charges levied specifically on imports (2300)”. This is simply to emphasise that indirect taxes on trade are to be discussed under “Internal measures (9000)”.
- Under quotas (6200), a new code, “quotas linked to domestic production levels (6260)” has been added. This describes the rationale for determining the size of import quotas for goods to be “balanced with domestic production and demand”, which in 1998 were oil and gasoline, fertiliser, building steel, cement, and paper [11/1998/QD-TTg].
- “Special customs formalities (8300)” has been expanded to become “Customs formalities (8300)”, with these sub-sectors:
 - Special formalities (8310)
 - Customs efficiency (8320)
 - Corruption (8350)⁵

⁵ In fact, corruption could be more broadly discussed as a new para-tariff code, as it is not a problem exclusive to Customs. For this report, however, we look only briefly at the issue as it pertains to Customs.

The scope of the UNCTAD “special customs formalities” covered only a minor aspect of Customs procedures, whereas the whole issue of Customs efficiency and transparency can be reasonably viewed as an NTB concern. This has been highlighted recently by Mr. Anwarul Hoda, Deputy Director General of the WTO when he addressed the World Customs Organisation (WCO) in May 1997:

“As the globalisation of trade advances, the dependence in business on the fast moving of goods becomes more and more vital. Therefore Customs procedures can be a formidable non-tariff measure. Trade needs simple, fast and transparent Customs services.” (cited in Williams, 1997. p.16).

- The other significant change to the UNCTAD definition has been to add a new group to cover “Internal Measures (9000)”. The Baldwin (1970) definition of trade distortions adopted above requires consideration of both border and non-border measures. The sub-groups under this heading are:
 - Investment measures (9100)
 - Export promotion (9110)
 - Industrial policy (9120)
 - Taxation concessions (9200)
 - Procurement (9300)

The classification and analysis of the internal measures is rudimentary, as this is not an area of concern to ASEAN. Further research would be useful, however, to properly develop the UNCTAD classification scheme and to assist in Vietnam’s process of joining the WTO, where issues such as national treatment for investment are of greater concern.

A brief survey of prior research about Vietnam’s trade policies and NTMs

There is quite an extensive international literature about identifying and measuring NTBs⁶. The various general methods that have been used for measuring NTBs can be classified as follows: *frequency-type measures* based upon inventory listings of observed NTBs that apply to particular countries (as used by the ASEAN Secretariat), sectors, or categories of trade; *price-comparison measures* calculated in terms of tariff equivalents or price relatives; *quantity-impact measures* based upon econometric estimates of models of trade flows; and measures of *equivalent nominal rates of assistance*⁷.

A comprehensive analysis of the impact of tariffs and NTBs on domestic net economic welfare requires the incorporation of all tariff indicators and their equivalents for NTBs

⁶ See Laird & Yeats (1990) for a survey of literature to that year, and Yeats (1996) or Sharer (1998) for surveys of subsequent work. Sharer (1998) surveys attempts at cross-country analysis of trade restrictiveness in developing countries.

⁷ See Deardorff & Stern (1997) for a discussion of these techniques.

into a general equilibrium framework. This approach takes into account second-round effects involving such factors as induced changes in exchange rates and the terms of trade as well as the interaction of sectors not directly affected by tariffs and NTBs. Such an exercise is obviously beyond the scope of this report.

It is unfortunate that no applied research into identifying and measuring the impact of NTMs in Vietnam has been undertaken to date. There has, in fact, been little research about Vietnam's trade policies at all. Aside from general reviews of the economic and trade policy reform process (e.g. Fforde A. & Goldstone 1995; Le Dang Doanh & McCarty 1995; Dollar 1996; Dodsworth, *et al.* 1996), the only detailed trade sector research has been conducted for the World Bank (CIE 1998a)⁸, and by the Economist Intelligence Unit (EIU 1995). The UNDP-funded ASEAN project, of which this report is one part, has also produced detailed analysis about the tariff revenue and foreign direct investment implications of Vietnam joining ASEAN (UNDP 1998). This report, however, is the first to exclusively address the issue of understanding Vietnam's NTMs. A better understanding, it is hoped, will lead to further research about the economic costs and benefits of Vietnam's NTMs.

Despite the lack of detailed research, there have been some attempts to gauge the relative importance of some of Vietnam's NTMs through questionnaire surveys of foreign and local businesses. We might view this approach as another "general method" for measuring the impact of NTBs – or at least to determine if they are of concern to businesses.

The European Union (EU) commissioned a Trade and Investment Analysis report about Vietnam in 1997 (Apoteker 1997). This report conducted a modest survey of seven EU companies doing business with Vietnam and concluded that: "Obstacles to imports in Vietnam include both tariff and non-tariff barriers to trade, with the latter being generally perceived to be much more constraining than the former" (p.16). Problems with customs valuations were reported as the strongest and most frequent NTB faced by exporters to Vietnam, while quality and health standards were not viewed as a major problem. Another noteworthy observation was that "in terms of tariff protection, the instability ... and very high disparity between [tariffs for] products in the same broad category of goods, seemed to be much more of a problem than the average level of tariff protection" (p.17).

Another survey, of 500 Vietnamese enterprises in 1997, did indicate that the trend of reforms was towards liberalisation (VCCI 1998)⁹. The enterprise directors were asked to comment on reforms over the previous two years and replied as follows:

⁸ The IMF have no doubt conducted research on trade reform issues, although their documents are rarely for public distribution. Similarly, ADB-sponsored research is rarely made public.

⁹ The relative satisfaction of businessmen is probably partly due to the abolition of Ministry of Trade permits for each import or export shipment in February 1996.

Table 3: Vietnamese business opinions about the changing administrative environment, 1995-1997.

	More favourable	More difficult	No change	No comment
Export/import formalities	44%	8%	13%	35%
Customs procedures	34%	13%	18%	35%

Source: VCCI survey, 1997.

The Ministry of Trade is presently completing its own internal review of non-tariff barriers to trade in Vietnam (Tran 1998a, p.1). This survey appears to be largely guided by the ASEAN definition of NTBs (but includes quotas), and covers all trade control documentation issued by the Ministry of Trade or by line Ministries with specialised product control responsibilities. The relevant Ministries and NTBs are as follows:

1. Ministry of Trade: leading agency, main responsibility in quantitative control measures (quotas, licensing) and monopolistic measures (single channel for imports);
2. Ministry of Finance: para-tariff measures, price control measures (minimum import prices);
3. Ministry of Agriculture and Rural Development: sanitary and phytosanitary measures and measures affecting trade in agricultural products;
4. Ministry of Industry: measures affecting trade in industrial products;
5. Ministry of Health: measures affecting trade in pharmaceuticals and medical equipment;
6. Ministry of Culture and Information:
7. Government Pricing Board: surcharges for the purpose of price stability;
8. Ministry of Science, Technology and Environment: technical measures (standard and quality requirements)

In the survey the following measures are considered as NTBs:

- Quotas
- Import licenses
- Sole importers
- Surcharges

Technical standards are considered as NTMs (non-tariff measures).

The results of the internal NTB review were not made available for this report, but it is understood that a schedule for NTB removal to the year 2006 has been drafted. This schedule needs to be revised given recent reforms, especially Decree 57/1998/ND-CP, before submission for Government approval (Tran 1998a, p.3).

The scope for applied research about Vietnam's trade policies is therefore extensive. First, however, is the need to understand what they are and which ones appear to be barriers to trade. That is the purpose of this study: measuring can come later.

Chapter 2: Vietnam's current and pending NTM commitments

Vietnam's commitments to remove NTBs (and reduce tariff protection) remain obscure for the next few years, but in the somewhat longer term are clear, comprehensive and unavoidable. Membership of APEC will require participation in cross-country research and dialogue to identify "unjustifiable" NTMs, with the subsequent removal of those in identified priority areas by the year 2005. Similarly, AFTA membership involves progressive addition of tariff lines to the Inclusion List, and the phased removal of all NTBs relating to these goods by the year 2006. Eventual membership to the WTO will entail similar commitments in the long term, and achieving Most Favoured Nation (MFN) status with America may bring some of these commitments forward. Thus, even allowing for some broken promises and definitional disputes, Vietnam's trade policy regime should be greatly liberalised over the next eight years.

Commitments under ASEAN and AFTA

Vietnam joined ASEAN on 28 July 1995, and subsequently committed to implement the Common Effective Preferential Tariff Scheme (CEPT) for the realisation of the ASEAN Free Trade Area (AFTA) from 1 January 1996. Besides this program to cut tariffs on almost all products to five percent or less by 1 January 2006, Vietnam is also obliged to remove all quantitative restrictions and other non-tariff barriers applied to CEPT Scheme products as provided for in Article 5 (Other Provisions) of the CEPT Agreement.

With regard to quantitative restrictions (QR), Article 5:A.1 states that "ASEAN Member States will have to eliminate all quantitative restrictions in respect of products under the CEPT Scheme immediately when the products start to enjoy the concessions applicable to those products." A product starts to enjoy low import tariffs of other ASEAN countries, and other concessions under the CEPT Scheme when it satisfies all of the following criteria:

- the product is included in the Inclusion List (IL) of both the importing and exporting countries;
- the tariff applied on it is equal to or less than 20%; and,
- the product matches the requirements of ASEAN Rules of Origin, (i.e. ASEAN content of it is at least 40%).

Other non-tariff barriers, are accounted for in Article 5:A.2: "ASEAN Member States shall phase out other non-tariff barriers within a period of five years after the enjoyment of the concessions applicable to their products."

Although the CEPT Agreement allows for elimination of other non-tariff barriers within five years after enjoyment of concessions, ASEAN countries agreed at the 8th AFTA Council Meeting in December 1995, to accelerate the process of NTB phasing out. The Meeting decided that "Member States should aim to eliminate NTBs earlier than currently allowed for and no later than the year 2003".

Vietnam started to implement the CEPT Scheme from 1 January 1996. The process of non-tariff barrier removal also officially started at the same date, and should be completed by 1 January 2006, as Vietnam started to implement the CEPT Scheme three years later than other ASEAN Member Countries. The products introduced into the tariff reduction program for the years 1996, 1997 and 1998 are, however, subject to very few quantitative restrictions or other non-tariff measures, Vietnam's actual NTB removal will start only after 1 January 1999, when products in the Temporary Exclusion List (TEL) start to be phased into the Inclusion List.

Nevertheless, despite the scope for delays, the commitment to have removed all NTBs (as defined by ASEAN) by the year 2006 is clear. It is towards understanding and implementing this objective that this report, and the present Ministry of Trade research and planning is directed.

The general agreement on NTBs has been supplemented by specific actions in some areas. Analysis of non-tariff barriers by the ASEAN Secretariat¹⁰ has been limited to reporting some NTB prevalence data (see Table 4), and this has led to a focus on removing customs surcharges. Consequently, the ASEAN countries agreed to phase out all customs surcharges affecting identified CEPT products (i.e. on the inclusion lists) by the end of 1996. Further reform of NTBs is apparently to be guided by the numbers of private sector complaints, differences between domestic and world prices, and the trade volume of goods, although little reporting or research on these criteria has been published.

Table 4: Prevalence of NTBs applied in ASEAN countries, 1995.

Non-tariff Barriers	Number of tariff lines affected
Customs surcharges	2,683
Additional surcharges	126
Single channel for imports	65
State trading administration	10
Technical measures	568
Product characteristics requirement	407
Marketing requirement	3
Technical regulations	3

Source: ASEAN Secretariat (1996), *AFTA Reader: Volume 4, The Fifth ASEAN Summit*.
 Jakarta: ASEAN Secretariat (September).

¹⁰ See <http://www.aseansec.org/asc/r9697/> for more details about the Secretariat and AFTA.

ASEAN is also moving towards greater harmonisation of trading activity, which will facilitate trade and limit the scope for allowing particular NTMs to be used as NTBs. ASEAN, for example, has identified a list of twenty products for priority harmonisation of standards:

Televisions; computer monitors and keyboards; switches; video apparatus; refrigerators; air-conditioners; rubber condoms; medical rubber gloves; resistors; radio; telephones; TV and radio spare parts; loudspeakers; printed circuits; inductors; capacitors; cathode ray tubes; mounted piezo-electric crystals; diodes.

Harmonisation of standards for the maximum residual limits (MRLs) of pesticides in vegetables, of animal vaccines, and of phytosanitary measures concerning 14 priority agricultural products¹¹ is also being pursued.

Harmonisation of customs procedures is being achieved through:

- Use of a common ASEAN CEPT form for customs declarations (not yet implemented by Vietnam);
- Introduction of the GATT Transactions Valuation (GTV) methodology (Vietnam committed to introduce by the year 2000);
- Use of an ASEAN Harmonised Tariff Nomenclature (AHTN) for classifying trade down to the eight-digit level. A common AHTN, of 6,400 tariff lines, has been finalised within ASEAN, with commitment for collective use by all member countries by the year 2000.

In October 1997 the ASEAN Economic Ministers (AEM) requested that the ASEAN-CCI (Chamber of Commerce and Industry) compile a list of barriers to trade such as “administrative and bureaucratic procedures faced by the private sector”. Earlier that year, the ASEAN Secretariat in 1997 had also commissioned a survey to be undertaken of non-tariff barriers and customs procedures in ASEAN Member countries. The survey was expected to “help identify those measures, regulations and customs procedures that impede trade among member countries”. Coopers and Lybrand carried out the Survey, but no results seem to have been published as yet¹².

¹¹ Rice, mango, coconuts, ginger, dendrobium, groundnuts, round cabbage, black pepper, potato, onions, oranges, coffee, pineapples, bananas.

¹² The methodology, it appears, involved a short questionnaire to seek quantitative data on opinions, but no detailed research or investigation.

Commitments under APEC

Vietnam became a full member of APEC in November 1998. It has submit its Individual Action Plan (IAP) and is committed to implement the Collective Action Plans (CPAs) to realise the objective of trade and investment liberalisation and facilitation as set out at the Bogor APEC Summit.

In general, APEC members have agreement to remove NTBs, but are still in the preliminary stages of identifying and reaching agreement about removing them¹³. APEC commissioned two reports by the Pacific Economic Cooperation Council (PECC) in 1995 that have formed the basis for ongoing research (see bibliography). These reports reported quantitative indicators of dubious value¹⁴, and could not really prove its general conclusion that "non-tariff measures are numerous and thought to be continually growing..." (PECC 1995a, p.39). Some main findings were that:

- NTBS are used frequently in some sectors - for example, agriculture, labour intensive manufactures, steel and automobiles.
- Multi-stacking of NTBs, where more than one measure operates across products, is prevalent.
- The level of impediments rises significantly in some sectors when all measures affecting trade and production are taken into account (PECC 1995a, p.5).

Nevertheless, APEC Economies have agreed on 15 sectors for implementing a program of Early Voluntary Sectoral Liberalisation (EVSL). Nine sectors are given priority.

Actions in respect of NTMs for the 9 priority sectors are as follows:

Forest products: APEC economies will conduct a study of NTMs relating to forestry products, including SPS measures, which will be assessed in light of the WTO SPS Agreement. The study should be concluded by Mid-1999 with appropriate recommendations. By the year 2000, APEC members will have included a timetable for implementing the recommendations in their IAPs. Subsequently, APEC members shall report progress in implementing the recommendations each year.

Fish and fish products: APEC economies have agreed on the elimination or modification of all fish and fish product NTMs by December 31, 2007. A substantial number of NTMs will be phased out or modified more quickly.

¹³ See (PECC 1995b) for information about APEC and progress towards identifying and removing member country NTBs.

¹⁴ The "inventory or coverage approach [frequency ratios]" shows the prevalence of NTMs across tariff lines, but this is both a rough and possibly misleading indicator of protection, even when trade-weighted. Substantial qualitative analysis and research into tariff equivalent calculations is require for a more meaningful picture to develop.

Toys: Identification of existing, technical, regulatory and other unjustified NTMs to be completed by the end of 1999. This will allow consultation on the modality and schedule for elimination of identified “unjustified” NTMs, to be completed by 2001. The target date for removal of “unjustified” NTMs is to be determined by participating countries, but preferably by the year 2001 and no later than 2005.

Gems and jewelry: APEC economies will identify NTMs that affect trade in this sector with the aim of phasing out any unnecessary measures between 1 January 1999, and 1 January 2005. Each member country is to submit an action plan to indicate how they would phase out “unjustified” measures by 1 January 2005.

Chemicals: By February 1999, each APEC member country shall submit an initial list of chemical product NTMs for discussion at the first meeting in 1999 to identify non-tariff barriers. Further, by June 1999, APEC will compile a list of customs regulatory barriers to facilitate the objective of harmonisation and simplification of customs procedures for chemical imports.

Chemical standards and testing will also be harmonised. By the end of 1998, all APEC members will involve their relevant technical and regulatory agencies to work toward increased consistency in three areas:

1. Notification of new substances.
2. Moving toward uniform test guidelines and good laboratory practices, using internationally recognised procedures as a starting point.
3. Through participation in global efforts, chemical hazard classification and labeling, material safety data sheets (MSDS) for workers and other information system improvements.

6. Medical equipment and instruments: By 30 June 1999, APEC economies will complete a transparency study to identifying “unjustifiable” NTMs. By 30 November 1999, a workplan to address these NTMs is to be finalized.

7. Environmental goods and services: Members have agreed to launch a work programme to identify “unjustified” NTMs that can impede or distort trade in this sector. APEC economies would subsequently seek to take individual or collective action to remove these barriers.

8. Energy: APEC economies will complete a study by 31 December 1999 to identify NTMs that may impede or distort energy sector trade flows. Member countries will set a date for the removal of “unjustifiable” NTMs relating to primary energy commodities and energy-related products. An Energy Working Group project will also be established with the aim of identifying existing technical, regulatory and other barriers that hinder the development of markets for primary fuels in the region.

9. Telecommunications Mutual Recognition Arrangement: Launched in June 1998, this Arrangement is intended to streamline the Conformity Assessment Procedures for a wide range of telecommunications and telecommunications-related equipment, and thereby to facilitate trade among APEC members. It provides for the mutual recognition by the importing parties of Conformity Assessment Bodies, and mutual acceptance of the results of testing and equipment certification procedures undertaken by those bodies in assessing equipment.

Vietnam has now submitted its Individual Action Plan for the submission to APEC, with the Ministry of Trade coordinating the contributions from other relevant government bodies. The plan makes no new immediate commitments.

Pending promises: WTO and bilateral trade negotiations

Vietnam was granted observer status at the GATT in 1994 and lodged a formal application for WTO membership in 1995. A WTO Working Party was then established to deal with the issues relating to Vietnam's accession.

The accession negotiations are ongoing. The *Memorandum on Vietnam's Foreign Trade Regime* was submitted to the WTO in September 1996. Vietnam received about 1,500 questions in reply, mainly from the USA, the EU, Japan, Canada, Australia, Switzerland and New Zealand. Replies to 655 questions were submitted to the WTO in February 1998, and the remaining answers relating to trade in services and trade-related intellectual property issues were submitted in July 1998. The First Meeting of the WTO Working Party on Vietnam's accession was held on 27-28 July 1998. The Second Working Party meeting, to deal with policies affecting trade in services and issues related to intellectual property rights, is scheduled for the end of 1998.

Multilateral trade liberalisation has made considerable progress under the auspices of the GATT and now the WTO. International trade volumes have risen sharply illustrating the increasing globalisation of the world economy. The world trading system has endeavoured to establish non-discriminatory tariffs as the principle means of trade of protection. To date, liberalisation has taken place primarily through the lowering of tariffs and the fall in the use of quantitative restrictions.

Box 2: What would WTO membership mean for Vietnam's NTM regime?

Until recently, the WTO has approached the identification and removal of NTBs on a piecemeal basis. Specific elements connected with the simplification and harmonisation of trade procedures were found within the WTO legal framework as follows.

- GATT (1947) Articles V, VII, VIII, X
- Agreements on Customs Valuation
- Import Licensing
- Pre-shipment Inspection
- Rules of Origin
- Technical Barriers to Trade
- Agreement on the Application of Sanitary and Phytosanitary Measures
- Safeguards
- Anti-dumping
- Subsidies and countervailing measures¹⁵

As the level of tariffs and use of quotas has been reduced attention has been switched to the use of less visible impediments to international trade – NTBs. This was apparent during the Uruguay Round when the following outcomes related to NTBs were achieved.

- NTBs on industrial products were reduced
- Definition of non-tariff protection measures were clarified
- Phasing-out multifibre agreement (textile and clothing sectors)
- Outlaw of new and elimination of current voluntary export restraints (or any similar measure affecting imports or exports such as orderly marketing arrangements, discriminatory import systems, consulting arrangements etc.)
- Agreement on Agriculture: all NTBs will be converted into their tariff equivalents (tariffication). Reduction in domestic support measures.

Only in 1997 at the Singapore Ministerial Conference did the WTO receive a mandate to take a more serious look at non-tariff barriers under the banner of “trade facilitation” in order to assess the scope of WTO rules in this area. An overall framework of WTO definitions, disciplines and rules is required if NTBs are to be tackled in an encompassing way. Trade facilitation being defined as “the simplification and harmonisation of international trade procedures” with trade procedures being the “activities, practices and formalities in collecting, presenting, communicating and processing data required for the movement of goods in international trade”.

¹⁵ When anti-dumping and countervailing actions (AD/CVs) are OK if taken in strict accordance with corresponding provisions of the GATT they are seen as legitimate measures to counteract “unfair” foreign competition.

Bilateral Trade Agreements:

The Agreement on Textile and Clothing, between Vietnam and the European Communities, allows for tariff reductions on 243 textile tariff lines for EU imports over a 10 year period, starting from 1 January 1996 (the list of these items was given in the Decree No. 18/CP, 4 April 1996).

Vietnam has been negotiating with the United States on a bilateral trade agreement for several years. Non-tariff trade controls are part of the agenda of the negotiations. The substance of the negotiations is treated as confidential, but newspaper reports indicate that the American concerns include many of those raised in relation to WTO membership. In both cases, therefore, it seems likely that Vietnam will reach an agreement only after some more years of negotiations and trade liberalisation.

Chapter 3: Towards an understanding of Vietnam's policy regime and directions

This chapter provides some insight towards understanding the NTM policy regime described in the subsequent chapters. An understanding of the strategic purpose of policy regimes helps towards forecasting the direction of future reforms, and in determining if particular policies are NTMs or NTBs. The analysis takes the form of discussing six inter-related propositions relevant to or about Vietnam's foreign trade policy regime. The first proposition is about the general vision behind the trade regime, while the following five detail aspects of that regime.

1. Vietnam is still an economy "in transition" and a "developing economy".

Vietnam's trade and investment policies can be characterised as "export-led protectionism", whereby import substitution is encouraged with trade protection, and export industries promoted by providing subsidies to countervail the high relative costs of intermediary products. This should not be interpreted as simply some "South Korean model", but rather central planning monopoly-based protectionism paired with a crude interpretation of export-led development.

The legacy of central planning is, most importantly, a strong belief self-sufficiency through import substitution. Another important aspect is the lingering belief in the role of government to manage and frequently "fine tune" the whole economy, and a consequent disregard for the costs of price distortions and uncertainty created by this approach in a market economy. The legacy of central planning is also manifested in common characteristics and problems with the trade regime, as noted by the OECD (1997, p.93):

"Some of the problems encountered in transition economy markets include: frequent changes in tariff and non-tariff measures, difficulties in customs valuation procedures used to counter under-invoicing problems, taxations schemes not based on national treatment, vestiges of state trading and exclusion from preferential arrangements among some transition economies."

Vietnam has all of these features noted by the OECD, except that old preferential arrangements are now irrelevant. One can also include an attitude of excessive secrecy concerning trade data. To these problems can be add those typical of a poor developing economy: low public sector salaries, weak capacity to implement policies, and import taxes constituting a high share of total government revenue.

The faith in monopoly-protectionism is a “path dependent” consequence of the central planning experience¹⁶. Thus, to many Vietnamese officials, Vietnam’s present trade and investment policy regimes have the contradictory objectives to provide protection for domestic producers, while also removing trade protection¹⁷. Indeed, it is hard to escape the conclusion that Vietnam’s membership of regional and global organisations are more politically motivated than out of any consensus about the virtues of free trade. In this context, some look to NTBs as an avenue for subtle protectionism:

“Increasing the tariff rates is only a temporary [protectionist] measure. They cannot be long-term solutions as we are due to join AFTA and WTO... We’ve got to think about non-tax barriers, the methods that are being used by a number of countries. It can definitely work for us.” (Le Dang Doanh, VIR July 6, 1997)¹⁸

"The non-tariff barriers that ASEAN nations employ are of great diversity, the most sophisticated ones being specifications of technical standards. For the case of Vietnam, non-tariff measures are rudimentary ones such as licences and quotas. In order to ensure domestic protection, we are studying the introduction of similar non-tariff measures before the time comes for their removal." (Ha Huy Tuan 1996, p.3)¹⁹.

"Parallel to the formation of the protection policy, effective non-tariff measures should be built and perfected to the international norm. A well planned policy will provide reasonable protection for domestic producers when the time comes to remove tariff barriers." (Ha Huy Tuan 1996, p.10).

"It is very difficult for local enterprises when non-tariff measures are lifted because domestic production's competitiveness is still modest. The Government should consider supplementary measures which conform with international trading practices and are usually applied by other countries for a certain period to protect domestic production ... It is not easy for Vietnam to meet all the CEPT requirements and protect local production at the same time. The ministry [of Trade] is expected to apply other measures such as quality and hygiene standards, labor safety and surcharges. The ministry is also considering new tariffs [tariff quotas], anti-dumping, anti-discrimination ... It needs sufficient and modern management to apply these measures, and the new tariffs must cover all imports. Not so easy." (Cao Cuong, *The Saigon Times Weekly*, 29 August 1998).

¹⁶ The cause of this “faith” may be a genuine majority belief in the intuitive logic of protectionist arguments, or more a reflection of the ongoing relative strength of state commercial interest groups.

¹⁷ See Le Bo Linh (in Vo Dai Luoc, 1998. pp.17-55) for an attempt to grapple with the issues of “what to do to speed up export; how to conceive protectionism in the condition of trade liberalization” (p.17).

¹⁸ Professor Doanh is Director of the Central Institute for Economic Management, in the Ministry of Planning and Investment.

¹⁹ Mr. Tuan was from the AFTA Vietnam National Office.

2. Policy making is largely Ministry-specific

The Vietnamese Laws are generally vaguely worded statements of intent and policy direction. As such they are as much policy pronouncements as legal documents, with the specification of detailed implementing documents left mainly for relevant Ministries to decide. Thus, at the Ministry level, there is much discretion about the design and implementation of policies. Ministries can also initiate changes within their allocated sphere of responsibility (e.g. the Ministry of Finance decides on tariff rate changes, and does so quite often). Ministries do discuss and debate policy changes with each other, but this process is secondary to Ministry-led policy formulation. Microeconomic policy reform is therefore largely decentralised and uncoordinated²⁰.

This decentralised policy approach “compartmentalises” the reform process. That is, while the general trend may be towards liberalisation, there can still be pockets of stubborn protectionism. If these “pockets” are dominant in key Ministries, then reform can be stifled or even reversed, despite the exhortations of higher authorities. Looking at the overall picture, reform may seem to be always “taking two steps forward and one step back [sometimes two]”. What is needed is a general perception or “vision” about the direction of the reform process stretching down to the Ministry level. To expect this of an economy in transition may be too much, and anyway there is general consensus about some policy directions – such as the AFTA commitment to reduce all tariffs to 5 percent or less by the year 2006.

Decentralised policy making will therefore remain a feature of the Vietnamese policy-making process for some time. One consequence of this structure is that concerns expressed by higher authorities tend to produce a rash of minor regulatory reforms at the Ministry level. A recent example is the concern about the fall in foreign direct investment, which has prompted many Ministries to “do something” within their sphere of authority. Consequently, visa regulations have been relaxed, new tax incentives introduced, FDI was allowed in new economic sectors, and the regulatory approval process simplified. Typically, however, MOLISA took a “step backwards” by tightening control over the employment of local staff.

²⁰ Macroeconomic policies, such as monetary policies, involve much more “consensus management” and sometimes require a leading role by the Office of Government. The Office of Government may be viewed as a “dispute resolution centre”, rather than an organisation ensuring a consistent and focused policy reform process.

3. Excessive numbers of policy objectives for each policy instrument.

Almost every major Vietnamese policy instrument is laden with the burden of multiple policy objectives. “Each tax instrument attempts, to a certain extent, to encourage certain types of industrial development, to promote progressivity of the tax burden, while at the same time trying to raise revenues” (Shukla & El-Hifnawi 1998, p.4). Tax and other policy instruments also sometimes reflect regional development concerns, an ongoing bias against services in favour of goods (“material products”), and a desire to raise the rate of accumulation and investment (high taxes on consumption). This “objectives heavy” approach may reflect the lack of a centralised policy-making process, but also a limited awareness about the costs of having numerous and frequently changing price distortions in market economies. This approach introduces needless economic and administrative costs to an economy with an already limited capacity for policy implementation.

Trade taxes are a major source of revenue, but they are also used to “influence industrial policy by providing protection to the domestic manufacture of import substitutes such as automobiles, as well as to promote equity by imposing higher tax rates on what are likely to be luxury goods. These objectives are not necessarily consistent and are better accomplished using different tax instruments” (Shukla & El-Hifnawi 1998, p.26).

4. Many policy instruments are changed frequently for “fine-tuning” purposes.

Vietnam's trade-related legal framework is not so much "in transition" as continually on the boil. The quantity of legal pronouncements issued every few months to “fine tune” the policy regime is daunting. Freshfields (1998), for example, report 27 documents involving trade policy changes from July to September 1998: two about quotas; four changing import duties; six about import duty exemptions [e.g. for re-exports]; three clarifying tariff line definitions; two about stamping imports; six on customs administration [e.g. anti-smuggling]; and four about exemptions and changes to other taxes which have trade implications [e.g. sales tax].

This unpredictability is itself a barrier – an additional cost - to trading with Vietnam, as well as for domestic producers²¹. Tariff rates and various NTMs, such as surcharges and quotas, are changed regularly and often only marginally. This volatility in the policy regime has been noted by the American Trade Compliance Centre (1998): "formal rules in many areas of the [Vietnamese] trading system have not been defined; while in others, the measures and their practical interpretation are frequently changing."²²

²¹ Thang & Toan (in Vo Dai Luoc, 1998. P.103) note that “The change of import taxes twice a year, even four times a year, does not conform to the production cycle of informatic-electronic items producing businesses”.

²² See <http://infoserv2.ita.doc.gov/tcc/>

Surcharges, tariff rates, tariff exemptions, finance measures, quotas, and import stamping are all changed or modified quite regularly, and at least every year. This practice is a legacy of the perceived micro-management role of the State under central planning, now applied comprehensively only to “strategic goods”. A lack of awareness about the economic costs of generating price distortions and uncertainty in markets compounds the problem. Uncertainty and weak management and information systems exacerbate other problems, as the OECD (1997, p.10) noted:

"The main insufficiency of new trade regimes in many transition economies, especially in the Newly Independent States (NIS), is their lack of transparency and predictability, ...the unstable trade and investment framework is often accompanied by considerable discretionary powers given to governmental officials, thus increasing the risk of rent-seeking activities."

Box 3: Fine-tuning electronics industry protection in Vietnam

From the Vietnam Investment Review, 30/11/98 (p.2):

“The Government is going to nationalise the country’s electronics sector by raising tax levies on imported picture tubes and electronics spare parts to a 30 percent minimum. Banks have been prohibited from selling hard currency to companies that import these products...The Government also agreed that taxes on incomplete knockdown and complete knockdown parts would be abolished and that single parts would attract tax levies in isolation, not as a spare parts package.”

This Decision follows ongoing disputes about what exactly constituted IKD and SKD kits (interviews 21 and 22).

5. The language of legal documents remains unclear.

“Ambiguity of laws and discretion in administration increase compliance costs and provide plenty of opportunities for irregularities that also serve to reduce government revenues” (Shukla & El-Hifnawi 1998, p.4). Indeed, a weakly defined legal code could be considered as an NTB in its own right.

Ambiguity arises because the higher level legal documents are also policy statements, and hence imprecise language is not seen as a serious problem. Some imprecision may also be what particular interest groups may desire. It is generally left to the Ministries to add precision and to clarify definitions, but the lag in doing so can be considerable.

Some examples from Vietnam's answers to the WTO questions (GoV 1998) illustrate the sort of problems:

- Lists specifying where the State “has the exclusive right to conduct commercial activities” were not yet formulated (p.10).
- The list of “important lines of activities” in which large national Corporations are to specialise was not available (p.13 and p.32).
- There is no legal definition of “morally pernicious” or “depraved cultural and reactionary products” (p.121).
- “There is so far no definition of monopoly (i.e. what market share would constitute monopoly) in the provisions of existing Vietnamese laws.” (p.189).

In addition to the WTO country definitional queries, we could also ask, *inter alia*, for the Vietnamese understanding of:

- “imported fixed assets which cannot be produced locally” (89/1998/TT-BTC).
- "dumping" and "too low [import] prices due to assistance";
- and regarding special sales tax exemptions: "natural disasters *and other sudden incidents*", for “*small scale* beer producers suffering losses", and for “*small scale manufacturers*” having trouble (109/1998/TT-BTC).

6. Not all legal documents are systematically collected and published.

Publication of official policy documents is apparently a legal requirement (GoV 1998, p.93), but in practice many important documents are not readily available. This is a particular problem for Official Correspondence, the circulation of which seems to be more at the discretion of issuing Ministries. It is rare if higher level documents cannot be found in the Government gazette (*Cong Bao*) or in the National Assembly collection.

The problem, however, is that Official Correspondence can include very important documents – particularly when they clarify definitional ambiguities. Documents relating to sensitive and lucrative industries, such as petroleum, are “hard to find”. Then again, Ministries may decide not to advertise policy changes by keeping directions about such changes an “internal matter”.

Much important information does not get published. For example: “Prices controlled by the Government are not published in the Official Gazette but can be found in the daily Market and Price Bulletin” (GoV 1998, p.16). The policies of the State commercial banks are also not available for scrutiny (interviews 27 & 28)²³. Thus the analysis of important issues, such as the deposit policies for opening letters of credit, had to be based on interview information.

The system for translating official documents could also be improved. Official translations of most important documents do appear, but sometimes after delays. Many documents, however, are not officially translated, and so can lead to problems in interpretation and unnecessary misunderstandings.

The above propositions about Vietnam’s trade policy processes and regime give an insight into the research challenge of surveying Vietnam’s NTBs. Many policy instruments are used, and most are complex in their design and administration. While most legal documents were accessible through databases²⁴, some important ones were not and had to be sought through various channels. Even then, interpretation was sometimes difficult. Many concepts introduced in legal documents, as discussed above, remain unspecified. Nevertheless, over the two months assigned for this task, we have managed to pull together a fairly comprehensive overview of NTBs. It is a baseline study upon which others can build.

²³ For list of interviews, see appendix.

²⁴ These databases include the National Assembly archive (in Vietnamese only), the VCCI legal database, and various regular publications such as Cong Bao, Freshfields, *The Vietnam Law Journal*, and Freehill, Holingdale & Page.

Box 4: Why do policy makers use NTBs?

In the 1980s, the use of NTBs seemed to on the rise (see Coughlin and Wood 1989). But in the 1990s concerted bilateral, regional and international efforts have enabled a decline in at least the prevalence of NTBs (Laird, 1996; OECD 1997). They are, however, still very common in the trade policy regimes of both developed and developing countries. Why?

The economics of trade protection points unequivocally to using tariffs rather than NTBs to achieve protectionist objectives. NTBs are crude and inefficient “second-best” policy instruments for protection, but in the context of international tariff reduction commitments that is precisely how they may be viewed. For countries committed to provide trade protection for certain domestic interest groups, maintaining high tariffs may not be an option.

There are other explanations, however. NTBs offer more certain and quantifiable protective effects. Also, domestic businesses, foreign invested enterprises, and politicians can more easily capture the distribution of the benefits (“economic rents”) from NTBs. “Such an allocation of benefits increases the probability that the political process generates larger amounts of non-tariff barriers relative to tariffs” (Coughlin and Wood 1989, p.45). Finally, the adverse effects of NTBs are generally less obvious to consumers and trading partners than the effects of tariffs. Lack of clarity, in some policy contexts, may be seen as a virtue.

Chapter 4: Para-tariff measures

Para-Tariff Measures (2000)

Measures that increase the cost of imports in a manner similar to tariff measures, i.e. by a fixed percentage or by a fixed amount, calculated respectively on the basis of the value and the quantity.

Customs surcharges (2100)

The customs surcharge, also called surtax or additional duty, is an ad-hoc trade policy instrument to raise fiscal revenue or protect domestic industry

Additional taxes and charges (2200)

Additional charges comprise of various taxes and fees, which are levied on imported goods in addition to customs duties, and surcharges and which have no internal equivalent.²⁵

- tax on foreign exchange transactions (2210)
- stamp tax (2220)
- import license fee (2230)
- consular invoice fee (2240)
- statistical tax (2250)
- tax on transport facilities (2260)
- taxes and charges for sensitive product categories (2270)
- other (2280)

Internal taxes and charges levied on imports (2300) [not included ASEAN]

- general sales tax (2310)
- excise tax (2320)
- taxes and charges for sensitive product categories (2370)

Decreed customs valuations (2400)

Customs duties and other charges on selected imports can be levied on the basis of a decreed value of goods. This practice is presented as a means to avoid fraud or to protect domestic industry. The decreed customs valuation transforms an ad valorem duty into a specific duty.

Other para-tariff measures (2900)

²⁵ It should be noted that Article VII of GATT states that fees and charges other than customs duties and internal taxes shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes.

Customs surcharges (2100)

Despite the ASEAN agreement to remove all surcharges by 1996, Vietnam maintains surcharges on a small number of important products. During the past three years, customs surcharges have been applied for various periods of time to imported petroleum, some types of steel and iron, and fertiliser. Exports of coffee, unprocessed cashew nuts, and rubber have also had surcharges applied in recent years, purportedly as part of a price stabilisation fund process (GoV 1998, p.118).

The surcharge rates have been changed with an alarming frequency. Since mid-1994, the rates on petroleum products have been changed fourteen times (GoV 1998, p.115). Rates on petroleum products differed between north and south Vietnam until 1996. Rates of between 2-10 percent are applied to eight different types of iron and steel products.

In May 1997, surcharges only applied to imported iron and steel, and 10 percent on exports of unprocessed cashew nuts (GoV 1998, p.22). The surcharge for petroleum products, however, was reintroduced in July 1997 (GoV 1998, p.116), and then raised in March 1998 (305/CP-KTTH)²⁶ and in August 1998 (71/1998/QD/BVGCP-TLSX), with a 40 percent surcharge presently applied to gasoline. Four months later, the surcharge on fertilisers was also reintroduced (2766/1998/TC/TCT)²⁷, including a 3 percent surcharge on urea. On 12 August, the Ministry of Finance then introduced a new 5 percent surcharge on imported plastic goods made from PVC "to support the Mitsui-Vina joint venture" (3039/1998/TC/TCT)²⁸.

Surcharges seem to be applied sometimes as *ad hoc* solutions to particular problems. On 14 August 1998, Customs introduced an additional "special consumption tax" on trucks converted into passenger cars that applied immediately to all such imports since 1 January 1997. Vietnam's practice of counting the seats of vehicles, rather than engine size, to determine the tariff rate was apparently being abused.

There seems no intention to abolish customs surcharges, and nor have there been any government statements to that effect. Recent pronouncements actually suggest a rapid increase in their use is imminent (4670/VPCP-KTTH)²⁹. The surcharges seem mostly designed to extract windfall revenue gains for the government from international price fluctuations at the expense of Vietnamese consumers and export producers. This is not entirely true, as the government does try to apply price stabilisation policies through

²⁶ See Freehill, H&P. April-May 1998; "This surcharge is not regarded as an import duty and therefore exemptions from import duties do not apply" (p.7).

²⁷ All legal documents quoted may be identified in more detail by searching the NTB Legal Database produced by this project.

²⁸ This is a fascinating instance of interest groups in conflict. The vibrant plastic goods industry in Vietnam is resisting protection for the downstream Mitsui-Vina joint venture, which would see a significant increase in the cost of PVC resin. For a detailed discussion, see "Vietnam and AFTA: By Choice or Obligation?", Report No. 4: Frank Flatters, Sep. 1997; at <http://www.undp.org.vn/projects/vie95015/#inter>. Also, Saigon Times (12/09/98 and 09/05/98).

²⁹ See the conclusion of this report for a details about this Official Letter.

subsidisation mechanisms. It sets ceiling prices in the domestic market for "essential goods" like petroleum, urea fertilisers, paper, cement, and steel, and uses import quotas, directed credit and subsidies to support these prices (GoV 1996, p.8). State-owned companies that have and must fulfill urea fertiliser import quotas, for example, can expect to be bailed out if they suffer losses due to government price fixing (interview 12).

An explicit balancing of specific commodity surcharge revenues and subsidies, however, does not appear to happen. This is typically the objective of price stabilisation funds, but Vietnam's WTO Accession Memorandum (GoV 1996) suggests that it may only apply in this manner to coffee exports:

"Establishment of price stabilisation funds from charges on export/import prices with a view to partly balancing the differences between international and domestic prices during price fluctuation period. The Fund is used to cover interest of bank loans or to subsidise prices. To present, this has just been applied to coffee." (p.8).

A similar rice price stabilisation fund, based on extracting a surcharge from rice exports, has been proposed (VIR, 26/5/97 p.10), but as yet does not seem to have been implemented.

Additional taxes and charges (2200)

The long list of additional border taxes and charges (see appendix) are not applied or cannot be considered as barriers to trade in Vietnam. Licence fees may exist for obtaining import and export quotas, but they are unlikely to be significant. Official customs fees and charges are also reportedly reasonable (interviews 20, 26, & 19). The present practice is for 100 percent inspection of both export and import containers, and this involves a fee when inspection is done at places other than the official venues.

Fees are also applied for (GoV 1998, p.119):

- Re-certifying or re-issuing customs documents of goods and luggage.
- Escorting and sealing of containers.
- Customs warehousing.
- Wharfage charges.
- Storage and port space rentals.

Some examples of fee rates are (GoV 1998, p.121):

- Embarkation of goods on wharf: US\$0.0035/GRT; anchorage US\$0.0012/GRT
- Storage and customs warehousing fee:
 - for goods not in container, US\$0.2/MT/day;
 - for 40 feet container, US\$3/day (loaded); US\$1.5/day (empty).

Internal taxes on imports (2300)

Most taxes in Vietnam, as noted above, aside from raising revenues, are also designed to promote industrialisation policies of one form or another: import substitution, technology transfer, accumulation and investment, regional development, export promotion. In this section we discuss those which explicitly discriminate against imports and are collected at the border, while other taxes are discussed under Internal Measures (9000).

Special sales tax (2310)

The Luxury Tax Law, approved in May 1998, comes into effect on 1 January 1999. This Law introduces a controversial new special sales tax regime (also called the special consumption tax), that replaces the 1990 Law of Special Sales Tax and its subsequent amending articles. The new Law explicitly discriminates against "filter cigarettes produced mainly from imported raw materials". These cigarettes faced a 65 percent special sales tax, while those "mainly from domestic raw materials" were taxed at 45 percent.

The new special sales tax removes the previous explicit sales tax imposed on imported cars, which had existed since October 1995 and which had afforded an effective rate of protection of over 200 percent for domestic assembly operations (CIE 1998a, p.40). However, the scope for exemptions suggests little change in reality. In the Law, exemptions of various degrees were specified for businesses encountering difficulties due to "natural disasters and other sudden incidents"; for small scale beer producers "suffering losses"; and for domestic automobile assembly operations (60-100 percent up to ten years) and golf courses (30 percent for five years)³⁰.

³⁰ See *Vietnam Economic News*, 1998. No.26 p.39-42 for a translation of the Luxury Tax Law.

The Ministry of Trade then expanded the scope for exemptions on 31 July 1998 (109/1998/TT-BTC). The amendment stated "that small scale manufacturers who have paid their special sales tax in full, and then experience production growth and encounter difficulties and losses will be considered for a reduction [of up to 50 percent] in special sales tax" (Freehill, H&P. Aug-Sept 1998, p.10). Given the fungibility of Vietnam's accounting and auditing systems, which do not yet correspond to international norms, the scope for tax evasion through exemptions must be considerable.

The Value-Added Tax [VAT] (2320)

The VAT is to take effect from 1 January 1999 (02/1997/QH9). There are to be four tax rates: zero percent for exports; 5 percent for education and agricultural goods and services, and medicines; 20 percent for some services; and 10 percent for all other goods and services (see Freehill, Apr.-May 1998, p.5). The VAT is therefore applied on a destination basis - imports are subject to VAT, and exports are zero rated. Another aspect of the VAT is that it will be collected at ports upon clearance of goods, unlike the present system which allows 30 to 270 days of delayed payment of import duties. There are 26 specified exemptions from the VAT, some of which have direct implications for trade (89/1998/TT-BTC):

- "goods and services that are subject to special sales tax are not subject to VAT during production or importation;
- imported fixed assets (e.g. specialised machinery and transportation equipment) which cannot be produced locally;
- imported international aid;
- technology transfers;
- exported unprocessed minerals." (Freehill, Aug-Sept 1998, p.10).

The lack of precise definitions for concepts such as fixed assets "which cannot be produced locally" will inevitably "involve high degrees of judgment by collecting authorities, scope for widespread evasion and/or erosion of protection for local imperfect substitutes for the equipment." (CIE 1998a, p.67).

Some degree of VAT avoidance by domestic producers is to be expected. This implies a lower real taxation of domestic products compared to imports. The solution to this problem, however, can only come through a further strengthening of existing tax collection and accounting systems in Vietnam. Concern about increased scope for exemptions and VAT tax write-offs may also be warranted. Tax write-offs are commonly applied in Vietnam for "enterprises in trouble", and this practice will probably also be applied to the VAT.

Decreed customs valuation (2400)

Vietnam utilises minimum import prices (discussed under 3110) to determine the tariffs for many imported goods. For goods not covered by the minimum price list, the "contract price"³¹ is used. However, if "the contract price cannot be used or [if the goods were] imported by method other than normal purchase in which payments are not made through banks", then Customs "is authorised to set (with agreement from Ministry of Finance) the minimum customs valuation import price" for the goods (GoV 1998, p.149). Decreed customs valuations are therefore the last and unusual step in the valuation process.

Vietnam has committed itself to introducing the GATT customs valuation system by the year 2000, and there have been steps and statements in this direction. In March 1998, for example, Phan Van Dinh, Head of the General Department of Customs, reported that: "We are now trying to eliminate the three-way tariff classification in favour of an official method based on values stated in invoices. Of course, these documents must be genuine to prevent losses to the State." (VIR, 9/3/98).

³¹ "The term 'contract price' is construed to be the price indicated on the contract .. Therefore, the 'contract price' is not exactly a synonym of 'transaction value' used in the Agreement on Implementation of Article VII of the GATT" (GoV 1998, p.145).

Chapter 5: Price control measures

Price Control Measures (3000)

Measures intended to control the prices of imported articles for the following reasons:

- to sustain domestic prices of certain products when the import price is inferior to the sustained price;
- to establish the domestic price of certain products because of price fluctuation in the domestic market or price instability in the foreign market; and
- to counteract the damage caused by the application of unfair practices of foreign trade.

Most of these measures affect the cost of imports in a variable amount calculated on the basis of the existing difference between two prices of the same product compared for control purposes.

*Administrative pricing*³² (3100)

By administrative price fixing, the authorities of the importing country take into account the domestic prices of the producer or consumer; establish floor and ceiling price limits; or revert to determined international market values.

minimum import prices (3110)

Voluntary export price restraint (3200)

A restraint arrangement in which the exporter agrees to keep the price of his goods above a certain level.

*Variable charges*³³ (3300)

Variable charges bring the market prices of imported agricultural and food products close to those of corresponding domestic products, in advance, for a given period of time, and for a pre-established price.³⁴ [Based on a target domestic price of imports, a levy is imposed so that the price of imports reaches the target price whatever the costs of imports.]

variable levies (3310)

variable components (3320)

compensatory elements (3330)

flexible import fees (3340)

other (3390)

³² Referred to as official prices, minimum import prices or basic import prices.

³³ Known as reference prices, threshold prices or trigger prices.

³⁴ Primary commodities may be charged per total weight, while charges on processed foodstuffs can be levied in proportion to the primary product contents in the final product (known respectively as variable levy and variable component in the EU).

Anti-dumping measures (3400)

Imposition of a special import duty when the price of imports is alleged to lie below some measure of the costs of production of foreign firms. Minimum foreign prices may be established to “trigger” antidumping investigations and actions.

anti-dumping investigations (3410)

anti-dumping duties (3420)

price undertakings (3430)

Countervailing measures (3500)

Imposition of a special import duty to counteract an alleged foreign government subsidy to exports; normally required that domestic injury be shown.

countervailing investigations (3510)

countervailing duties (3520)

price undertakings (3530)

Other price control measures (3900)

Price Control Measures (3000)

Administrative pricing (3100)

Minimum import prices (3110)

As noted above (2400), Vietnam employs a schedule of minimum import prices as its first step in valuing imports. The list of 34 categories of merchandise subject to government management in terms of import prices for customs valuation (975 TC/QD/TCT) of 29 October 1996, was replaced by a list of 21 categories of merchandise (918 TC/QD/TCT) in 11 November 1997. The detailed list is as follows (from GoV 1998, p.146):

Table 5: Vietnam's Minimum Price List, 1997.

No.	Items	Harmonised System Tariff 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
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;	41350, 841360, 841370, 41381
	- Electric fans;	41451, 841859
	- Air conditioners and parts;	from 41510 to 841590 and 8418
	- Refrigerators and parts;	8450
	- Washing machines and parts;	851610
	- Electric water heaters;	851660
	- Electric cookers;	850910
	- Vacuum cleaners;	851821, 851822, 51829
	- Speakers;	851840, 8519
	- Amplifiers;	
	- Radio cassette and parts;	52200

No.	Items	Harmonised System Tariff Code
	- CD players and parts; - LD players and parts; - Television sets and parts; - VCRs and parts; - Iron.	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

Within these tariff headings, brand name items are identified, so that, for example, over 3,000 prices were specified for the 34 commodities minimum prices list. Minimum export prices are also set for some products such as paddy rice (GoV 1998, p.14). The above 21 commodities minimum price list was again replaced and shortened by another (590A/1998/QD-BTC) on 29 April 1998. The latest list is similar to that above, but with the "sugar and confectionery" group excluded. The list covers 45 pages, and is most detailed in its listing of motor vehicles. The Toyota Landcruiser, for example, has 14 minimum prices specified depending on the specific model and year of production. The list also continues to specify higher prices for many products coming from G7 countries. G7 photocopy paper, for example, has a minimum import price of US\$1.5 per ream, compared to US\$1 from elsewhere. Powdered milk from Holland, Australia and Denmark is priced at US\$4, while any other is US\$3.5. Brazil, China, Indonesia, Sweden and the USA are just some of the countries which also feature in country-specific minimum prices. It is clearly a document in need of revision to facilitate entry to the WTO.

In recent months, some further minimum price changes have focused on prices for imported spirits (1334/1998/QD-BTC), including one specifically for Martell Medallion VSOP liquor (766/1998/QD-BTC). Customs is authorised to adjust prices actually used in duty assessment by 5 percent, based on observed variations in actual import prices. Dutiable prices for imported second hand goods are set at 70 percent of the price of a new good in the same category (CIE 1998a, p.116).

On 27 May 1998, a Decision (155/1998/QD-TCHQ) was issued to clarify the valuation process. Contract prices would be used if they were above the minimum price, and the minimum price used in other cases. But then, for "goods imported for direct use as materials and supplies in production and assembly, if the CIF price is higher than 60% of the minimum price in the price index, the dutiable value will be the CIF price." (Freehill H&P. June-July 1998, p.6). This constitutes a significant fall in the levied tariff for the import of intermediary products, although tariff rates for many of these were already low. The tariff rates on assembly operations, however, are high and hence this Decision

implies a sharp fall in the effective protection afforded to these industries³⁵.

Decision 155 may have been a response to ongoing complaints about the inflexibility of the minimum price system, especially given sharp price changes in the prices for many goods in 1998 (Vietnam News, 4/4/98, p.3). The US Trade Compliance Centre had noted this problem: "In practice, [Vietnamese] customs valuation remains non-transparent and is highly discretionary. Although in principle, reference prices are used to counter the practice of under-invoicing, the system is not responsive to world market price fluctuations. In the household electrical appliances sector, for example, the higher taxes paid on components have translated to a higher price on the finished product, as much as a 20% inflation over Thailand, Malaysia and Singapore."³⁶ The interviews also revealed discontent about the rigidity of the minimum price system. Sharp falls in the price of Indonesian margarine and urea in 1998, for example, were not reflected in reductions of minimum prices for duty assessment (interviews 23 & 12)³⁷.

The minimum price lists are applied rigidly and therefore set, in effect, a set of specific rates for imports. Discretion, however, is often involved in determining the particular tariff code to apply. This was a common problem raised in interviews and it is discussed in section 8300 of this report.

Vietnam has made a commitment to ASEAN to implement the GATT valuation system by the year 2000. This will require a comprehensive program of activities, but little seems to have been achieved to date (CIE 1998a, p.118). It is most likely that some form of minimum price system will continue for some years.

Maximum import prices (3120)

Since at least April 1994 (Decree 33/CP), Vietnam has taken the unusual step of setting maximum import prices "for certain imported goods which are of prime importance to the Vietnamese economy" (GoV 1998, p.21). These are imposed on fertiliser, petroleum, iron and steel and certain machinery and equipment (GoV 1998, p.14, 21).

Setting maximum import prices is a mechanism for avoiding transfer-pricing fraud by State trading companies. That may have had some relevance in the less competitive trading environment of 1994, but in 1998 it seems a crude and unnecessary solution to that problem. The purpose may also be to set the domestic prices for some of these goods. The objective for urea is, for example, "to supply farmers with the necessary urea quantity at reasonable prices" (GoV 1998, p.21). Thus, State importers are assigned urea quotas, which they must fulfill and sell at regulated prices, with any subsequent losses compensated for by the Government (interview 12). They might buy above the maximum

³⁵ On the other hand, it may only apply to imported raw materials, for which minimum prices have generally not been applied in practice anyway (interview 12).

³⁶ See [http://inforserve2.ita.doc.gov/tcc/...](http://inforserve2.ita.doc.gov/tcc/)

³⁷ Margarine was reportedly imported CIF for US\$665 per ton, but the minimum price was US\$990 per ton.

import price to meet their quotas, but cannot sell above it domestically. On the other hand, enforced and low maximum import prices for import substitution goods like iron and steel may effectively constitute a ban on such imports.

Minimum export prices (3130)

Crude oil and rice are subject to minimum export prices (GoV 1998, p.162). This policy, like that of having maximum import prices, seems peculiar to retain in a market economy. In fact, their origins seem to be based on the need to control the activities of State-owned trading companies. Until recently, and possibly still, these companies could expect to be "bailed out" when they made losses. Also, the highly distorted price and incentive structure made crude policy instruments seem relatively sensible.

The need for these price control policies in 1998 is not apparent. Rice exports have been liberalised, and it is hard to see how setting a minimum export price for crude oil could be useful.

Administrative pricing n.i.e (3190)

In July 1997, the Government decided to regulate prices for the import of rubber wood from Cambodia "to avoid competition causing price raising and losses" (3159/1997/CV-VPCP-KTTH).

Anti-dumping (3400) and countervailing measures (3500)

The Laws on Import and Export were amended in May 1998 to include, amongst other things, provisions to impose "an additional tax" on the following:

- "Import goods which are dumped in Vietnam, hindering the development of the local production of goods of the same kind;
- Goods imported into Vietnam with too low prices due to assistance from the exporting country, hindering the development of the domestic production of goods of the same kind;
- Goods imported from countries applying a strict tax policy and other procedures to Vietnamese commodities." (Vietnam Economic News, 1998 No.26. p.39)

This May 1998 amendment may be unveiling a new policy instrument for "fine-tuning" protection in Vietnam. The distinction between "dumping" and "too low prices due to assistance" obviously needs more explanation. The latter probably reflects concerns about "unfair competition" or "unbalanced competition" often cited by Vietnamese business managers and officials (e.g. VIR, 20/7/98). This is another vague term, which in most applications can be equated with "strong competition". It is part of the Vietnamese protectionist rhetoric, and the fear is that this amendment will become its policy tool.

When Vietnam joins the WTO, then imposing countervailing duties for anti-dumping will be much more difficult. The case must be argued convincingly and in detail to the WTO before any actions may take place. In effect, it would rule out this policy option for Vietnam³⁸.

When a country embraces the concept of dumping and countervailing duties, it also embraces an interpretation of barriers to trade which extend beyond border measures. It may be more practical to take a stance that trade policies are border policies, particularly if your development strategy is one of export-led protectionism - like Vietnam. In this case, indignation about imports "with too low prices due to assistance from the exporting country" must ring hollow given Vietnam's explicit and substantial export subsidisation policies.

³⁸ See CIE 1998a, p.103-108, for a full discussion of this issue.

Chapter 6: Finance measures

Finance Measures (4000)

Measures that regulate the access to and the cost of foreign exchange for imports and define the terms of payment. They may increase the import cost in a fashion similar to tariff measures.

Advance payment requirements (4100)

Advance payment of the value of the import transaction and/or related import taxes, which is required at the moment of the application for, or the issuance of, the import license.

advance import deposit (4110)

Obligation to deposit a percentage of the value of the import transactions for a given time period in advance of the imports, with no allowance for interest to be accrued on the deposit.

cash margin requirement (4120)

Obligation to deposit the total amount corresponding to the transaction value, or a specified part of it in a commercial bank before the opening of a letter of credit; payment may be required in foreign currency.

advance payment of customs duties (4130)

Advance payment of all or part of customs duties, with no allowance for interest to be accrued.

refundable deposits for sensitive product categories (4170)

The deposit refunds are charges which are refunded when the used products or its containers are returned to the collection system

regulations concerning terms of payments for imports [see 4500]

transfer delays, queuing [see 4600]

other (4190)

Multiple exchange rates (4200) [not included ASEAN]

Restrictive official foreign exchange allocation (4300) [not included ASEAN]

Prohibition on [or priority access to] foreign exchange allocation (4310)

bank authorisation (4320)

Foreign exchange surrender requirement (4400) [added for this study]

This is the requirement of the Central Bank that all “excess”, or a specified percentage of foreign currency earnings must be converted into local currency.

Regulations concerning terms of payments for imports (4500)

Special regulations regarding the terms of payments of imports and the obtaining and use of credit (foreign or domestic) to finance imports

Transfer delays, queuing (4600)

Minimum permitted delays between the date of delivery of goods and that of final settlement of the import transaction (usually 90, 180 or 360 days for consumer goods and industrial inputs and two to five years for capital goods). Queuing takes place when the prescribed delays cannot be observed because of foreign exchange shortage, and transactions are settled successively after a longer waiting period.

“Foreign exchange control regulations date back to 1988, and a great number of governmental and SBV measures have been taken since then. They are part of a very complicated and unclear legal structure³⁹. The goal of the exchange control policy has always been the same: to limit the outflows of foreign currency, to regulate transactions in foreign currency (“dedollarization”), and to channel the foreign currency flows inside Authorised Credit Institutions.” (Gide, *et al.* 1998, p.36).

The State of Play as of November 1998

In 1998 foreign exchange management controls became a more prominent economic policy tool in Vietnam. The controls are being used to meet macroeconomic and specific trade and industry policy objectives. The renewed emphasis on foreign exchange controls is best illustrated when comparing the Government’s 1997 and 1998 annual lists of “non-essential imports”:

13 January 1997:

“Proceeding from the need of protecting domestic production, efficiently using foreign currencies and restricting the import of non-essential and luxury commodities ... [the government] shall adjust in time the import duties at appropriate rates and restrict to the minimum the granting of import permits”. [*Decision 28/1998/QD-TTg, Import-Export Management Mechanism in 1997. Article 5: “On the import of Consumer Goods”*].

23 January 1998:

“The imported consumer goods shall be regulated by taxes and payment modes of banks ... along the direction of restricting to the minimum the import of consumer goods which are not really necessary and goods which are produced in the country. [*Decision 11/1998/QD-TTg, Import-Export Management Mechanism in 1998. Article 5: “On the import of Consumer Goods”*].

³⁹ Freshfields have characterised Vietnam's foreign exchange regulations as like reading the turgid "*Finnegan's Wake*": the words are certainly there but deciphering the exact meaning requires considerable assistance." (Freshfields, August-September 1998, p.2).

The increased emphasis on financial controls preceded the removal of import licensing (see 6100), and was most probably a response to the Asian financial crisis and dwindling capital inflows. That is, an emerging “shortage of dollars” promoted a strengthening of foreign exchange controls which, as usual, were then also used to pursue other development strategy objectives.

The foreign exchange management controls discussed in this section affect both the size and composition of imports and can therefore be classified as NTMs (see UNCTAD 1994)⁴⁰. To be considered as barriers, exchange management control NTMs should have a clear distortionary influence by impeding the import of goods, either through restrictive foreign exchange allocation (together with foreign exchange surrender requirements) or by restricting the availability of import finance.

The foreign exchange controls are described below as they relate to the various categories of the modified UNCTAD definition specified above. As an introduction, however, it should be noted that the evolution of these controls over the past two years has largely been driven by an inability to enforce them. What seem highly restrictive NTBs are, in practice, only partially implemented, if at all. The impression gained from interviews was that the State commercial banks place profit maximising concerns well before implementing the vague exhortations of government bodies. For this reason, the Government has had to impose crude but precise measures when vague ones were flouted. For example, the February 1998 regulation requiring enterprises and corporations to sell “surplus” foreign exchange to the banks [157/1998-CV-nhnn7], had to be followed up in September by a Decree which fixed the amount to sell at 80 percent [173/QD-TTg].

The direction of foreign exchange management control policy is not encouraging. It seems headed towards stronger and cruder instruments of exchange rationing. The central issues are, however, to what extent are these controls circumvented, and how serious is the “shortage” of foreign exchange anyway?

⁴⁰ These current account controls need to be distinguished from capital account controls, more generally known as “capital controls”, which manage foreign exchange flows entering and leaving a country and affect imports only indirectly. Vietnam has always maintained capital controls, but they are not NTMs. Capital account controls were tightened in August 1998 under Decree 63/ND-CP.

Advance payment requirements (4100)

Cash margin requirement (4120)

During 1996/97, Vietnam faced serious problems concerning a build-up of short-term international debt through Letters of Credit (LoCs). Defaults by the Vietcombank to honour some small LoCs caused concern about the level of foreign exchange reserves, and about Vietnam's commitment to international financial arrangements (Forster, 1998, P.8). In March 1997, it was reported that Vietnamese banks owed in excess of US\$1.3 billion in outstanding LoCs, of which US\$65 million was overdue (Freshfields, Oct. 1997).

One response by the Government was to turn the target that imported consumer goods should not exceed the value of 20 percent of total exports [864/1995/QD-TTg] into a specific list of consumer goods to be restricted from importing. The first general direction to make this list, quoted above, was issued in January 1997. The Ministry of Planning and Investment (MPI) then announced the list the next month [948 BKH/TMDV], and in doing so asked the State Bank to "control the opening of LoCs" to restrict these imports. The 1997 list of restricted consumer goods is shown below. Apparently, a 1998 list exists, but we were unable to obtain a copy, although we were informed that it is very similar (interview 1).

Table 6: List of consumer goods to be restricted from import.

<i>HS classifications</i>	<i>Description of goods</i>
0401, 0402, 0403, 0404	Dairy produce
1509 to 1514	Vegetable fats and oils
1701 to 1704, 2105, 2106	Sugars and confectionery
1801 to 1806	Cocoa and cocoa preparations
190510 to 190540	Breads
All 22, except 2207 and 2209	Beverages and spirits
2009	Fruit and vegetables juices
0901 to 0903	Tea and coffee preparations
0701 to 0712	Edible vegetables
0801 to 0813	Edible fruit and nuts
201 to 2009	Preparations of vegetables, fruits, nuts
2103, 2104	Miscellaneous edible preparations
0201 to 0210	Meat and edible meat offal
0301 to 0307	Fish and crustaceans
3920	Film
4419	Tableware & kitchenware of wood
7321, 7323	Kitchenware metal items
711810	Coins (not gold)
761510	Kitchen and household aluminium items
8215	Forks, spoons, knives
691110	Ceramic toilet and household products
7013	Glass household and kitchen products
9403, 9404	Bedding and similar furnishings
9105	Other clocks
6301, 6302, 6303	Textile items: curtains, blankets, linen
6910, 7324	Sanitary wares: steel and ceramic
9617	Vacuum flasks
611220, 621120	Clothing accessories
All 61	Clothing, knitted
640311	Footwear
6503 to 6506	Headgear and parts thereof
6601	Umbrellas
3303 to 3307	Perfumes and cosmetics
3401	Soap and washing preparations
9613 to 9616	Lighters, pipes, combs, scent sprays
850610, 8509	Batteries, electro-mechanical domestic appliances
8510	Shavers, hair clippers
8516	Electrical water heaters
85361010, 85362010, 85363010, 85365010, 85366110, 85371091, 85372091	Domestic electrical appliances

<i>HS classifications</i>	<i>Description of goods</i>
8539, 8540, 9405	Lamps and lights
84181010, 84182111, 84182112	Refrigerators
84145111, 84145119 to 84145910	Domestic fans
84137011 to 84137012	Household-type water pumps
84151000 to 84152000	Airconditioners
84501110, 84501210 to 84501910	Washing machines
8519	Record players and sound equipment
8520, 8522	Tape recorders, parts & accessories thereof
85281110, 85281210 to 85281310	Televisions
852110	Video players
85271200, 85271300 to 85271900	Radio cassettes
90065110, 90065210, 90069190, 90069910	Cameras and parts thereof
900711 to 900719	Video recorders
900840	Photocopiers
87120010	Bicycles

Source: 948/1997/BKH/TMDV

Note: HS codes are specified in the document, which makes it an exception.

In July 1997, the State Bank announced that a deposit equal to 80 percent of a Letter of Credit was required to import goods on the restricted consumer goods list [515/CV-NH7]. This cash margin requirement constitutes a dramatic increase in import costs for reliable and profitable companies. These companies typically pay deposits of between zero to 30 percent towards opening a LoC. Higher deposits of up to 100 percent are required of less creditworthy customers, but the guiding criteria seems to be entirely commercial (interviews 19, 27 & 28). The Industry and Commercial Bank of Vietnam (ICBV) did mention that higher deposits were required for consumer goods imports (interview 28), but the Vietcombank official interviewed said that product-specific cash margin requirements were not implemented in practice (interview 27). This was confirmed in interviews with trading companies, who reported that cash margin requirements depended on the Vietcombank ranking of their company, not on what was going to be imported (interviews 19 & 25). Thus, what seems to be a dramatic NTB is, in practice, something of a fiction.

Restrictive foreign exchange allocation (4300)

Prohibition on [or priority access to] foreign exchange allocation (4310)

The necessary rationing of foreign exchange has required the Government to specify who has priority access and who does not. This, therefore, has evolved into a mechanism for promoting the Government's development priorities.

Foreign invested enterprises (FIEs) are obliged to balance their foreign currency requirements and this was reaffirmed in mid-1997 [02/TT-NH7]. This does not apply to those FIEs that produce "import-substitution" products (together with specified Infrastructure Projects and Important Projects). These enterprises have "guaranteed access" to foreign exchange. FIEs involved in these projects can apply for a priority "conversion certificate" to obtain their required foreign exchange.

This setting of rationing priorities has, of course, required the production of many lists, as shown in Tables 7, 8 and 9. These generalised lists have been converted into lists that specify actual projects with exchange priority. The Ministry of Planning and Investment has selected 500 of its 1,829 listed FIEs for priority access to foreign exchange. The State Bank has also reportedly "given rights to 289 projects enabling them to convert their dong earnings into foreign currencies" (VIR, 28 December 1998. P.15).

Table 7: List of infrastructure projects guaranteed foreign exchange.

<ul style="list-style-type: none">➤ Road, railway and inland transportation➤ Domestic telecommunication systems and rural telecommunications➤ Water supply and drainage➤ Construction of industrial zone infrastructure and new urban areas➤ Public transport projects in urban areas using advanced technology➤ Bridge, port and airport construction➤ Power plant and power distribution and transmission➤ Urban and industrial waste treatment plants➤ Construction of international schools and hospitals

Source: Freshfields, September 1997 [5158/BKH/QLDA-TC]

Table 8: List of important projects guaranteed foreign exchange.

- Oil refinery and petro-chemical plants
- Mineral exploitation and processing projects
- Aircraft repair projects
- Telecommunications equipment manufacturing plants
- Industries producing new materials, biological technology, micro-electronics information, laser and isotopic radiation technology
- Research and development projects
- Pharmaceutical production
- Labour intensive industries (5,000 or more employees)
- Production of plant seeds and animal species of high productivity
- Ferrous and non-ferrous metallurgical products
- Shipbuilding and repair projects
- Automobile and motorcycle parts manufacturing plants producing import substitutes
- Plants for “construction vehicle” manufacturing
- Investment projects in hi-tech zones using advanced technology (“where technology transfer is less than five years”)
- Afforestation projects
- Agricultural product processing
- Projects contributing over VND 100 billion per annum for the state budget
- Industries which are subject to special investment incentives in their investment licence

Source: Freshfields, September 1997 [5158/BKH/QLDA-TC]

On 6 July 1998, the State Bank announced that FIEs which fall into the priority lists could apply for a “priority conversion certificate” to ensure that their foreign exchange requirements were met [585/CV-NHNN7]. Later that month, it was decided that, without specific State bank approval, commercial banks were not permitted to sell foreign currency to FIEs that did not have priority conversion certificates [844/CV-QLNH2]. These announcements were followed by a strengthening of foreign exchange surrender requirements (4400), which made being a “priority” FIE of dubious value (discussed in next section).

Table 9: List of essential import substitutes guaranteed foreign exchange.

Milk and dairy products	Aluminium structures for construction	Televisions	Neutral bottles of glass and PET	Handling machines (including lifts and escalators)
Steel pipes	Phosphoric acid, hydrochloric acid, glutamin acid	Paints and raw material for paint production	Laminated steel	Construction and industrial glass
Cement	Electric lamps	Electricity and water meters	Sugar	Vegetable oil
Electrical transformers	Vaccines	Kraft packaging paper	Lubricant oil	Metal roofing
Sodium carbonate	Bulbs and components	Cars and motorcycles	Electrical equipment	Bitumen
Radios, cassette players	Tyres and tubes for cars, tractors and motorcycles	Mechanical equipment and industrial moulds	Chemicals for soap and detergent	Electricity control panels
Electricity cables	Coated steel	Animal feed	Fertilisers	Chemicals used in construction
Gasoline or diesel engines	Garment materials	Metal and plastic boxes	Electronic components	Pesticides
Medical equipment	Wheat flour	Sodium hydroxide	Natural fibers	Steel housing frames
Agricultural equipment	PVC for the production of plastic articles	Starters for florescent bulbs	Fabrics, including fabrics used in the production of tyres	Disposable plastic syringes

Source: CIE 1998 (p.33) and Freshfields, December 1997 [7273/BKH/QLDA-TC]

So do these lists matter? If foreign exchange reserves continue to decline in the context of a relatively fixed exchange rate regime, then these lists constitute an increasingly strong barrier to trade – if they are implemented. The reality is that such regulations force commercial businesses to work outside the banking system. Even within the banking system the regulations, and in particular these lists, are interpreted somewhat as guidelines rather than directives.

The commercial banks have to balance three strong claims to obtain foreign exchange:

- 1) The priority for access due to inclusion on Government lists;
- 2) the foreign currency demands from trading companies which have deposited their export dollars at the bank, and;
- 3) the need to make profits from, and to maintain the custom of reliable trading companies.

The interviews clearly indicated that enterprise deposits in foreign exchange entitled that enterprise to withdraw the full amount for import activities (interviews 19, 20, 25 & 27). If you earned dollars, you could get them back⁴¹, although recent surrender requirements (4400) have raised doubts even about this right. The question for banks was therefore how to divide remaining foreign currency reserves between “listed” enterprises and net importing trading companies. The returns from financing trading companies were quicker and larger. Financing of listed enterprise imports could entail long delays in repayments and higher risks, even with the expectation of eventual “bail-outs”.

This conflict of commercial and regulatory requirements produces a balance whereby listed enterprises get some or most of their operational requirements, but may still complain, and trading companies get the balance which, for the moment, seems to be sufficient (interviews 19 & 25). “Priority access” to foreign exchange thus means, in reality, some preference backed by implicit government guarantees. This is not always enough. The steel-making joint venture, Posco Vietnam, claims to be only able to obtain about a quarter of the US\$5-6 million “needed” each month, and in March 1998 it was reported that the Vietcombank was unable to supply Petrolimex with dollars from the company’s own current account (EIU 1998, p.32). The tensions inherent in such a rationing arrangement will increase if foreign exchange reserves dwindle further.

Surrender requirements (4400)

For some time, speculation about a further devaluation of the dong caused enterprises and individuals to hoard foreign exchange. This speculation was well founded and the dong was devalued by 7 percent in 1998. Nevertheless, it is clear that the dong remains rather over-valued, as indicated by a flat inter-bank market and stories in newspapers.⁴² Surrender requirements have subsequently emerged as a principle mechanism for limiting this hoarding by enterprises. In practice, it is pushing an increasing share of financial saving and transactions outside of the banking system.

⁴¹ Letter 585 [6 July 1998, 585/CV-NHNN7] enshrines this right for FIEs, but the repurchase of foreign exchange must happen within six months and be for specific purposes (see Freehill, H&P. Jun-Jly 1998, p.2).

⁴² *Vietnam News* 9/11/98 p.2; *Vietnam Economic Times*, Oct. 1998 p.22; CIE 1998a, p.34.

The surrender requirement saga has continued throughout 1998. It began, on 10 January 1998, with a reminder to commercial banks that enterprises are only allowed to retain sufficient funds in their accounts to meet their operating requirements for that quarter [38/1998/CV-NHNN7]. So enterprises began using multiple bank accounts. In February the Prime Minister declared that enterprises could only maintain one foreign exchange bank account, and that all others had to be closed by 31 March [37/1998/QD-TTg]. That caused an outcry and so was revised to allow multiple bank accounts, but only with State Bank permission.

On 23 February, and 21 March 1998, the State Bank issued implementing Correspondence about Decree 37 [157/1998/CV-NHNN7 & 249/1998/CV-NHNN7]. These stated that enterprises should sell their “surplus” foreign exchange to banks. The spectre of appropriation emerged, and was not much diminished by information provided to Freshfields at the time: “Due to protests the State Bank has informally advised that the implementation of mandatory sales is temporarily suspended” (March 1998).

The “surplus” being sold was, not surprisingly, minimal. The Prime Minister therefore bit the bullet and issued Decree 173/QD-TTg in September. The Decree stated that all Vietnamese enterprises, Corporations and FIEs with priority foreign exchange rights must sell at least 80 percent of foreign currencies collected from their commercial activities within 15 days of obtaining them. Later documents provided the complicated details of implementation [08/NHNN7], and confirmed that Decree 173 would be implemented without exceptions [1297/CP-KTTH].

One commentator said Decree 173 “smacked of desperation, and will just fuel a speculative frenzy” (Le Duc Tan in *Vietnam Economic Times*, October 1998 p.22). “Even if the measures do stop speculation, they will further reduce the liquidity and free flow of funds between buyers and sellers” (G. Thissen, Director of ABN-AMRO bank in *Vietnam News*, 27/9/98 p.3). According, however, to the State Bank Governor Nguyen Tan Dung, Decree 173 is only “a temporary administrative regulation which the Government will repeal when other effective economic solutions come to light” (VIR, 2/11/98, p.18).

Foreign exchange transactions were already being conducted outside of banks. CIE (1998, p.34) reported in early 1998 that there was “anecdotal evidence that a ‘grey’ market in foreign exchange was developing where enterprises with foreign exchange flows were contracting to import goods on behalf of other enterprises, rather than selling foreign exchange into the bank/interbank market at the official exchange rates”⁴³. Decree 173 will strengthen the trends toward “outside” transactions and speculative hoarding, and it will continue so long as the dong is perceived to be over-valued. “Outside” dealers can obtain more dong for their dollars. Banks, it seems, have also been bending and

⁴³ See also *Vietnam Economic Times*, October 1998, p.22.

sometimes breaking rules to charge more for their dollars:

“Immediately after the State Bank admonished five commercial banks for transgressing Viet Nam’s foreign-exchange rules, Vietnamese companies started reporting that they now have to buy their foreign currency at prices higher than the set rate – but without receipts ... banks have been selling foreign currency at a premium above the ceiling price. But previously they issued receipts and explained the difference as a commission or other expenses. Before that, the banks took advantage of the price difference between spot rates and forward rates and signed forward contracts, but delivered the money immediately. Now, they dare not give buyers proof of any higher amount for fear of being punished by the State Bank. Enterprises have to find their own way to account for the extra ‘tea money’, some by listing it as corporate entertainment expenses.” (*Vietnam News*, 9 November 1998, p.2).

Within the banking system, enterprises were slow to sell their foreign exchange to the banks. By mid-October, only US\$388 million of an estimated US1 billion in bank foreign exchange holdings had been sold (*Vietnam News*, 19/10/98 p.4). The fifteen-day grace period for selling of foreign funds has also been utilised to transfer them between accounts when possible (*Saigon Times*, 12/11/98). Enterprises expected losses on exchange rate margins from having to sell dollars and then repurchase them later and, of course, to lose considerably more if the dong was devalued further. There is also uncertainty about their future access to “their” dong-denominated foreign exchange, which is now regulated:

“All these businesses need to do, according to the State Bank, is present sufficient documents and agreements relating to their operations and indicating they need foreign currencies for legitimate business purposes.”
(*Vietnam News*, 19/10/98 p.6)

Decree 173 has made foreign exchange rights of dubious value for FIEs. Some such firms have asked to stop receiving guarantees, which may have prompted the State Bank to specifically announce a list of the 225 FIEs with guarantees who are therefore required to convert 80 percent of their foreign bank account funds into dong (*Saigon Times*, 12/11/98).

The surrender requirement saga is probably far from over. A further twelve commercial banks were recently reprimanded by the State Bank for selling foreign currencies “at prices higher than stipulated” (*Vietnam News*, 25/11/98 p.4). If Decree 173 is indeed only a “temporary administrative regulation”, then it will most likely be followed by more. Well-founded expectations that the dong must devalue will drive this futile regulatory game until either a substantial devaluation does occur, or until there are no dollars left.

Regulations concerning the terms of payment for imports (4500)

Foreign exchange rationing seems to be mainly achieved through the instruments discussed above, namely: LoC deposit requirements; priority access lists; and surrender requirements. Control over what companies could import, however, is in practice very weak. The interviews revealed no concerns relating to the ability to open LoCs, which seems to be still based entirely upon commercial criteria and at the discretion of the banks. If this changes, as it did for foreign loans in September 1998 [897/CV-NHNN7], then it would introduce a new and potent NTB.

The requirement for State enterprises to register their foreign loans with the State Bank had been in effect since 1996 [58/CP and 07/TT-NH7]. In September 1998, however, the State Bank ordered that all State enterprises “must lodge their foreign loan agreement with the State Bank for approval before signing the agreement” [897/CV-NHNN7]. Letters of Credit for over 12 months were also defined as foreign loans. This, if implemented in practice, constitutes a strong regulatory discipline on the capital account transactions of State enterprises. If the foreign exchange situation deteriorates further, the Government may be tempted to introduce such discipline to the current account. Indeed, a recent newspaper report mentions a new Government Decision that bans “banks from selling hard currency to companies that import” picture tubes and electronics spare parts (VIR November 30, 1998. P.2). There may be more to follow.

Chapter 7: Automatic Licensing Measures

Automatic Licensing Measures (5000) [not included ASEAN]

Automatic License (5100)

Import Monitoring (5200)

retrospective surveillance (5210)

prior surveillance (5220)

prior surveillance for sensitive product categories (5230)

Surrender Requirement (5700)

Import monitoring (5200)

retrospective surveillance (5210)

Vietnam's Customs department conducts retrospective surveillance of imports because many tariff rates and exemptions are classified on an end-use basis. This places a significant administrative burden upon Customs, who must try to ensure that imports given tax breaks based on end-use criteria do not "leak" to other uses or users. There are also substantial costs involved for end-users, which must regularly prove that they have indeed consumed the goods for which they were given tax breaks. This Customs monitoring role covers the following areas of tariff reductions and exemptions:

- Foreign invested enterprises and business cooperation contracts receive import duty exemption for fixed assets and some specialised transport equipment. This is based on approval of a project business and import plan (see *Gide, et al.* 1998 p.58 for details).
- Raw materials and goods imported for the implementation of BOT, BOT and BT projects are duty-free.
- Plant and animal species, chemicals imported for agricultural, forest and aquatic projects are duty free.
- "Other goods and materials necessary to encourage investment projects, as provided by the Prime Minister" (*Gide, et al.* 1998 p.58).
- Construction material imports by foreign-invested enterprises are duty free unless they are on the list of "construction materials that can be made locally" (2317/TCHQ-KTTT, 8/7/98).

- Duty drawbacks and refunds, or duty exemptions or 270 day suspension system (9110).
- Temporary import systems, manufacturing in bond procedures or export-processing zones (9110).
- Imports for security, national defence, scientific research and education.
- Various exemptions for Government agencies and foreign diplomatic and aid organisations.

The retrospective surveillance task assigned to Customs is thus considerable, indeed unrealistic. Customs must maintain a complex computer system for the tracking of Customs duties owed (interview 5), as all imports obtain suspended payment for between 30 to 270 days. Bad debts of such Customs duties were reported to have exceeded 500 billion dong (about US\$36 million) in early 1998 (Vietnam News, 16/1/98 p.11).

The complex network of duty exemptions specific to projects, organisations (foreign investments, Ministries), or to promote exports, places an additional administrative burden on Customs. It is clearly the consequence of placing too many objectives upon the one policy instrument. This leads to needless complexity, higher administration costs, and opportunities for corrupt practices.

Chapter 8: Quantity control measures

Quantity Control Measures (6000) [not included ASEAN]

Non-automatic licensing (6100)

- license with no specific ex-ante criteria (6110)*
- license for selected purchaser (6120)*
- license for specified use (6130)*
 - linked with export trade (6131)*
 - for purpose other than exports (6132)*
- license linked with local production (6140)*
 - purchase of local goods (6141)*
 - local content requirement (6142)*
 - barter or counter trade (6143)*
- license linked with non-official foreign exchange (6150)*
 - external foreign exchange (6151)*
 - importers own foreign exchange (6152)*
- license combined with or replaced by special import authorisation (6160)*
- prior authorisation for sensitive product categories (6170)*

Quotas (6200)

- global quotas (6210)*
 - unallocated (6211)*
 - allocated to exporting components (6212)*
- bilateral quotas (6220)*
- seasonal quotas (6230)*
- quotas linked with export performance (6240)*
- quotas linked with purchase of local goods (6250)*
- quotas linked with local supply and demand (6260)***
- quotas for sensitive product categories (6270)*

Prohibitions (6300)

May be selective with respect to commodities and countries of origin/destination

- total prohibitions (6310)*
- suspension of issuance of licenses (6320)*
- seasonal prohibition (6330)*
- temporary prohibition (6340)*
- import diversification (6350)*
- prohibition on the basis of origin (embargo) (6360)*
- prohibition for sensitive product categories (6370)*

Export Restraints Arrangements (6600)

Restrictions imposed by importing country but administered by exporting country; administered multilaterally and bilaterally; requires system of licensing.

voluntary export restraint arrangements (6610)

orderly marketing arrangements (6620)

multi-fibre arrangement (6630)

quota agreement (6631)

consultation agreement (6632)

administrative cooperation agreement (6633)

export restraint arrangements on textiles outside MFA (6640)

quota agreement (6641)

consultation agreement (6642)

administrative cooperation agreement (6643)

Enterprise-specific Restrictions (6700)

selective approval of importers (6710)

enterprise-specific quota (6720)

The discussion of Vietnam's quantity and monopolistic controls becomes rather repetitive to fit within the UNCTAD classification system. The situation, in brief, is that a mix of direct quantity control and monopolistic measures are applied to a small number of important import and export goods. The importing of some other goods is regulated by various line Ministries, sometimes including quantity controls. Trading in most other products is unrestricted, particularly since the recent abolition of import licensing [57/1998/NP-CP].

This chapter and the next therefore detail the wide range of controls employed to maintain state control of trade in a select number of industries. The purpose is mostly to fine-tune protection for domestic producers, either state enterprises or FIEs, although revenue raising and food security are reasons for controlling some products.

Non-automatic licensing (6100)

Licences are required to import some of the "goods regulated to balance the economy" (see section 6200) and for some goods under the authority of specific line Ministries. Government control of trade activity also typically extends down through Corporations to individual state enterprises. Corporations give permission or trade directly on behalf of their member enterprises, but this is a generalised system of control rather than licensing as such. Licences linked to foreign exchange, specified use or selected purchasers are not utilised. Some foreign investment licences, such as for automobile assembly, include local content requirements and can thus be considered *production* licences linked to local production.

b) List of exports and imports subject to licenses

This falls under the category of non-automatic licensing (6100).

The products include:

- Petrol and oil
- Fertilizers
- Motorbikes and their complete assembly components
- Twelve- and under-twelve-seat automobiles
- Steel and iron
- Cement
- Refined and raw sugar
- Writing and printing papers
- Alcohol
- Construction glass
- Products under specialized control by line Ministries, approved by the Government

All these products should have a license issued by the MoT. In addition, products under category line Ministries should have an authorization from relevant Ministries. These goods include chemicals, animals and plants, pharmaceuticals and cosmetics, and media products. As the regulations, including licensing, are predominantly of a technical nature these line Ministry controls are discussed under section 8000 (chapter 10).

Apart from the goods listed above, however, Vietnam does not use import licences to micro-manage trade activity. Export promotion, for example, is pursued through foreign exchange rationing, subsidised credit and tax concessions (internal measures), and through import-duty exemptions. Exporters do not, however, have any special rights to import particular goods.

Licensing of the right to trade has, however, been an important NTB until its removal under Decree 57 [57/1998/ND-CP]. This system of licensing was very much a hangover from central planning. It did not exist to direct the allocation of resources, but rather to ensure that enterprises conducting trading activity were financially viable and had the “required skills” to conduct the business. It was a typically blunt policy mechanism by which the state attempted to control the effectiveness of its enterprises.

What is Decree 57?

On 31 July 1998, the Government of Vietnam enacted the *Decree No. 57/1998/ND-CP* providing details for the implementing the Commercial Law taking effect on September 1, 1998. Before Decree 57, only those enterprises that obtained Export-Import Business Licenses issued by the Ministry of Trade (MoT) were able to conduct export and import activities. To get that license, an enterprise had to meet certain financial and personnel capability criteria. Moreover, the enterprises were confined to trade in products that were specified in their Export-Import Business License.

Decree 57 stipulates that "traders of all economic sectors established under the laws can export and import the products inscribed in their Certificates of Business Registration" (Article 3). MoT Circular 18/1998/TT-BTM of 28 August 1998, however, limits "traders" to enterprises established under the law, thereby excluding cooperative organizations and individuals from direct foreign trade activities.

The only thing enterprises have to do before conducting export and import activities is to register at the Customs Authorities. Enterprises register their Code Numbers and the products inscribed in their Certificates of Business Registration and receive a Certificate of Code Number Registration in return. This is once-for-all registration.

Circular No. 03/1998/TT-TCHQ of 29 August 1998 issued by the General Department of Customs guides the implementation of the Decree 57. This Circular sets out the procedures of Code Number registration by enterprises as follows:

The Code Number of an enterprise conducting export and import activities is identical to the Code Number given to it by Taxation Authorities of the Ministry of Finance in its Certificate of Tax Registration.

Enterprises register their Code Numbers at the Customs Departments of the provinces or cities where their headquarters are located. Upon application for Certificates of Code Number Registration, each enterprise has to present the following documents:

- 1) Certificate of Tax Registration issued by taxation authorities of the Ministry of Finance.
- 2) Certificate of Business Registration issued by provincial Departments of Planning and Investment or the Ministry of Planning and Investment.
- 3) Application Form for Code Number Registration.

The Customs Department will check the correctness of information provided in the Application Form and issues a *Certificate of Code Number Registration of Export-Import Enterprises* to the enterprise within five days.

What will be the impact of Decree 57?

Decree 57 means that virtually all enterprises are now eligible to conduct export and import activities. The previous licensing regime had been fairly restrictive. Table 10 shows that, as of 30 November 1997, only 1,630 out of more than 32,000 domestic enterprises had Ministry of Trade Import-Export Business Licenses, and the majority of these were State-owned enterprises. Further, the range of trading activity for individual enterprises has expanded, as the Business Registration Certificates are not as product specific as the previous Export-Import Business Licenses.

Table 10: The number of enterprises with trading rights as of 30 November 1997

Type of Enterprise	Number
<i>By ownership:</i>	
State-owned enterprises	1,361
Non-State	269
<i>By forms of enterprises:</i>	
Production enterprises	867
of which non-State	219
Trading enterprises	763
of which non-State	50

Source: Tran Dong Phuong (1998b).

Decree 57 therefore implies increased competition in trading activity, and this was the impression gained from the interviews. The situation, however, was already very competitive, aside from the short list of managed products [11/1998/QD-TTg]. Commissions for importing goods were slim, generally one percent or less, and certainly much lower than the prevailing 5 to 7 percent in the early 1990s (McCarty, 1993). The net impact may be less than anticipated, but at least it removes one important and unnecessary bureaucratic hurdle for enterprises involved in trade.

Barter or counter trade (6143)

The Government has authorised barter trade with Laos, and has even specified the commodities that can be exchanged. The principal activity seems to be Vietnamese rice for CKD “Dream 2” motorbikes (from Thailand). CKD motorbike imports are controlled through quotas, and an increase in the quotas was rejected in mid-1998 – except for companies that barter motorbikes with Laos (Vietnam News, 15/9/98). AT the same time, the Prime Minister asked relevant authorities “to quicken the localisation programme for the motorbike industry”, and ordered the “Finance Ministry to issue guidelines for an automobile and motorbike component import tax that accords to their rate of localisation” [1079/CP-KTTH] (p.3).

Quotas (6200)

The export and import products controlled by quotas are:

- Rice exports (seasonal quotas linked to food self-sufficiency concerns).
- Products controlled by quotas allocated to Vietnam by international economic organizations and foreign countries (e.g. clothing export quotas to the EU, Canada and Norway – see 6600).
- Goods “required to balance the economy” as specified in an annual Decision from the Prime Minister.

Rice export quotas are flexible throughout the year depending on seasonal output. The process was outlined in response to WTO questions:

“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 that are able of fulfilling the quota. No form of quota sale or transfer is permitted.” (GoV 1998, p.161).

Rice exporting was significantly liberalised in 1998, and is now much more competitive. Quotas however, remain, despite the waning of food security as a reasonable rationale. Improved internal rice marketing and a decade of rice output exceeding population growth rates have made the prospect of localised famines remote. Continued control by export quota is probably only justifiable, if at all, as a second-best response to other incentive and price distortions, such as the need to maintain control of SOEs and to ration access to hard currency.

Controls on goods “required to balance the economy” are specified in an annual Decision from the Prime Minister. Decision No. 11/1998/QD-TTg of 23 January 1998 specifies the controls for 1998, and Circular No. 01/1998TM/XNK of 14 Feb. 1998 of the Ministry of Trade guides its implementation. Ten products are controlled under these Decisions:

1. Petroleum products

Decision No. 11/1998/QD-TTg sets the quota for 1998 petroleum imports at 7 million tones. The Ministry of Trade is responsible for the administration of importation within the prescribed quota. Petroleum Import-Export Corporation (PETROLIMEX) is assigned 60 percent of the quota. The remaining quota is allocated to other state enterprises specialized in the petroleum business. These enterprises are those determined have adequate facilities for handling petroleum products such as tankers, tanks for storing petroleum, and safety equipment (Tran Dong Phuong, 1998b).

2. Fertilizers

The importation of fertilizers is regulated by Decision No. 12/1998/QD-TTg of 23 Jan. 1998 of the Prime Minister on “The administration of rice export and fertilizer import for the year 1998”, and MoT Circular No. 01/1998TM/XNK of 14 Feb. 1998.

The Decision sets quotas for the importation of fertilizers in 1998 as follows:

Kind of fertilizer	Quota (tones)
Urea	1,600,000
DAP	300,000
SA	250,000
NPK	350,000
KCL	240,000

The Decision also provides that the MoT in coordination with the Ministry of Agriculture and Rural Development (MARD) allocates the quotas to provinces and some selected central enterprises. It is a once-off allocation early in the year. Quotas are allocated to the selected central enterprises and provinces on the basis of the need of agricultural production in each province. The provinces then allocate the quotas to enterprises under their management. Thirty-five state-owned central and local enterprises were selected.

Non-state enterprises could, in theory, also be considered for licenses, subject to the following requirements:

- having fertilizers or agricultural production materials noted in their Certificates of Business Registration;
- having a legally established distribution network; and
- having a sound financial situation, capable of raising funds and import payment for a minimum import amount of 50,000 tones per year.

3. Motorbikes and their complete assembly components

MoT Circular No. 04/1998/TT-BTM of 12 March 1998 regulates the import of IKD-form components of motorbikes for 1998. Enterprises satisfying the following criteria can be licensed:

- Enterprises which have invested in the production or assembly of motorbikes in 1997 and were issued with licenses to import IKD-form components for assembly in 1997;
- Newly invested enterprises of IKD-form assembly, which match the following conditions:
 - Having feasibility studies approved by their relevant direct managing authorities (Ministries or Provincial People's Committees)
 - Written approval by the Ministry of Industry
 - Certified by the Ministry of Science, Technology and Environment on their technical capability of IKD-form motorbike assembly, and on the list of in-imported components and the list of localized components in accordance with the Decision 65/TDC-QD of 16 March 1995 of the General Department of Standardization, Quality and Measurement.

4. Automobiles of up to twelve seats

Decision No. 11/1998/QD-TTg prohibits import of passenger automobiles of up to twelve seats, and MoT Circular 01/1998TM/XNK of 14 Feb. 1998 further specifies import prohibition of the following:

- Automobiles of up to twelve seats, and two and three-wheel motor vehicles, including in complete and SKD forms;
- Used automobiles and two and three-wheel motor vehicle engines;
- Two-wheel motor vehicle frames, except those as parts of imported CKD and IKD components;
- Cabins, chassis and chassis installed with engines of automobiles which are subject to special consumption taxes, except those as parts of imported CKD and IKD components;
- Used ambulance cars; and
- Automobile of dual purposes (i.e. used for the transportation of both passengers and goods).

5. Steel and iron

The following products are temporarily prohibited from import:

- Construction smooth steel rods (HS 721310) of diameter 6-40 mm;
- Construction twist steel rods (HS 721310) of diameter 10-40 mm;
- L-figured steel rods (HS 721600) of height 20-100 mm;
- and I-figured steel (HS 721600) of height under 120 mm;
- Welded steel pipes (HS 7306) not coated and zinc-coated of diameter 14-115 mm;
- Zinc-coated flat steel sheet (HS 7212) of thickness 0.25-0.55 mm and length up to 3,500 mm and zinc-coated and colored wave-profiled steel sheet; and
- Steel wire not coated or zinc-coated (HS 731300) and wire net (7314).

Other steel products can be imported freely.

6. Cement

Circular No. 01/1998TM/XNK estimates demand for imported black cement in 1998 at 200,000 tones, of which 50,000 tones is allocated to the Sao Mai Joint-Venture Company. The importation of the remaining 150,000 tones is permitted only on the basis of permissions by the Ministry of Construction (MoC) “when the need arises” (Tran Dong Phuong, 1998b).

7. Refined and raw sugar

Box 5: Balancing supply and demand for sugar

Edited highlights from Vietnam Investment Review sugar industry articles during 1995-1997 give a flavour to the peculiar process of government-led “market balancing” (and rent distributing):

(30/10/95) “Vietnam’s sugar farmers are bitter over sugar import quotas which have proven to be far in excess of demand and leaving them with no one to sell their crop to this harvest...Dang Minh Tan, General Director of the Vietnamese Union of Sugarcane Production, said sugar prices could fall five or six percent. However, he said further imports could be stored until later in the year in order to even out the pricing and supply...The Government Price Board also submitted a proposal to re-establish the import tax at a rate of 20 percent for raw sugar and 30 percent for white sugar”

(5/8/96) “The Ministry of Agriculture and Rural Development (MARD) has proposed that the Ministry of Trade should temporarily halt importing raw sugar from July 15 following a bumper sugar cane crop in 1995-96...Vietnam expects to produce 1.5 million tonnes of sugar in 1998-2005. Under the Government plan, introduced in late 1994, Vietnam will more than double its current annual production, to one million tonnes by 2000. With current domestic demand at 400,000 tonnes per year, Vietnam may not have to import sugar in 1997, said a ministry official, and could even move into the export market. The international price of sugar... has slumped to US\$221/tonne this year because of falling international demand.” (7/10/96) “The Ministry of Agriculture and Rural Development has called n the Ministry of Trade to halt sugar imports...Last year, Vietnam consumed about 450,000 tonnes of sugar, of which 50,000 were imported. This year, imported sugar was reduced to 20,000 tonnes.”

(9/12/96) “Sugar executives welcomed last week’s announcement that sugar imports would be suspended in 1997, thereby keeping the Vietnamese market protected. ‘The sugar companies assume that market will remain protected but with Vietnam trying to join the World Trade Organisation and APEC, it’s not clear that Vietnam will continue to do that. These companies are definitely taking a risk,’ said a sugar company official...Even before the ban was announced, high tariffs on sugar imports kept the price of sugar in Vietnam more than double the world price of about US\$300/tonne...At present, Vietnam has 16 existing sugar factories with 27 under construction...The Vietnamese sweet tooth and a protected market go a long way towards explaining why foreign sugar companies are scampering to set up factories in Vietnam despite a glut in the world sugar market.”

(3/2/97) “The Ministry of Trade has sanctioned new imports of [10,000 tonnes of] sugar [by two companies] to meet peak demand over Tet despite a MARD pledge made late last year to support Vietnam’s own sugar industry by blocking additional shipments...A January 25 cut-off was announced, after which no more foreign sugar would be allowed into the country.” (14/7/97) “Vietnam plans to import 35,000 tonnes of raw sugar over the next month to help fulfill demand from the sugar refining industry.”

(11/8/97) “The price of sugar could be set to skyrocket due to poor domestic output and delayed imports which are in danger of causing shortages throughout Vietnam in the mid-Autumn festival season, say officials. As scheduled, 5,000 tonnes of refined sugar and 35,000 tonnes of raw sugar should have arrived at Vietnamese ports before August 20. But so far, none has arrived, and authorities fear a rise in the cost of sugar is in the cards...The question of whether sugar should be imported or not is raised every year, although many industry experts believe that often it is not necessary and is based on inaccurate figures on production and consumption.”

Circular No. 01/1998TM/XNK sets the quota of imported sugar in 1998 at approximately 80,000 tones, of which:

- Raw sugar (HS 170111): 60,000 tones allocated to enterprises designated by the Ministry of Agriculture and Rural Development. The shipment should arrive at the latest by 30 August 1998.
- Refined sugar (HS 170191): 20,000 tones. The importation is administered by the MoT in coordination with the Ministry of Planning and Investment and the Ministry of Agriculture and Rural Development, and is permitted only “when market demand arises”.

8. Writing and printing paper

Also by Circular No. 01/1998TM/XNK, imports of the following kinds of paper are temporarily suspended:

- Paper for newspaper (HS 480100);
- Normal writing and printing paper (HS 4802); and
- Paper for making packages (HS 480421).

9. Alcohol

MoT Circular No. 06/1998/TT-BTM of 26 March 1998 sets provisions on the importation of alcohol in 1998. Importers of alcohol bottled in foreign countries are selected from licensed State-owned enterprises that were undertaking alcohol import during 1996-97 of above US\$200,000. Authorised enterprises can only import US\$150,000 of alcohol of 30 proof or more, unless otherwise authorized by the MoT.

10. Construction glass

Circular No. 01/1998TM/XNK sets the approximate import demand for transparent sheet-shape glass of 2-7 mm thickness (HS 7003) at 2.5 million square meters. Enterprises under the management of the MoC are allocated 1.5 million square meters, and other enterprises one million square meters. The quotas are allocated on the first-come-first-served basis.

Prohibitions (6300)

List of prohibited goods in 1998

- Weapons, ammunition, explosives and military technical equipment
- Narcotics of various kinds
- Toxic chemicals
- Reactionary and immoral cultural products
- Firecrackers of all kinds, and toys detrimental to personality education and society's order and security
- Cigarettes (except for personal use in a prescribed amount)
- Used consumer goods (except those of private property of migrants, including of diplomatic officials of foreign countries and international organizations, as well as those in the form of personal luggage the quantity of which is limited)
- Right-handed steering automobiles and motor vehicles (including those in incomplete-knock-down form)
- Used spare parts of automobiles, two and three-wheel motor vehicles, including used automobile chassis with engines⁴⁴.

⁴⁴ Although used automobile engines are included in the list of import prohibition, MoT Circular No. 08/1998/TT-BTM of 28 April 1998 allows for their importation.

Vietnam is also issuing specific lists of goods to be banned if they are, or sometimes if they could be made in Vietnam. In March 1998, for example, the Ministry of Health asked hospitals to draft a list “of indispensable drugs, none of which may be imported if locally made versions are available” (Vietnam Economic Times, August p.28).

Export restraint arrangements (6600)

Garment export quota arrangements are utilised for exports to the European Union (EU), Canada and Norway. EU quotas are issued in batches over the course of a year: 40 percent in September of the year before, 20 percent in December, and 30 percent in March of the actual quota year. The remaining 10 percent being allocated less systematically. The main criteria for obtaining a quota seems to be prior performance in fulfilling them (interview 14), which restricts competition. Given the vigorous black market in selling EU clothing quotas, this rationing criteria does not seem to have much justification in reality. Obtaining an EU shirt quota presently costs US20 cents, which includes both formal and informal payments (interviews 24, 26, & 14), these often involve provincial authorities, which receive quotas, but in reality have little capacity to fulfill them. Apparently plans are being developed to auction 30 percent of some EU quota categories (interview 14). Some trial auctioning have taken place. The trials provoked criticism about “small and medium” enterprises missing out on quotas as larger enterprises could pay more, which was an innovative approach to justifying non-transparent allocation systems (Vietnam News, 11/1/99).

Private companies receive no allocations of EU quotas, so all rents accrue to state enterprises and officials. Private companies need special connections to obtain a share of rents, or otherwise they operate as low-margin subcontracting operations.

In return for their quotas, EU imports to Vietnam across 243 tariff lines are subject to tariff reduction over a ten year period, which started from 1 January 1996 [Decree No. 18/CP] (GoV 1998, p.106). Vietnam will reduce taxes on garments and textiles imported from the EU by 2 percent during 1998-1999, and 3-5 percent in 2000-2001 (Saigon Times, 19/9/98. P.12).

Material imported for re-export is exempted from duties, but this requires a complex system of post-clearance monitoring. “Quota books” are issued whereby imported materials and corresponding exports are recorded by the Customs authorities. Customs officials may visit production sites to measure material used for making a shirt. The whole system is administratively complex and time-consuming and, in the end, easily evaded. Further, anti-smuggling efforts concerning textiles and clothing have been generally ineffective, despite an apparent “informal ban” on fabric imports from China (interview 14).

Enterprise-specific restrictions (6700)

selective approval of importers (6710)

enterprise-specific quota (6720)

All of the quantity controls discussed above involve specifying which enterprises and Corporations have the right to import and how much they can import. These enterprises and Corporations are typically also producing that product in Vietnam, or they may be trading companies belonging to the Ministries involved in making the decision. Some quotas get allocated to provincial authorities. The process for selecting enterprises is not clear. GoV 1996, however, provides some insight into the apparent criteria:

“In principle, the allocation of import quotas for a certain item shall not depend on whether the enterprise to which the quota allocated produces that item. The most important criterion is the enterprise’s ability of implementation. If an importer enterprise is considered to be unable to fulfill the allocated quota, the licensing authority has the right to revoke the quota for allocation to other requiring importers (this is also applied to licences under quantitative management, ensuring the import plan). In case the importation of a certain item cannot be implemented due to objective reasons (e.g. the import duty is too high), the State can consider a reduction of import duties, enabling the importers to fulfill the allocated quotas.” (p.3)

Chapter 9: Monopolistic measures

Monopolistic Measures (7000)

Measures which create a monopolistic situation, by giving exclusive rights to one or a limited group of economic operators, for either social, fiscal or economic reasons

Single or limited number of channels for imports (7100)

All imports or imports of selected commodities have to be channelled through state-owned agencies or state controlled enterprises. Sometimes the private sector may also be granted exclusive import rights.

state trading administration (7110)

sole importing agency (7120)

Compulsory national services (7200)

Government-sanctioned exclusive rights of national insurance and shipping companies on all or a specified share of imports.

compulsory national insurance (7210)

compulsory national transport (7220)

“The present system of allocating quotas and granting permits is aimed essentially at creating a kind of monopoly profit for state-owned businesses and foreign investors”
(Le Bo Linh in Vo Dai Luoc [ed], p.55).

The extent of monopolistic measures depends crucially on the definition of “monopoly” one adopts. It can range from a definition requiring a single importing enterprise, to a more general but in some ways more satisfying concept of “the absence of competition”. This report adopts the latter definition that, as discussed above, required some extension of the UNCTAD classification scheme.

Single or limited number of channels for imports (7100)

As Table 11 shows, Vietnam’s largest fifteen import and export companies conducted only a modest 10.2 percent of total trade during the first five months of 1998. The Food Corporation of Vietnam (FCV) dominates with a 3.7 percent of total trade, and its share of particular agricultural exports must be considerable. Several import-substituting joint ventures are major importers. Seven companies appear in both lists. It would appear that trade as such is not monopolised, but that monopolistic activity may be prevalent for particular products and industries.

Table 11: Largest import and export companies in the first five months of 1998.

<i>Companies</i>	<i>Imports</i>	<i>Companies</i>	<i>Exports</i>
FCV	161,760	FCV	166,842
GMV JV Co	43,486	Vietnam Floating Glass Co.	29,225
Tae Kwang Vina Industrial Co	38,781	Tae Kwang Vina Industrial Co	28,498
VietsoPetro	36,339	Pouchen Vietnam Co. Ltd.	22,758
Honda Vietnam Co.	30,296	VPS	21,464
Vinakyoei Steel JV Co.	21,351	Haulon Corporation Vietnam	20,692
Petroleum Exploration and Exploitation Co.	21,297	Orion-Hanel TV tube Co.	18,432
Sam Yang Vietnam Co. Ltd.	20,923	Daewoo-Hanel	16,046
Orion-Hanel TV tube Co.	20,221	Vedan joint-stock Co. Ltd.	15,266
Chang Shin Vietnam Co. Ltd	19,605	Chang Shin Vietnam Co. Ltd	15,007
Vedan joint-stock Co. Ltd.	17,332	Sony Vietnam Co.	13,379
Pou Yuen VN Joint-Stock Co. Ltd.	16,833	Samyang Vietnam Co. Ltd.	12,838
Pouchen Vietnam Co. Ltd.	15,322	Lac Cuong Footwear Co.	11,922
Wei Xern Sin Industrial Co.	14,414	Sai Gon Steel Pipe Corporation	11,409
My Duc Enamel Tile JV Co.	12,614	VMS	11,243
Total of 15 companies	490,574	Total of 15 companies	415,021
Total imports to end-May 1998	4,833,000	Total exports to end-May 1998	4,024,000

Source: Vietnam Economic News, No. 29. June 1998, p.43.

The high level of direct trading by Government Ministries and provincial authorities is probably of greater concern than the imports by individual companies. The moral hazard posed by this situation is immediate: those who make commercial policies are also making the profits. Table 12 shows that trade is dominated by the state, although the data on provincial and city authorities may be for all businesses in those areas (i.e. not just the Government). Nevertheless, the eight central Government agencies listed conducted 56 percent of Vietnam's exporting, and 48 percent of its importing, during the first three months of 1998.

Table 12: Exports and Imports by Ministries and Provinces, January to March 1998 (US\$ millions)

Ministries and Provinces	Exports	Imports
Hanoi City	62,734	138,758
Government Office	342,701	15,577
Min. of Agriculture and Rural Development	232,688	84,708
Min. of Defence	22,380	91,415
Min. of Fisheries	20,602	41,231
Min. of Health	2,706	33,325
Min. of Industry	158,658	280,430
Min. of Trade	87,412	318,578
Min. of Transport & Comm.	43,483	81,816
Ba Ria-Vung Tau	18,421	57,794
Dong Nai	82,981	118,640
Hai Phong	55,864	77,737
Ho Chi Minh City	342,184	589,478
Long An	51,226	34,150
Tien Giang	51,934	555
Vinh Long	44,196	5,311
	1,620,170	1,969,503
Total trade for the three months	2,138,000	2,720,000
Above list as percent of total trade	75.8	72.4

Sources: *Vietnam Economic News*, No.18 May 1998, and p.44.

Trade totals from *Vietnam Economic Times*, Feb. 1999, p.29.

At the national level, competition to import quantity controlled goods (6000) is highly restricted. For petroleum there are only five designated “focal point” enterprises (GoV 1996, p.186). All other goods that involve quotas and line Ministry management also involve, to varying degrees, monopolistic practices. Similarly, the particular enterprises allowed to export rice or coffee, and to the EU under quota arrangements, involve non-transparent processes of selection. Most “selected” enterprises for quota imports are domestic producers of the same goods, or trading enterprises belonging to Ministries making the policy decisions. The moral hazard problem is obvious. One consequence has been erratic price fluctuations as Corporations and others have been tempted to exploit their monopoly positions. Sugar, discussed above, suffered from “hoarding” and “artificial shortages”. Cement has had a similar experience:

“Just months after being established, the Vietnam National Cement Corporation – one of the first if Vietnam’s new ‘state corporations’ – came under intense government criticism for allegedly exploiting its semi-monopolistic position as the dominant manufacturer and major importer of cement, by hoarding and speculating during the key construction period just before the rainy season.” (Freeman 1996, p.393).

The actual scope of monopolistic activity, however, is probably wider than the list of quantity controlled products. Firstly, the state sector continues to dominate importing, where informal barriers continue to constrain the private sector. Exports of agricultural products also involve state enterprise cartels with little scope for competition. Secondly, localised provincial monopolies are prevalent, which restrict the choices of producers (farmers). Countervailing this pessimistic picture are observations of evident competition between state enterprises: between those owned by Central authorities (Ministries, the Army, the Party) and those owned locally (provincial, sub-provincial). The formation of the corporations, however, has limited this intra-state sector competition. Also, the scope for monopolistic behaviour is directed correlated to the ability of interested parties to control trading activity. Smuggling remains rampant in Vietnam and, like corruption, is largely a consequence of a trade policy environment trying to provide protection and economic rents. Smuggling maintains competitive pressures which for many products, such as bicycles and electronic products, seem to negate most attempts at protection (interviews 7,8,21, and 22).

Compulsory national services (7200)

These do not seem to be much of a problem in Vietnam. The insurance industry remains tightly controlled by state enterprises, despite strong pressures for entry by foreign companies. The struggle for market control seems to be between *Bao Viet*, which holds a virtual monopoly at present, and various Corporations that want to establish their own insurance operations to cover enterprises under their control. For international trade, however, enterprises do seem to have choice. This also applies to valuation services, with about four foreign valuation companies operating in Vietnam.

Chapter 10: Technical measures

Technical Measures (8000)

Measures referring to product characteristics such as quality, safety or dimensions, including the applicable administrative provisions, terminology, symbols, testing and test methods, packaging, marking and labelling requirements and they apply to a product.

Technical Regulations (8100)

Regulations that provide technical requirements, either directly or by referring to or incorporating the content of a standard, technical specification or code of practice, in order to protect human life or health (sanitary regulation); to protect plant health (phytosanitary regulation); to protect the environment and to protect wildlife; to ensure human safety; to ensure national security; to prevent deceptive practices.⁴⁵ [Regulations designed for domestic objectives but which may discriminate against imports]

product characteristics requirements (8110)

Technical specifications prescribing technical requirements to be fulfilled by product.

marking requirements (8120)

Measures defining the information for transport and customs that the packaging of the goods should carry (country of origin, weight, special symbols for dangerous substances, etc.).

labelling requirements (8130)

Measures regulating the kind and size of printing on packages and labels and defining the information that may of should be provided to the consumer.

packaging requirements (8140)

Measures regulating the mode in which goods cannot be packed in conformity with the importing country handling equipment or for other reasons and defining the packaging material to be used.

testing, inspection and quarantine requirements (8150)

Compulsory testing of product samples by a designated laboratory in the importing country, inspection of goods by health authorities prior to release from customs or a quarantine requirement in respect of live animals and plants.

⁴⁵ The regulation may be supplemented by technical guidance that outlines some means of compliance with the requirements of the regulation, including administrative provisions for customs clearance, such as prior registration of the importer or obligation to present a certificate issued by relevant governmental services in the country of origin of the goods. In certain cases, a prior recognition of the exporter or certificate issuing service by the importing country is also required.

Pre-shipment Inspection (8200)

Compulsory quality, quantity and price control of goods prior to shipment from the exporting country, effected by an inspecting agency mandated by the authorities of the importing country. Price control is intended to avoid under invoicing and over invoicing so that customs duties are not evaded or foreign exchange is not being drained.

Customs formalities (8300)

Special formalities (8310) UNCTAD: Formalities which are not clearly related to the administration of any measure applied by the given importing country such as the obligation to submit more detailed product information than normally required on the basis of the customs declaration, the requirement to use specific points of entry, etc.

Customs efficiency (8320): The general processes and efficiency of Customs.

Corruption (8350): Corruption in Customs activities.

Technical Regulations (8100)

Vietnam has adopted European Quality Standards and is a member of various international organisations. Thus, in the opinion of the European Union: "Given the existing regulations and the [Vietnamese] Government's commitment to improve it constantly and consistently, making the WTO's requirements on Technical Barriers to Trade (TBT) should not pose major problems"⁴⁶.

In general, Vietnam does not use technical measures to serve as NTBs. The exceptions to this are some goods controlled by specific Ministries, which are discussed below. Vietnam's protection is achieved through the use of crude policy tools, so there is no need for less transparent policies. The ongoing process of global integration may, however, see a trend towards the use of technical barriers to trade in Vietnam as pressure increases to remove more obvious measures, such as quotas. As elsewhere, if national policy makers are not convinced about the benefits of unilateral trade liberalisation (or are "captured by interest groups), then technical measures become a useful option for maintaining protection.

⁴⁶ See <http://mkaccdb.eu.int/mkdb/sec1.pl>

Quality control measures

During 1994-1996, the number of cases where inspected import shipments of goods that did not meet Vietnamese standards were as follows (GoV 1998, p.173):

Table 13: Import Inspection Results, Vietnam 1994-96.

	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).”
- (GoV 1998, p.173)

State administration of product quality is carried out principally through the two following measures:

- "Registration of product quality" - applied to domestically produced goods.
- "State inspection on quality" - applied to exported and imported goods (Table 14).

“So far, Vietnam has issued about 4,000 national standards⁴⁷, 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.” (GoV 1998, p.174)⁴⁸ Other technical requirements, such as labelling (MoT Decision 636-TM-QLCL), can be demanding but, nevertheless, do not appear designed as barriers to trade⁴⁹.

⁴⁷ Up to “approximately 5,000” according to the Vietnam News, 19/7/98, p.2.

⁴⁸ See GoV. 1998, Annex 5 for a list of “Agencies Carrying out Registration of [Domestic] Products”.

⁴⁹ See <http://infoserv2.ita.doc.gov/tcc/> for a detailing of Vietnamese labelling requirements by the US Trade Compliance Centre.

Table 14: List of agencies carrying out state compulsory inspection for traded commodities

Product	State Inspection Agencies
<i>Imports:</i>	
Milk, Flour, sugar, monosodium glutamate, alcohol and non-alcoholic beverages, food additives.	Quality Assurance and Testing Centres 1,2,3 (MOSTE); Nutritional Institute (MoH); Nha Trang Pasteur Institute (MoH); Public Health Hygiene Institute of Ho Chi Minh City (MoH).
Fertilisers	Quality Assurance and Testing Centres 1,2,3 (MOSTE)
Insecticides, fungicides, herbicides	Quality Assurance and Testing Centres 1,2,3 (MOSTE); North and South Centres for Pesticide Inspection (MARD).
Explosives and related accessories	Laboratory of Mine-Chemical Enterprise of Quang Ninh (Ministry of Industry); Explosives Centre of Military Technical Institute (Ministry of Defence)
Fish (other processed fish), crustaceans, molluscs (processed crustaceans and molluscs)	Department of Aquatic Resource Protection (Min. of Fisheries); The National Fisheries Inspection and Quality Assurance Centre (Min. of Fisheries); Quality Assurance and Testing Centres 1,2,3 [except breeding shrimp] (MOSTE)
Goods under management of MOSTE	Quality Assurance and Testing Centres 1,2,3 [except breeding shrimp] (MOSTE)
<i>Exports:</i>	
Fish (or processed), crustaceans, molluscs (or processed).	Department of Aquatic Resource Protection (Min. of Fisheries); The National Fisheries Inspection and Quality Assurance Centre (Min. of Fisheries); Quality Assurance and Testing Centres 1,2,3 [except breeding shrimp] (MOSTE)

Source: GoV 1998, annex 5. See also MOSTE 2386/1998/QD-BKHCMNT for the latest quality control list, effective 1 January, 1999.

Goods subject to specialized control by line Ministries

The government bodies involved in the administration of foreign trade in specific products include:

- Ministry of Industry
- Ministry of Agriculture and Rural Development
- Ministry of Public Health
- Ministry of Aquaculture
- Ministry of Culture and Information
- Ministry of Labor, Invalids and Society
- Vietnam State Bank
- General Department of Posts and Telecommunications

In addition to import license issued by the Ministry of Trade, the products subject to specialized control should have a written approval from respective Ministries before their importation.

1. The list of products under the control of the Ministry of Industry includes chemicals, toxic chemicals and intermediate materials for their production. The importation of such products is regulated by Decision No. 28/TTg dated 13 Jan. 1997 of the Prime Minister, and Circular No. 03 dated 26/03/1997 of the Ministry of Industry.

2. The list of products under the control of the Ministry of Agriculture and Rural Development includes wild animals, pesticides and materials for their production, veterinary drugs and materials for their production, feeds and materials for their production, and animals and plants for breeding. Regulations on the importation of such products are set in Decision No. 28/ TTg dated 13 Jan. 1997 of the Prime Minister and Circular No. 02/NN-KNKL/TT dated 01/03/1997 of the Ministry of Agriculture and Rural development.

3. The list of products under the control of the Ministry of Public Health includes pharmaceuticals, substances that may cause addiction, pre-substances, and cosmetics that may have impacts on human health, and medical tools and equipment.

The Ministry of Health (MoH) is responsible for managing the import of pharmaceutical products. This is done with the explicit aim of protecting domestic production, probably all of which is done by state enterprises. Only 38 enterprises are authorised to import pharmaceutical products, all of which belong to the MoH (interview 3). Although there was a decision to allow 35 foreign companies to import specified medicines in September 1998 [2434/1998/QD-BYT]. Most raw materials are duty-free, except amoxicilin and ampicillin, which are taxed at 7 percent to protect a Korean joint-venture with Pharmaceutical Factory Number 24 (interview 17).

Pharmaceuticals for retail sale face tariffs and a licensing system. A licence is required to import any particular pharmaceutical product. At present there are some 3,000 registered pharmaceutical products, with licences issued for between one to three years (interview 3). Licence numbers must be printed on boxes, and instructions must be in Vietnamese. Fees are charged for product assessment and registration [65/1993/TTLB]. There is an intention to restrict the number of registrations “of common types” of pharmaceutical products (interview 3). In 1996, a list of 62 pharmaceutical products was announced for which no new licences would be issued [1203/BYT-QD]. Existing import licences continue to be issued, but for only one year periods while an outright ban on importing these products is pending approval of a draft Decree (interview 3).

4. The list of products under the control of the Ministry of Aquaculture includes aquatic breeds, aquacultural feeds and materials for their production and chemicals for the protection of aquatic life. The importation of these products should have a prior written authorization by the Ministry of Aquaculture. 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.

5. The list of products subject to approval by the Ministry of Culture and Information includes printed works (books, newspapers, magazines, paintings, photographs and calendars), cinematic works, recorded audio and video tapes and disks, and certain kinds of special printing equipment. Regulations regarding these products are set in Decree No. 89/CP dated 15 Dec. 1995 of the Government and the inter-ministerial Circular No. 26/TTLB dated 19 Apr. 1994 of the Ministry of Culture and Information and the Ministry of Trade.

6. The Ministry of Labor, Invalids and Society approves the importation of products relating to labour safety such as pressure-resistant equipment (boilers, tanks and containers for storing liquid and gasses under high pressure), lift vehicles, elevators and explosive materials.

7. Vietnam State Bank authorizes the importation of specialized banking equipment

8. General Department of Posts and Telecommunications controls the importation of radio transmitters, receivers, and other radio emitting equipment, telephone exchanges.

The import of machinery and technology transfer

The MoH is also responsible for evaluating imports of pharmaceutical production lines. They have a Medical Equipment Department for this. The response was general confusion when, during an interview, MoH officials were asked the apparently hypothetical question of whether a private sector importer of a pharmaceutical production line required MoH inspection and approval (interview 3). As elsewhere, it was simply presumed that production in this industry would remain a state enterprise activity, with direct ownership controls imposed through the Ministry.

Protection of the mechanical and engineering industry in Vietnam is generally achieved through import bans, as tariff rates are low. Machinery that is being produced in Vietnam is mostly protected from formal competition from overseas. The Sugar Industry Steering Board at MARD, for example, maintains a list of “machinery made in Vietnam” which is not allowed to be imported (interview 13). Protection from second-hand machinery imports was increased in 1998 through a regulation that required such equipment to be “80 percent of its original quality” (2019/QD-BKHCNMT and 491/TB-TDC, 29 April 1998). The fuel consumption of the used machinery was also to be no more than 10 percent greater than the new equivalent. This has required inspections upon importation and after assembly in Vietnam. Several valuation disputes were reported during interviews (interviews 16, 18), but the more general impression was that the new regulations had halted the import of used equipment almost entirely.

A final word on this complicated area involves Technology Transfer contracts, which must be channeled through MOSTE (45/1998/ND-CP, 1 July 1998). If technology transfer is deemed to occur, then the importation is subject to certain exemptions and tax concessions.

Customs formalities (8300)

Special formalities (8310)

The 8300 UNCTAD classification only mentions “special” customs formalities in this section, which can be loosely interpreted as “additional and generally unacceptable import and export requirements”. In this narrow sense, the stamping of certain imported goods constitutes one such NTB. We have, however, adopted a broader definition of the category to encompass a discussion of the processes and efficiency of Customs in general, which should be considered as a potential – if unintentional - barrier to trade.

The stamping of goods has been generally viewed as a failure, although there were some short-term positive effects (interviews 8, 22, & 19). The stamps, which are actual stickers glued to each product, were placed on the entire existing stock of goods in Vietnam through vast campaigns. The idea was that subsequent non-stamped goods could be clearly identified as smuggled. The problem, however, was that the system was quickly circumvented by either the sheer volume of non-stamped goods coming in, or by widespread fraud (buying real or fake stamps, or using stamps again). By one estimate, only one-third of televisions sold have stamps (interview 22).

The stamping of imported bicycles is a good case study. Imported bikes are often smuggled in from China to avoid the 60 percent tariff. Introduced in 1997, stamping caused sales of domestic bikes to double for a few months. Soon, however, smuggling of bike parts increased markedly, and systems to obtain or re-use stamps became established. By mid-1998, the price of Chinese bicycles was only 5-10 percent higher than it had been before stamping (interview 8).

The administrative cost of stamping, for both Customs officials and importers, is substantial and probably not justifiable. This is particularly so when stamps are required on low-value high-quantity products. The stamping of ceramic tiles, for example, requires the importer to remove all 1,600 boxes from each container have them stamped, and then put them back in. There are plans to expand the use of stamping (Saigon Times, 15/8/98), but really what is required is a detailed cost-benefit analysis of the previous stamping efforts.

Customs efficiency (8320)

One company reported that Customs were becoming more pedantic about trade documentation, and that certified copies of original documents were no longer accepted (interview 20). The requirement to inspect 100 percent of both export and import containers is both unrealistic and institutionalises “side payments” (“envelopes”). Many interviews reported the need to “grease the wheels” of customs inspections, or as one put it: “without giving envelopes they are likely to count every shoelace”. Side payments were reportedly modest, but private companies were charged more than state enterprises or other importers “with connections”.

Typical disputes with Customs that came through the interviews included:

- Sheets of fibreglass (1 percent tariff) were defined as “ceiling boards” (10 percent tariff). The company had to pay the 10 percent and then seek assistance from VINACONTROL to argue for a refund.
- Vinyl floor tiles (3 percent tariff) were classified as “ceramic floor tiles” (40 percent)
- Dried sheets of paper pulp were classified as paper.
- Television sets imported as CKD were later classified as IKD and the importing company had to pay the higher tariff retrospectively.

Retrospective payment of higher import duties was reported in several interviews, as were cases of refunds by Customs for wrong valuations - although these normally took the form of equivalent subsidies on subsequent imports by that company. The legal basis for the demand of retrospective payments is unclear, although a pending Decree and the draft Customs Law are apparently designed to explicitly give this authority to Customs (interview 5).

The interviews, of course, only recorded one side of the story. Customs is trying to operate in an environment of generally accepted tax avoidance, and some examples were cited. Much paper is imported as “school paper”, when it is not, to avoid higher tariff rates (interview 9). Similarly, computer parts are sometimes imported as parts for fax machines to obtain a lower tax rate.

The problem is that the tariff schedule is so complex that, evasion and corruption aside, just doing the job requires detailed technical knowledge. Customs officials lack the required technical knowledge, and there is no systematic case study history upon which they can draw. Training in product identification and valuation, combined with stronger supporting information systems is required to better implement the existing tariff schedule. A better option is to simplify the tariff schedule.

Corruption (8350)

Corruption is a serious and pervasive problem for Vietnam's Customs service (Williams, 1997). In mid-1998, the Saigon Times Group held a conference about "administrative reform in Customs" in which participants "singled out the professional ethics of customs personnel as the most important factor in performing their duties" (Saigon Times, 11/7/98. P.29).

Trivial public service salaries make the giving of "envelopes" accepted practice. The problem, however, is that it blurs the distinction between a legitimate payment and corruption. It undermines the authority of formal channels for conducting economic activity. For example, inspection of a container for export requires a payment to Customs of 60,000 dong, for which a receipt is given, but then envelopes for the specific Customs officials doing the job come to about an additional 200,000 dong – without receipts. The informal payments are made openly and on a regular basis, so is that corruption?

Corruption is not a problem exclusive to the Customs Office, and perhaps it should be considered as a form of para-tariff measure. The Police, for example, extract a reasonable income from container trucks that flout regulations in urban areas. Particular licences are required to travel at certain times or in certain areas, but the cost of obtaining such licences may be greater than just paying regular informal payments. Corruption in Ministries, mostly in relation to obtaining quotas of various sorts, was sometimes mentioned in the interviews. Vietnam ranks 74th out of 85 countries listed in the Corruption Perceptions Index⁵⁰: better than Russia and Indonesia, but worse than China, Thailand, India, and the Philippines. There is clearly room for improvement. Vietnam could look to corruption fighting models in the region, such as the Independent Commission Against Corruption (ICAC) in Hong Kong⁵¹, and similar systematic attempts to tackle the problem in Malaysia and Australia.

⁵⁰ See Transparency International at [wysiwyg://contents.28/http/www...rency.de/documents/cpi/index.html](http://www.transparency.de/documents/cpi/index.html)

⁵¹ See www.icac.org.hk

Chapter 11: Internal measures

Investment measures (9100)

These include non-tax domestic policies that, while not explicitly discriminating against imports, provide subsidies in one form or another to selected enterprises or enterprise groups, thereby indirectly influencing the level and composition of exports or imports.

Export promotion (9110)

Investment

Industrial policy (9120)

Taxation concessions (9200)

Procurement (9300)

Under one definition, all internal price distortions caused by Government intervention influence trade and can therefore be considered as NTMs or NTBs. In practice, this definition is rarely applied, as it would, for example, encompass welfare payments. In this section we briefly survey some of the main price distortions caused by Government, although it would take another report to do justice to the subject.

Investment measures (9100); Export promotion (9110), and Industrial policy (9120)

Vietnam typically loads all or most of its policy objectives on each of its policy instruments. Internal taxation and subsidisation, and exemptions are therefore as complex as the external trade regime. Consider the turnover tax: “In addition to generating revenues, this tax is used to promote regional development by providing tax deductions for investments undertaken in rural and remote areas; to influence industrial policy through a reduction in the tax burden for import substitution projects; and to promote equity by imposing higher tax rates on goods and services that are likely to be consumed by high-income individuals” (Shukla & El-Hifnawi 1998, p.10). To this we can add turnover tax exemptions for exporters. It is unclear how, or if, turnover tax exemptions will carry over now that the value-added tax has, reportedly, replaced it.

Price distortions come through soft bank loans, taxation schedules and exemptions and licensing controls. Some examples:

- At the Industry Bank, about 30 percent of loans are made at the preferential interest rate of 0.9 percent per month, instead of at the normal 1.15 percent (interview 28). Preferential loans are given to “strategic and export-producing customers”.
- Fourteen import-substituting domestic products will receive a 50 percent reduction in turnover taxes for one year for “items which take less than six months to produce” and two years “for those taking more than six months to produce” (VIR 9/7/1998, p.10). The Mitsui-Vina PVC joint venture also gets a 50 percent tax reduction [MPI 3070/BKH/TMDV and 1028/BKH-TMDV].
- New foreign investment in remote areas or in “particularly encouraged” activities may receive five years of import tax exemptions. Reductions or exemptions in profit taxes are also possible for FIEs licensed after November 23, 1996 [63/1998/TT-BTC, May 13 1998].
- “Imported fixed assets e.g. specialised equipment, machinery and transportation which cannot be produced locally will be exempted from VAT” [MoF 89/1998/TT-BTC, 27 June 1998). As are all exported goods.
- Foreign investment licences in some areas are restricted only to investors who will export over 80 percent of output [229/1998/QD-BKH]. New ventures in cement joint ventures have been banned.

The box below, which reports on changes to the Law on Domestic Investment, passed by the National Assembly on 7 May 1998, gives a flavour to the complexity of the internal regime of price distortions.

Box 6: Amendments to the Law on Encouragement of Domestic Investment
(Selected quotes from Vietnam Economic News, No.22, June 1998)

Investors in projects within the scope of investment preferences are subject to 50 percent exemption of land-use charges...Land-use tax is also cut by half in the first three to ten years for investment in localities encountering socio-economic difficulties...To boost exports, the amended law also gives corporate tax preferences as bonuses for businesses that are able to export for the first time or find new export markets, and corporate tax imposed on export profits is reduced by half. Businesses that either export large amounts of products or have stable export markets are subject to three-five percent corporate tax rate reductions levied on export profits. In cases when export value is higher than in the previous year, corporate tax on export profits is cut by 50 percent...Investors contributing capital in the form of intellectual property rights, technical know-how or technological processes are exempt from taxes relating to technology transfer. Article 2 also stipulate that income tax exemptions aimed at forming fixed assets for prioritised domestic projects are the same as those applied to foreign-invested projects...foreign invested businesses (not including petroleum) are subject to four profit tax rates of 10, 15, 20 and 25 percent. Foreign-invested businesses are exempt from import tariffs levied on machines and equipment used for forming fixed assets, in the meantime domestic businesses may only have their import taxes reduced or eliminated when necessary. However, ... domestic businesses are exempt from luxury tax, but foreign-invested businesses must, however, pay it, as well as tax on transferring profits abroad. They are also obliged to pay higher rates for electricity, telephones and transport.”

Taxation concessions (9200)

Tax concessions are often granted as part of a package of support for developing particular industries or enterprises. The Dong Da television assembly enterprise is, for example, about to diversify into producing medical equipment. The aim is to replace some of the US\$40 million of medical equipment imported by the Ministry of Health each year, and the deal will involve soft loans and a two-year exemption from turnover tax (interview 22). Such expansion through government patronage remains the norm in Vietnam, which lacks a capital market and long-term commercial bank lending to the private sector.

A final comment about Internal Measures

The extent to which internal policies cause distortions to the volume and structure of trade requires a further research effort. They cannot, however, as noted above, be ignored if the principle of dumping is also embraced. The argument for countervailing measures is quite simply that internal policies created protectionist barriers.

This report has only highlighted the complexity and depth of Vietnam's internal policies relating to trade. Further research would include more detailed consideration of those noted above and the following:

- Domestic content and localisation policies.
- Government and bank lending.
- Government procurement.
- Industrial, state enterprise and regional development strategies.
- Government research and technology policies.
- National systems of taxation and social insurance.
- Foreign investment policies.
- Immigration and Labour policies.

There is scope, therefore, for further research. Indeed, even as you read this it is already dated for Vietnam's trade policies change by the week. The foundation is here, however, upon which others can build: to update, to include a more detailed evaluation of internal measures, and to measure the impact of particular NTBs.

Chapter 12: Conclusion

Vietnamese trade policy reforms during the past few years may be interpreted as generally protectionist, although in some instances they were merely codifying existing policies. The salient feature has really been one of contradictory liberalisation: both protectionist and liberalising measures were being introduced every year. Publishing the CEPT tariff reduction schedule⁵² and abolishing import licences point one way, while foreign exchange controls, and the creeping increase in the use of quotas, bans and surcharges point the other.

It is hard, therefore, to say that Vietnam is firmly on the path to fulfilling its AFTA and APEC trade liberalisation commitments. Table 15 indicates, if anything, that trade policies have become more restrictive since 1996. Most NTBs have become stronger, with only licensing and rice exporting notably weaker. The modest reduction in the scope of the minimum price lists is not remarkable. Tariff protection has increased marginally, but the (unofficial) publication of the CEPT reduction schedule must be counted as a positive move.

Table 15: A summary of actual trade policy directions since about 1996

Type of NTB/NTM	Stronger	Much the same	Weaker
Customs surcharges	X		
Special consumption tax, internal taxes	X		
Minimum price lists		X	
Restrictive foreign exchange	X		
Foreign exchange surrender requirement	X		
Trade licensing			X (Decree 57)
Quotas and prohibitions	X		
Monopolistic measures			X (rice)
Special customs formalities	X (stamping)		
Tariff protection		X (CEPT)	

⁵² It is not clear, however, that this CEPT reduction schedule is a finalised and formal Government pronouncement. According to the *Saigon Times* (18/7/98), the schedule “has been approved by the Government. However, Vietnam will annually submit a specific tariff reduction list to ASEAN.” (p.21).

The future direction for reform also remains unclear. Regional agreements contradict the dominant vision of economic development in the minds of most Vietnamese policy makers which remains largely influenced by their experiences under central planning. A certain fixation with achieving targets and a pervasive lack of faith and understanding of market forces, combine to support a “fine-tuning” protectionist trade policy regime. A recent Official Letter from the Office of Government [4670/VPCP-KTTH, 16/11/98] encapsulates this vision of trade policy as a ministry-level micro-planning tool:

“The Government has asked ministries and relevant agencies to take prompt action to boost exports and restrict imports to reduce the trade deficit between now and the end of the year. This includes the continued revision of import taxes or the imposition of surcharges for such imports as steel billets, clinker, glass, paper, pharmaceutical materials, and tobacco and luxury goods. Foreign currency for importers of these commodities is to be restricted. However, the foreign exchange needs of companies that produce goods for export should be met.” (Vietnam News, 25/11/98, p.5).

Given the above approach to controlling the trade deficit, it is not surprising that Vietnam’s trade regime in 1998 remains restrictive by international standards. The Vietnamese policy framework is still very much a legacy of central planning. The planning vision of development and role of the state stifle the pace of liberalisation. Entrenched interest groups, particularly state enterprises and corporations, slow the liberalisation process even further. Such a cauldron of conflicting ideologies, interests and economic perspectives cannot be expected to produce a “liberal” trading regime in the short term.

Fundamental to the liberalisation challenge is the ongoing role of the State in commercial activities. State enterprises continue to dominate corporate sector activity, and still in an environment of poor accounting and financial controls. This causes the State to rely on blunt “second best” policy instruments for control and micro-management:

“As is the case in other areas of policy, the retention of controls on foreign exchange access seems to reflect the absence of stronger and more direct disciplines on SOEs. For example, it is widely reported that some SOEs took advantage of their Government backing to negotiate long-term letters of credit and used the proceeds for speculative purposes have lost heavily and are defaulting. This suggests that financial and budgetary discipline on SOEs are still weak.” (CIE 1998a, p.10).

The question for outsiders is whether to wait for privatisation (or at least a stronger division between the ownership and management of State commercial activities), or to pursue other options for liberalising trade. In the context of cooperation rather than confrontation, a WTO Working Paper has argued that transitional economies be afforded some form of temporary status within the WTO, which would lead to full membership “once necessary conditions are fulfilled.” (Drabek 1996, p.2). The author argues that “it

is vitally important that the countries [in transition] are effectively integrated into the international trading system and follow the same 'rules of the game' as all other countries. Otherwise, these countries are likely to seek other forms of cooperation that may be based on rules that are inferior to those of GATT/WTO. Some may even be forced to revert back to protectionism and isolationism.... Wrong policies can be introduced now but will be difficult to abolish later." (Drabek 1996, p.3-4).

This study has sought to develop a broad and consistent definition of an NTB. The topology, however, remains far from satisfactory and there is clearly scope for further work in this area. Our definition has extended that of UNCTAD to accommodate the peculiar legacy of central planning policies. It also includes consideration of administrative efficiency (Customs), and of non-border policy distortions as well as border policy measures. But there are further concerns that could have been included. For example, many of those interviewed complained about the lack of clarity and the frequent changes of detailed trade policies (interviews 9, 8, 19, 12, & 20). Such instability and uncertainty can be considerable costs to doing business, or as one trader put it: "protection should be predictable" (interview 19). It would seem that work to develop a more comprehensive definition of NTBs and NTMs would be a useful exercise for applied policy analysis purposes.

The definition we have used, however, has served its purpose. It is clear that Vietnam's NTMs and NTBs are strong and numerous, and that the general direction of trade reforms is unclear. Vietnam is committed to both protectionism and trade liberalisation: it is committed to a "policy headache". This report has also shown that removing NTBs is linked to other sectoral reform, particularly of state enterprises, and that until this happens some "second best" options are necessary.

The next steps are Vietnamese steps. This report has laid down the facts upon which to base a plan for meeting Vietnam's trade liberalisation. Vietnam should formulate and make public a detailed timetable to the year 2006 for removing NTBs covered by the AFTA agreement (like CEPT tariff reduction schedule). This process should also identify, draft and enact the legislative reforms required to implement the AFTA-related NTB removal schedule. Commitment for trade liberalisation needs to be encouraged at the highest levels. Vietnamese officials should study more closely the reasons for existing NTMs and the arguments for protectionist policies. Comprehensive trade liberalisation is in the best economic interest of Vietnam⁵³, but this is going to be very difficult to achieve without developing a greater awareness of this fact.

⁵³ The results of the Uruguay Round liberalisations suggest that in the year 2002, given that the agreed reforms are implemented, net world welfare could be around US\$270 billion greater, in current prices, than it would be if current levels of protection remained unchanged (OECD 1997, p.91).

Appendixes

Appendix 1: The coverage of various Vietnam NTM surveys classified by the UNCTAD codes

Ministry of Trade (1998)

- surcharges (2100)
- import licenses (6100)
- quotas (6200)
- sole importers (7100)
- technical standards (8100)

OECD (1997)

Focus on NTBs that are normally imposed with the specific intent of modifying or restricting international trade.

- voluntary export price restraints (3200 (3600?))
- variable charges (3300)
- anti-dumping measures (3400)
- countervailing charges (3500)
- other PCMs (3100/3200/3800)
- non-automatic licensing (6100)
- export restraints (6600)
- other quantitative restrictions (6700/6800)

European Commission (1997)

Survey results conveyed a convincing image of reinforced non-tariff barriers

- custom valuation (2400 and 8300)
- administrative delays (8300)
- licensing (6100)
- quality or sanitary health requirements (8100)

Coopers and Lybrand (1997/8)

- Compliance with import/export regulations (??)
- Customs valuation of goods (2400 and 8300)
- Price control measures (3000)
- Permits/licenses (6100)
- Monopolistic measures (7000)
- Local industry protection (7000?)
- Safety regulations or laboratory testing (8150)
- Sanitation standards (8150)
- Customs goods classification (8300?)
- Customs declaration and clearance procedures (8300)
- Customs facilitation fees (8300)

APEC (1993) [based on results in ASEAN]

Key NTBs identified within ASEAN

- Bank authorisation (4300)
- Import authorisations (6100)
- Import licenses for non-commercial reasons (6130)
- Licenses for normally prohibited goods (6170)
- Prohibitions, including health and sanitary reasons (6300)
- License for selected importers (6700)
- Sole (state) importing agency (7100)

EC (1998) – Market access database

- Levies and charges (other than import duty) (2000)
- Minimum import price (2400)
- Anti-dumping measures (3400)
- Countervailing duty actions and safeguard measures (3500)
- Import surveillance (5200)
- Import licensing (6100)
- Local content schemes (6142)
- Import quotas (6200)
- Import cartels (6210)
- Import prohibitions (6300)
- Export restrictions (6600)
- State trading enterprises (6700)
- Pricing and marketing arrangements (7200?)
- Registration, documentation, customs procedures (8100)
- Standards and other technical requirements (8100)
- Government procurement (??)
- Subsidies (??)

Appendix 2: UNCTAD NTB Classification

[Complete Form]

Para-Tariff Measures (2000)

Customs surcharges (2100)

Additional taxes and charges (2200)

tax on foreign exchange transactions (2210)

stamp tax (2220)

import license fee (2230)

consular invoice fee (2240)

statistical tax (2250)

tax on transport facilities (2260)

taxes and charges for sensitive product categories (2270)

other (2280)

Internal taxes and charges levied on imports (2300) [not included ASEAN]

general sales tax (2310)

excise tax (2320)

taxes and charges for sensitive product categories (2370)

Decreed customs valuations (2400)

Price Control Measures (3000)

Administrative pricing (3100)

minimum import prices (3110)

Voluntary export price restraint (3200)

Variable charges (3300)

variable levies (3310)

variable components (3320)

compensatory elements (3330)

flexible import fees (3340)

other (3390)

Anti-dumping measures (3400)

anti-dumping investigations (3410)

anti-dumping duties (3420)

price undertakings (3430)

Countervailing measures (3500)

countervailing investigations (3510)

countervailing duties (3520)

price undertakings (3530)

Finance Measures (4000)

Advance payment requirements (4100)

advance import deposit (4110)

cash margin requirement (4120)

advance payment of customs duties (4130)

refundable deposits for sensitive product categories (4170)

regulations concerning terms of payments for imports [see 4500]

transfer delays, queuing [see 4600]

Multiple exchange rates (4200) [not included ASEAN]

Restrictive official foreign exchange allocation (4300) [not included ASEAN]

prohibition of foreign exchange allocation (4310)

bank authorisation (4320)

Regulations concerning terms of payments for imports (4500)

Transfer delays, queuing (4600)

Automatic Licensing Measures (5000) [not included ASEAN]

Automatic License (5100)

Import Monitoring (5200)

retrospective surveillance (5210)

prior surveillance (5220)

prior surveillance for sensitive product categories (5230)

Surrender Requirement (5700)

Quantity Control Measures (6000) [not included ASEAN]

Non-automatic licensing (6100)

license with no specific ex-ante criteria (6110)

license for selected purchaser (6120)

license for specified use (6130)

linked with export trade (6131)

for purpose other than exports (6132)

license linked with local production (6140)

purchase of local goods (6141)

local content requirement (6142)

barter or counter trade (6143)

license linked with non-official foreign exchange (6150)

external foreign exchange (6151)

importers own foreign exchange (6152)

license combined with or replaced by special import authorisation (6160)

prior authorisation for sensitive product categories (6170)

Quotas (6200)

- global quotas (6210)*
 - unallocated (6211)*
 - allocated to exporting components (6212)*
- bilateral quotas (6220)*
- seasonal quotas (6230)*
- quotas linked with export performance (6240)*
- quotas linked with purchase of local goods (6250)*
- quotas linked with local supply and demand (6260)***
- quotas for sensitive product categories (6270)*

Prohibitions (6300)

- total prohibitions (6310)*
- suspension of issuance of licenses (6320)*
- seasonal prohibition (6330)*
- temporary prohibition (6340)*
- import diversification (6350)*
- prohibition on the basis of origin (embargo) (6360)*
- prohibition for sensitive product categories (6370)*

Export Restraints Arrangements (6600)

- voluntary export restraint arrangements (6610)*
- orderly marketing arrangements (6620)*
- multi-fibre arrangement (6630)*
 - quota agreement (6631)*
 - consultation agreement (6632)*
 - administrative cooperation agreement (6633)*
- export restraint arrangements on textiles outside MFA (6640)*
 - quota agreement (6641)*
 - consultation agreement (6642)*
 - administrative cooperation agreement (6643)*

Enterprise-specific Restrictions (6700)

- selective approval of importers (6710)*
- enterprise-specific quota (6720)*

Monopolistic Measures (7000)

Single channel for imports (7100)

- state trading administration (7110)*
- sole importing agency (7120)*

Compulsory national services (7200)

- compulsory national insurance (7210)*
- compulsory national transport (7220)*

Technical Measures (8000)

Technical Regulations (8100)

product characteristics requirements (8110)

marking requirements (8120)

labelling requirements (8130)

packaging requirements (8140)

testing, inspection and quarantine requirements (8150)

Pre-shipment Inspection (8200)

Customs formalities (8300)

Special formalities (8310)

Customs efficiency (8320)

Corruption (8350)

Appendix 3: Interviews conducted for NTB survey

Government Authorities

1. Ministry of Trade (MoT)
24 September
Mr. Pham The Dung, Vice-Director, Import-Export Department
with another officer from the Import-Export Department
2. Ministry of Science, Technology and Environment (MOSTE)
25 September
Mr. Vinh, General Department of Quality Control.
3. Ministry of Health (MoH)
21 September
Ms. Minh and Mr. Ky, Pharmaceutical Controls Department.
4. Ministry of Agriculture and Rural Development (MARD)
23 September
Nguyen Thi Hong, Planning and Management Department, and others from the
Science, Technology and Product Quality Department.
5. General Department of Customs (GDC)
22 September
Dr. Vu Ngoc Anh, Deputy Director of Customs Control & Supervision
Mr. Ngo Minh Tuan Deputy Chief of Multilateral Cooperation Bureau
6. State Bank of Vietnam (SBV)
22 September
Mr. Nguyen Quang Huy, Deputy Director, External Relations Dept.
and 2 more Officers from the International Relations Department.

Non-Government interviews

State Corporations:

7. Vietnam National Tobacco Corporation (VINATABA)
4 September 1998
Mr. Le Viet Duoc, Deputy General Director
8. Union Of Hanoi Bicycle And Motorcycle Factories (LIXEHA)
8 September
Mr. Le Thuoc, President of Vinacycle and General Director of Lixeha.
Mr. Nguyen Cong Hau, Chief Accountant.
Mr. Le Anh Tuan, Manager of Motorcycle & Furniture Trading Dept.
9. Vietnam Paper Corporation (VINAPIMEX)
4 September
Mr. Doan Manh Phuc, Deputy Director General.
10. Vietnam National Cement Corporation (VINACEMEX)
4 September
Mr. Dao Duy Nhan, CEO of Vietnam Cement Import Export Company,
and one Officer of Planning Department of Vietnam Cement Corporation.
11. Union Of Pharmaceutical Enterprises
10 September
12. Vietnam Chemicals Corporation (VINACHEM)
10 September
Mr. Nguyen Van Duc, Import-Export Director.
13. Vietnam Sugar Corporation No.1
15 September
Mr. Tran Van Son, Director, Commercial, Trading and Service Centre
14. Vietnam National Textile Corporation (VINATEX)
8 September
Hoang Ve Dung, Director of Import-Export Department.
15. Vietnam National Leather and Footwear Corporation (LEAPRODEXIM)
25 September
Mr Do Thanh Hong, Deputy Director General.
16. Vietnam National Sundries Import-Export Corporation
Mr. Cao Van Thuy, Manager of Import-Export Department

Trading companies and production enterprises:

17. Vietnam Medical Products Import-Export Co. No.1 (VIMEDIMEX, HANOI)
11 September
Mr. Vu Quang Duong
18. Vietnam Chemicals Import & Export Corporation (VINACHIMEX)
10 September
Mr. Do Manh Duc, Director of Planning Department.
19. Vietnam National Construction and Engineering Corporation (CONSTREXIM)
4 September
Madame Tran Ha Thu, Director of Import Department.
20. Vietnam National Construction and Engineering Corporation (CONSTREXIM)
18 November
Madame Tran Ha Thu, Director of Import Department.
21. Starlight Electronics Co. Ltd. (SEL)
8 September
22. Dong Da Electronic Co. (VIETRONICS Dong Da)
8 September
Mr. Nguyen Van Quyet, Manager of Import-Export Department.
23. Hai Ha Confectionery Company (HAIHACO)
15 September
Mr. Nguyen Manh Tuan, Commercial Executive
24. Garment Co. No.10 (GARCO)
17 September
Le Huu Hai, Sales Executive, Planning Department.
25. Vietnam Import-Export and Trade Service Co.
26. Mangharams (HK) Ltd., Hanoi Representative Office (Garment buyers)
15 September
Ngo Phuong Anh, Manager

Commercial banks and others:

27. VIETCOMBANK
17 November
Nguyen Thu Ha, Deputy Executive Director, Operations Center.
Tran Phuong Mai, Deputy Director, Import Payment Department.
28. Industrial & Commercial Bank of Vietnam (INCOMBANK)
17 November
Nguyen Van Khien,
Pham Van Anh, Expert of Credit Department,
Tran Thi Kim Yen, Deputy Director, International Payment Department.
29. Vietnam Chamber of Commerce and Industry (VCCI)
16 November
Mr. Nguyen Gia Hao, Director General, Business Consultancy Department
30. Vietnam Chamber of Commerce and Industry (VCCI)
17 November
Mr. Hoang Anh Dung, Officer of International Relation Department
31. Ray Mallon
Economic Consultant
UNDP-CIEM State Enterprise Reform Project

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