Vietnam-Japan Joint Initiative to Improve Business Environment with a view to strengthen Vietnam's Competitiveness

Report

December 4, 2003

Japan and Vietnam had established the diplomatic relations on September 21, 1973. However, due to the various reasons pertaining to the international relations in this part of the region during 70s and 80s, it was not until a decade ago that the Japan-Vietnam bilateral relations started to develop substantively. During the past ten years, Japan has contributed enormously to Vietnam in various areas, such as economic cooperation, trade and investment. Japan has particularly played an important role in the social and economic development of Vietnam, inter alia, its industrial and agricultural growth and infrastructure development.

Now, in this region we are living, at the start of a new century, time has got started rattling in search of a new paradigm to dictate the economies in the region in the years to come. AFTA, after a long period of trials and errors, has now been taking its shape, albeit fledgling. While each of ASEAN member countries is striving to secure its own economic benefits from its economic activities, it is commendable that ASEAN as a group has also been deploying its collective efforts on many fronts, such as FTA's with non-member partners such as Japan.

In this large movement covering the entire region, Vietnam needs to reinforce its competitiveness through drawing and attracting as much FDI as possible, which is one of driving forces for other ASEAN economies.

In April 2003, H.E. Mr. Phan Van Khai, Prime Minister of Vietnam, and H.E. Mr. Junichiro Koizumi, Prime Minister of Japan, met in Tokyo and launched this Vietnam-Japan Joint Initiative. This Initiative is distinctive in gathering officials responsible for decisions in governments as well as people from the private sector. It is also distinctive in making leaders take initiative on the identified issues and thereby showing the world that Vietnam is drastically improving the investment environment.

The improvement of investment environment is in the interest of all parties concerned in the development of Vietnam as well as in the interest of Vietnam as a prime beneficiary. The Action Plan resulting from this Joint Initiative will benefit not only the Japanese investors but also other foreign and local investors alike.

Vietnam and Japan intensively worked on this Joint Initiative and finally completed this report, which can be considered as a product of wisdom and effort of both countries. This report will then be submitted to the Prime Ministers of both countries at the bilateral summit meeting to be held on December 10, 2003, on the occasion of the Japan-ASEAN Commemorative Summit in Tokyo.

The Government of Vietnam and the Government of Japan declares their strong determination and willingness to implement the Action Plan.

Signed on December 4, 2003, in Hanoi, Vietnam

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ACTION PLAN

1. Significance and Purpose of the Japan-Vietnam Joint Initiative

On 7th April 2003, Prime Minister of the Socialist Republic of Vietnam H.E. Mr. Phan Van Khai and Prime Minister of Japan H.E. Mr. Junichiro Koizumi agreed and decided to launch "the Japan-Vietnam Joint Initiative to Improve the Business Environment with a view to strengthening Vietnam's competitiveness" herein after referred to as "the Initiative".

The Initiative aims to strengthen Vietnam's economic competitiveness through promottion of FDI flow into Vietnam. A particular objective of the Initiative is to share and implement specific and prioritized polices and measures to be implemented for the further economic growth of Vietnam, by fully mobilizing the ownership and commitments of the two governments (Vietnam and Japan) through intensive discussions and the participation of high-ranking leaders from both sides. The most significant feature of the Initiative is to form the Action Plan under which the following two key issues will be addressed. The Action Plan will be implemented vigorously and monitored properly.

- Strengthening competitiveness so that Vietnam can win in competition amongst other Asian countries and become a leader in ASEAN, and
- Attracting foreign investment – an indispensable factor in strengthening competitiveness.

The Joint Steering Committee established under this Initiative herby presents the Action Plan commissioned by the leaders of Socialist Republic of Vietnam and Japan.

2. Present Environment Surrounding FDI in Vietnam

Vietnam established its Doi Moi policy at the end of 1986 and has been making efforts to move from a planned economy to a market oriented economy, a so-called 'transition into a market-oriented economy'. The Vietnamese government has strengthened its policies which focus on promoting FDI and private sector development with a view to changing its economic structure which was previous led mainly by a structure of state-owned-enterprises. As a result of this shift and these policies, Vietnam has succeeded in attaining high economic growth levels since 1992, especially in comparison with other neighboring ASEAN nations, due to the growth of FDI and the private sector. During the middle of the 1990's, Vietnam achieved economic growth levels of 10%. This declined due to the impact of the Asian currency crisis in 1998 and in 1999. However, growth rates recovered to 6.7% in 2000, 6.8% in 2001 and 7.0% in 2002 thanks to an expansion in production by private enterprises enhanced by the enacting of Enterprises Laws, and the recovery of foreign direct investments.

Compared with other ASEAN countries, the amount of Japanese FDI in Vietnam is still very low. Not only the value of the registered capital but also Vietnam's share in all the FDI from Japan has decreased compared to Vietnam's neighboring East Asia countries. After the Asian currency crisis, many East Asia countries introduced new and attractive incentives to attract FDI, in particular Japanese FDI, which has been the main foreign investor in Asia. Vietnam is currently losing in the competition for Japanese FDI, with neighboring countries attracting FDI from Japan. In order to strengthen its industrial competitiveness edge and enhance its economic growth towards the future, Vietnam should adopt the following policy options which are very important from the viewpoint of exploring the Vietnam's existing merits. Vietnam also needs to strengthen its characteristics as an attractive venue for manufacturing companies amongst ASEAN countries which are moving rapidly to towards economic integration and interdependent economic relations (i.e. supply chain in ASEAN wide).

- Further FDI promotion into areas Vietnam holds a competitive edge, through the drastic improvement of Vietnams FDI environment.
- Intensive assistance for the private sector and SMEs in management, technology, and finance.
- Establishing strategic industrial development policies with a view to promoting FDI and developing the private sector and SME sectors efficiently
- Solving the problem of "good governance" including red tape, corruption, etc.

In this context, substantial and rapid policy change and action by the Vietnamese government to improve the investment environment in Vietnam is the key to ensuring sizable FDI recovery which is essential for Vietnam's nation building.

3. Basic Issues of FDI Promotion in Vietnam

Strategies to increase FDI in Vietnam focus mainly on the following two components:

(1) Investment promotion strategies which give potential investors attractive and favorable conditions and draw favorable attention to Vietnam
(2) Investment environment improvement to remove a number of impediments which hinder investors' daily business operations

From the viewpoint of investment promotion strategies, it is the most important to propose attractive investment conditions that are to be able to compete with that of China and neighboring ASEAN countries for potential investors. As for investment environment improvements, the following problems should be mentioned.

- Streamline investment-related regulations which impede foreign company business
- Improvement of basic public services related to the daily business operations of investors'
- Improvement of policies introduced into each industry

Based on these ideas, issues are categorized as follows:

(1) Reconsideration of regulations related to investment
(2) Capacity building of implementing authorities (i.e. customs offices, tax offices, courts, IP related authorities and statistics related organizations)
(3) Improvement of investment related institutions (i.e. judiciary and legal system

metrology and industrial standardization system)

(4) Improvement of economic infrastructure (i.e. issues of urban transport and functions, transport and distribution efficiency, the power sector, improvement of international telecommunications, issues of waste water and industrial solid waste, active use of JBIC's international finance)

With a view to attracting more FDI inflows to Vietnam, it is also important to address properly the problems and efficiencies facing the existing investors in Vietnam as potential investors are very interested in the business results of the existing investors.

4. Concrete Measures to Promote Foreign Direct Investment

"The 21st century is the century for Asia" – this has been a well-known phrase for some time. Many people first doubted that Asian countries could realize a full economic integration because of their political, historical and cultural diversity. Asian countries are, however, now moving rapidly toward borderless economic integration and reorganization. This is especially the case in East Asia, where AFTA is making fast progress with an East Asian Free Tree Zone within its scope.

Vietnam is located in the center of this dynamic region and now is on the process of exploring such economic dynamism for the promotion of Vietnam's own economic development. Vietnam has long been praised as "a rising dragon of ASEAN" and has been viewed as a key player for further integration of ASEAN, but Vietnam has not sufficiently adjusted its internal business environment to make use of this dynamism. Needless to say, the future direction of Vietnam, such as whether Vietnam can sustain its fast economic growth and catch up with the other more developed neighboring economies, largely depends on the speed of attracting FDI to Vietnam, because FDI is the single most important factor for economic growth in Asia.

In this regard, the fundamental challenges of Vietnam to attract more FDI and Japanese investors' are mentioned above. A number of detailed and advisable proposals have also been submitted from Japanese investors. Some of the actions included in the action plan may not be easy to implement. They will require a strong political commitment for implementation as domestic conflict and frictions are to be expected during the implementation process in Vietnam.

Acknowledging these points, the Government of Vietnam and the Government of Japan declares their strong determination and willingness to implement the following actions.

Part 1: Establishment and implementation of FDI attraction strategy

Item 1. Development, introduction and utilization of supporting industry in

Vietnam

1. Development of Supporting Industry

Government of Vietnam will take the following measures immediately in order to develop a supporting industry in Vietnam.<MPI>

(1) Establishing a master plan for supporting industry development
(2) Establishing business management & technological training centers and technical assistance centers for SMEs.
(3) Establishing a data bases on local supporting industries
(4) Developing some industrial parks particularly for supporting industry enterprises.
(5) Applying preferential measures for supporting industries (assistance in finance, training and human resources development, receiving technical information, taking part in products introduction fairs)

The Government of Japan will examine the future cooperation to assist the Vietnamese side in implementing the following measures.

(1) Policy advices for the development of supporting industries (i.e. establishing the master plan for supporting industry development)
(2) Technical assistance (establishment of a Technical Assistance Center for SMEs, dispatching technical experts for round technical diagnosis)
(3) Management diagnosis
(4) Exchanges between SMEs (trade fairs, business talk missions, exchanges between Japan's SMEs and Vietnam's SMEs)
(5) Providing technical information (list of local enterprises, organizing seminars for each sector, matching between FDI and local enterprises, "Reversal trade fair" which will provide foreign assemblers seeking local parts and material makers to meet assemblers demands)

The Government of Japan will also examine the possibility of assisting in the facilitation of Japanese FDI supporting industries to invest in industrial parks designated by the Vietnamese side.

2. Attraction of FDI supporting industries

In order to strengthen tax incentives to investment by supporting industries, the Government of Vietnam will strengthen tax incentives to certain types of supporting industries through issuing a new CIT guideline decree. The Government of Vietnam will issue the new CIT implementing guideline decree as soon as possible.<MPI, MOF:WT7>

3. Utilization of FDI supporting industries

(1) [Calculate parts and materials supplied by EPZ/EPE status enterprises into local content ratio]

Even in the case where assembly companies purchase parts or materials from enterprises with an EPZ or EPE status, the Government of Vietnam should allow them to calculate such parts or materials into local content ratios the Government of Vietnam will issue the guidelines for calculating local content ratios in such cases within 2004. <MPI, MOF: WT9>

(2) [Simplify procedures for EPZ/EPE status enterprises in domestic sales]
In the case where EPZ/EPE status enterprises sell their products to assembly companies that sell their products to the domestic markets, the Government of Vietnam will apply simplified procedures (similar to the procedures for enterprises within the bonded transactions filed in some foreign countries including Japan) (within half a year or so). <MPI, MOF: WT9>

(3) Import tariffs applied to EPZ/EPE status enterprises on the occasion when they sell their products to domestic market.
The Government of Vietnam will provide regulation for application of CEPT/AFTA to domestic sales of EPZ/EPE enterprises as far as the products meet the conditions for CEPT application.<MOF:WT9>

Item 2. Clarification of corporate income tax incentives for FDI Companies

1. Keeping tax incentives in accordance with the Law on the Foreign Investment: The Government of Vietnam affirms that the coming revision of the CIT law doesn't have any adverse effects on the current preferential tax treatment articulated in the Law on the Foreign Investment, in sum 10%, 15%, and 20%. [Immediate execution]. In addition, it should be articulated in the new CIT implementing guideline decree [as soon as possible before the end of 2003.<MOF: WT7>

2. Securing current tax incentives for existing investors: The Government of Vietnam affirms that the coming revision of corporate income tax does not have any adverse impact on the current tax incentive scheme given to existing investors. [Immediate execution]. Moreover, the new implementing guidelines issued later shall articulate this as soon as possible before the end of 2003.<MOF: WT7>

Item 3. Improvement of Personal Income Tax

Recognizing the important role of PIT as a basic tax, the Government of Vietnam should firmly put into practice the following action plans as well as increasing the minimum tax basis and enlarging tax coverage.

1. Reducing the maximum tax rate: In 2004, the Government of Vietnam will submit the draft amendment on the Ordinance on Higher-income Earners to the National Assembly, which will reduce the highest tax rate in view of enhancing Vietnam's competitiveness of investment attraction against neighboring countries. [the next revision of the PIT Ordinance within 2004] <MOF: WT7>

2. The Government of Vietnam will submit the draft of the new PIT Law to the National Assembly within 2006, which will introduce a personal allowance or deduction system suitable for Vietnam. [issuing PIT Law within 2006] <MOF: WT7>

The Government of Japan will examine the future cooperation of assisting the Vietnamese side to implement the above mentioned measures.

Item 4. Strengthening of FDI promotion activities (One stop service for FDI)

The Government of Vietnam will take the following action plan in enhancing the newly established FDI related agencies and departments.

1. The Government of Vietnam will take necessary budgetary measures for FDI promotion activities from the annual budgets of relevant ministries and peoples committees. <MPI: WT1> The Ministry of Finance will be responsible for the specific guidance to implement this regulations articulated in the Resolution No. 09/2001/NQ-CP issued on 28 August 2001.

2. In the cases of conflicts related to licensing or trouble-shooting, MPI as the contact point will co-ordinate with related ministries to ensure the legal and practical application of measures consistent with FDI laws or international agreements.<MPI:WT1>

The Government of Japan will examine the cooperation for strengthening the following assistance to the Vietnamese government in implementing FDI promotional activities.

1. Dispatching regular investment missions to Vietnam in cooperation with MPI
2. Assistance to the Vietnamese side in organizing FDI seminars in Japan for each sector (especially for supporting industries)
3. Capacity building to MPI (FDI agency and three Investment Promotion Centers in North, Central and South of Vietnam) related to FDI promotion activities and the one stop service agency.
4. FDI related legal assistance with a view to observing international commitments (i.e. Vietnam- Japan Investment Agreement)
5. Assistance to Vietnamese side in the establishment of the investment promotion service office in Japan through JETRO's scheme.

Item 5. Establishment of Strategy and M/P for Basic Inductries

1. The Government of Vietnam commits itself to giving foreign investors room to make comments in the process of establishing "Strategy" and "MP" [immediate execution]

2. The Government of Vietnam establishes "Strategy" and "MP" for basic industries as soon as possible in accordance with import tariffs and tax policies.

The Government of Japan will examine the future cooperation of assisting the Vietnamese side in implementing the above mentioned measures. <MPI: WT1>

Item 6. Visa waiver for short-term stay

The Government of Vietnam will grant visa waivers for short-term stays, possibly including business purpose, to Japanese citizens as soon as possible with an earliest timing of 2004. <MOFA>

Part 2: Specific policies and measures for drastic investment environment improvement

1) REGULATIONS RELATED TO INVESTMENT

Item 7. Schedule of establishment of commercial presence and deregulation for foreign trading companies
1. The Government of Vietnam will follow the road map described in the Vietnam - Japan Investment Agreement to approve the commercial establishment of FDI in the field of manufacturing, trade and distribution (including import and distribution by manufactures), finance, insurance, telecommunication and advertisement. The Government of Vietnam will issue implementing guidelines for the commercial establishment of FDI in the field of trade and distribution trade as soon as possible after enacting this agreement. <MPI:WT1> (Proposed Note of Japanese side: As for the preferencial tax for financial and other service sector, it should be paid special attention no to be harmful tax under the OECD rule) 2. The Government of Vietnam will loosen the limited function of branch offices of Japanese Sogo-Shosha, integrated general trading companies. The Government of Vietnam will submit the amended Commercial Law to the National Assembly in order that the number of commodities to be dealt with in imports and exports is enlarged and the rule of import-export balance is less restrictive according to regional and international economic integration schedule of Vietnam.<submit to the National Assembly as soon as possible in 2005> <MPI, MOT: WT1>

Item 8. Removal of the restrictive investment rule
Upon the date of the enactment of the Vietnam-Japan Investment Agreement, the Government of Vietnam will eliminate 80% of export requirements (except in some sectors) and also unanimous or consensus rule. The Government of Vietnam will eliminate local content requirements and dual pricing systems according to the roadmap of the Investment Agreement. <MPI: WT1>

Item 9:Clarification of sectors where 100% FDI Companies are approved

The Government of Vietnam will take the following steps. <MPI: WT1>

1. To submit to the National Assembly to stipulate that 100% FDI is approved in all sectors except those stated within a "negative list" on the next revision of the Foreign Investment Law.

2. To issue a more detailed "negative list" through a revision of Decree 27 on the occasion of the next revision of the Foreign Investment Law.

Item 10. Labor Code

<Indefinite term labor contract>

1. The Government of Vietnam will continue to disclose more examples of labor disputes to FDI companies after 2004, and arrange seminars on labor issues at a central level with investors so that the relationship between employers and employees will further be improved. <MOLISA: WT6 >

2. The Government of Vietnam will examine the possibility to remove this restriction of indefinite contracts in the next amendment of the labor code by considering the cost of labor, the opinion of enterprises and the regulation of other countries.<MOLISA: WT6>

<Overtime compensation on annual leave>

The Vietnamese government will report to the National Assembly concerning the necessity and appropriateness of the regulation (compensation for annual leave) in the next amendment of the Labor Codes.<MOLISA: WT6>

Item 11. Land Law

The Government of Vietnam revised the Land Law including the following points at the last session of the National Assembly in 2003 <MONRE: WT4>

1. All FDI companies may obtain land use rights with a lump-sum payment.

2. Land use rights and attached assets (buildings, etc.) which have been leased with a lump-sum payment may be leased, used as investment in kind or may be mortgaged against loans from credit institutions permitted to operate in Vietnam.

3. The assets (buildings, etc.) bought but attached to land which are being leased on annual payments may be assigned, or may be mortgaged against the types of loans mentioned above.

4. In cases where the land use duration is 50 years (70 years); it may be extended for another 50 years (70 years).

Item 12. Abolishment of import plan registration for parts and raw materials

The Government of Vietnam will abolish the import plan registration system for parts and raw materials. <within 2 years> <MOT: WT9>

Item 13. Promotion of Technology Transfer

1. As a result of the on-going work to revise the Decree 45 (related to technical transfer), the Government of Vietnam will abolish the ceilings on the value of technology transfer agreements applied to private companies [executes within one year] and loosen towards even abolishment of the ceilings on the value of technology transfer agreements applied to companies which have the participating interest of State-owned enterprises.<MOST: WT5>

2. The Government of Vietnam will submit to NA the draft of Civil Law to loosen towards even abolishment of the ceilings on the period of technology transfer agreements on the next revision of the Civil Law. <MOST:WT5>

3. The implementation of educational activities for relevant people in Vietnam concerning the value of and the compensation for intellectual properties, such as technology and know-how. <MOST: WT5>
   - Both sides will jointly hold seminars on technology transfer and intellectual property rights in several major cities in or around June 2004 with the participation of relevant government officials and business executives in Vietnam.

The Government of Japan will examine the possibility of assisting the Vietnamese side in implementing the abovementioned measures.

4. Tax deduction for technology transfer
   In order to encourage the technology transfer, the Government of Vietnam will consider introducing tax incentive schemes of a specified duration promoting technical transfer on the occasion of next revision of Decree 45. <MOF, MOST: WT5, WT7>

Item 14. Removal of the deductibility limit on marketing and adverting expenses

1. The Government of Vietnam will consider the possibility of removing the deductibility limits on marketing and adverting expenses during the amendment of the CIT law in accordance with the roadmap being implemented under international commitments in integrating into international economy. <MOF: WT7>

2. The Government of Vietnam may examine the definitions of 14 expense items for taxable income in the CIT guideline decree in 2004. <MOF: WT7>

Item 15. Abolition of bidding requirements in the placement of orders for equipment, buildings, etc. by joint ventures in which the participating interest of a Vietnamese enterprise is 30% or more in the form of the value of the land use right

The Government of Vietnam will assign the concerned ministries to draft amendment of Bidding Ordinance and submit it to the Standing National Committee of the National Assembly to abolish bidding requirements in the placement of orders for equipment, buildings, etc. by joint ventures in which the participating interest of Vietnamese enterprise is 30% or more in the form of value of the land use right as soon as possible. <MPI:WT1>

Item 16. Regulations on fund operations abroad by foreign bank branches and insurance companies

The Government of Vietnam will abolish the restrictions on overseas fund operations by foreign bank branches, and insurance companies, as soon as possible in accordance with international commitments. <SBV: WT8>

Item 17. Abolishment of capital requirements according to the Foreign Investment Law

1. From a view point of assuring flexibility in business operations, the Government of Vietnam will submit a draft of the amended Foreign Investment Law to the National Assembly allowing FDI to decrease their capital under specified conditions during the next revision of the Foreign Investment Law. (remark: now capital decreases are strictly limited) <MPI: WT1>

2. The Government of Vietnam will submit the draft of amended Foreign Investment Law to the National Assembly relaxing minimum capital requirements (at least 30% at present) during the next revision of the Foreign Investment Law. <MPI: WT1>

Item 18. Definition of total investment in relation to imported fixed asset

The Government of Vietnam will promulgate the legal document to clarify that depreciation should be considered in relation with the import of a fixed asset. [half year] <MOT: WT9>

2) CAPACITY BUILDING OF IMPLEMENTING AUTHORITIES

Item 19. Ensuring transparency, reliability, harmonization and speed-up, the simplification of customs procedures

The Government of Vietnam will take the following measures. <MOF: WT9>

1. Early ratification of the Revised Kyoto Convention
2. Smooth implementation of new institutions
3. Complete execution of suitable customs clearances
4. Establishment of enforcement institutions and inspection methods against illegal trade
5. Promotion of cooperation and coordination structures amongst administrative organizations
6. Improvement of customs office staff quality
7. Publishing information on custom procedures
8. Step-by-step implementation of customs value definitions according to GATT/WTO: gradually reducing the goods whose customs values are defined by minimum prices.
9. Study and promulgate regulations on customs procedures relating to protection of intellectual property rights at borders.
10. Implementation of Advance Classification Ruling System.

The Government of Japan will examine the future cooperation of assisting the Vietnamese side in implementing the abovementioned measures.

Item 20. Tax administration system

1. The Government of Vietnam will proceed with continuous improvements in the tax administration (effectiveness, upgrade of tax system, level-playing-field between local enterprises and FDI etc). The Government of Vietnam will make a number of case studies to trouble shoot the problems felt with the participation of Japanese ODA experts'.<MOF: WT7>

2. In terms of ODA VAT refund and tax treaty matters, the Government of Vietnam could develop a "Public Consulting Desk" to solve these issues within the central ministry as soon as possible. <MOF: WT7>

The Government of Japan will examine the future cooperation of assisting the

Vietnamese side in implementing the modernization of tax systems (such as capacity building for tax officials, tax windows and tax investigations).

Item 21. Improvement of the administration of intellectual property rights

1. The Government of Vietnam will continue to advance the simplification of the procedures of application for IPR. The Government of Vietnam will set up a data reference and management system on the internet (website) in order to provide necessary information to enterprises (within two year). The Government of Vietnam will improve the function and capacity of NOIP as the contact point, where inquiries of all kinds regarding IPR coming from existing and potential investors will be responded to promptly (within half a year). <MOST, MPI: WT5> The Government of Japan will examine the future cooperation of assisting the establishment of a data reference and management system on the internet (website).

2. The Government of Vietnam will amend Decree No. 54/2003/ND-CP, so that the treatment of trademarks is kept under NOIP [immediately]. <MOST: WT5>

3. The Government of Vietnam will become a member of the Madrid Protocol as soon as possible, taking the priority of other international commitments including WTO-TRIPs into consideration. The Government of Japan will examine the future cooperation of assisting the Vietnamese side in becoming a member of the Madrid Protocol. <MOST: WT5>

Item 22. Enforcement and protection of intellectual property rights

1. The Government of Vietnam will strengthen the investigation and exposure of counterfeit goods at three levels, such as the import, production and distribution (market) of goods. The Government of Vietnam will introduce concrete measures including strengthening of the Steering Committee 127 which is to conduct and monitor all the IPR enforcement activities and provide results of investigations on infringement cases (including suspected cases) upon investors' requests. <OOG:WT5>

The Government of Japan will examine the future cooperation assisting the Vietnamese side to strengthen the investigation and exposure of counterfeit goods including PR activities on the infringement of IPR.

2. The Government of Vietnam will conduct a campaign to investigate and expose counterfeit goods at a national level in 2004. The Government of Vietnam will amend Decree No.12/1999/ND-CP regulating sanctions against IPR violations, so that penalties against IPR infringement will, in principle exceed the benefits gained by such infringement as soon as possible. <OOG, MOST:WT5 > The Government of Japan will examine the future cooperation of assisting the Vietnamese side in implementing campaigns to investigate and expose counterfeit goods and amend the decree.

Item 23. Corruption eradication

1. The Government of Vietnam will continue to implement an action plan for corruption prevention with numerous concrete measures. <OOG>

2. Reinforcement of the hot-line between the business sector and the government <OOG>

3. Continuation of efforts to promote fairness, neutrality, transparency and the accountability of tax, customs and other administrative procedure simplification <OOG>

Item 24. Restriction on the fraudulent import

The Government of Vietnam will continue to introduce effective measures and strengthen coordinating function of a focal point against fraudulent import of all kinds of products (including flat glass) <within one year><OOG>

3) IMPROVEMENT OF INVESTMENT RELATED INSTITUTIONS

Item 25. Improvement in the promulgation process of legal normative documents
1. The Government of Vietnam will, as early as possible, promulgate guidelines on the implementation of the amended Law on the Promulgation of Legal Normative Documents.The Government of Vietnam will consult foreign enterprises for their comments on the process of promulgating of Legal Normative Documents that related to foreign enterprises. <MOJ: WT2> 2. The Government of Vietnam will strengthen the functions and organization of newly established specialized departments (such as the "legal normative documents check department" and "international law department") to examine the conflict of legal normative documents. [Within one year]. <MOJ: WT2> The Government of Japan will examine the future cooperation of assisting these departments' capacity building.

Item 26. Improvement of the implementation of judgments

1. The Government of Vietnam will take appropriate measures to ensure the effective and sufficient implementation of civil judgements without delay.<MOJ:WT2>

2. The Government of Vietnam affirms that, according to the new Ordinance on Commercial Arbitration, foreigners may be appointed as an arbitrator in the case of disputes involving foreign invested enterprises within the territory of Vietnam. The Government of Vietnam affirms that, regarding the selection of foreign legislation to be applied to disputes with foreign elements, the judgment on the consistency with the basic principles of Vietnam laws should be based on international practices. <MOJ: WT2>

3. The Government of Vietnam will set up a legal information window at each relevant ministries, local people's committees, and governmental organizations which are required quick, certain and publicized responses to investors' inquiries about legal matters (within one year). <MOJ. MPI:WT2>

4. The Government of Vietnam will establish common rules and give strong guidance to relevant ministries and organizations in following points.<MOJ, MPI: WT2>
   *to make public to FDI the criteria of permission and standard examining periods.
   *to provide information of current procedure statuses.
   *to quickly deal with applications from FDI

5. As part of Japan's technical cooperation project "The Formulation of Key Government Policies on Legal System: Phase 2", the National Legal Database, networking system to provide information on legal normative documents to 23 provinces, was established. The Government of Vietnam should extend the network to all provinces, the legal information windows mentioned above, and People's Committee at the District level, so as that the latest information on legal normative documents is available anywhere in the country. <MOJ: WT2> The Government of Japan, in cooperation with MOJ, will examine the future cooperation of assisting the Vietnamese side in implementing the revised Law on the Promulgation of Legal Normative Documents.

Item 27. Human resource development in the legal field

The Government of Vietnam will issue “LSDS” as soon as possible and make the utmost efforts for human resource development of legal professionals and officials, as well as capacity building in courts, in accordance with the Action Plan of the LNA and the LSDS. The Government of Japan will review the possibility of action plans as stated above. <MOJ>
The Government of Japan will examine the future cooperation of assisting the Vietnamese side in human resources development in the legal field.

Item 28. Promulgation of the Competition Law

The Government of Vietnam shall strengthen relevant organizations to realize the early promulgation of a Competition Law. <within the year 2004> <MOT: WT2>
The Government of Japan will examine the future cooperation of assisting the Vietnamese side in implementing the abovementioned measures.

Item 29. Introduction of International Accounting Standards

1. The Government of Vietnam will promulgate all accounting and auditing standards until 2005 to unify the VAS into IAS. <MOF: WT7 >

2. The Government of Vietnam will implement educational activities concerning accounting systems in conformity with the Law on Accounting from 2004. <MOF: WT7>

Item 30. Introduction of the system of bills and checks

The Government of Vietnam will establish a working team to study alternative payment methods, including bills and checks according to a revision of Decree 30 related to checks (within one year). <SBV: WT8>
The Government of Japan will examine the future cooperation of assisting the Vietnamese side in learning from the experiences of Japan in this area.

Item 31. Industrial standardization and metrology improvement

1. The Government of Vietnam will make a continuous effort to promote industrial standardization and metrology systems, especially the modernization of Vietnamese standards and harmonization with ISO standards, in accordance with the Master Plan.<MOST: WT5>

2. The Government of Vietnam will work out specific measures for the improvement of services to the private sector, including a certification system, testing and inspection facilities, etc. (within one year). <MOST: WT5>

The Government of Japan will examine the future cooperation of assisting the Vietnamese side in promoting industrial standardization and metrology systems, especially the modernization of Vietnamese standards and harmonization with ISO.

Item 32. Human Resources Development (vocational training and IT manpower)

The Government of Vietnam will enhance the system of vocational training and IT human resources development. <MPI>
The Government of Japan will examine the future cooperation of assisting the Vietnamese side in implementing the abovementioned measures.

Item 33. Improvement of economic statistics: capacity building of statisticical organizations

The Government of Vietnam strives to enhance the capacity of the General Statistics Office, especially by improving its services to users, in the wake of the introduction of the new Law on Statistics. The General Statistical Office will have a system to promptly provide data in response to requests by investors, in cooperation with MPI. <GSO>

The Government of Japan will examine the future cooperation of assisting the Vietnamese side in implementing the abovementioned measures.

4) IMPROVEMENT OF ECONOMIC INFRASTRUCTURE

Item 34. Urban traffic and urban functions

1. The Government of Vietnam will construct the urban traffic infrastructure steadily in accordance with the master plan, in Hanoi and HCMC, and will improve urban traffic management (especially traffic control and parking facilities in main cities). <MOTC>

2. The Government of Vietnam will implement urban function dispersion in the long- and medium-term, and in this connection, clarify the central administrative authority for urban development. <OOG>

3. The Government of Vietnam will take continuously concrete measures such as traffic rule obedience, education and dissemination of traffic appropriate traffic etiquette and the strengthening of the enforcement of traffic violations. <MOTC>

The Government of Japan will examine the possibility of assisting the Vietnamese side in implementing the abovementioned measures.

Item 35. Transport efficiency

1. The Government of Vietnam will examine the approval of the further entry of FDI into the transport sector (more than 50% investment share). <MOTC, MPI>

2. The Government of Vietnam will proceed in strengthening the functions of ports in the south and north and strengthen the road infrastructure between the cities and ports gradually. <MOTC>

The Government of Japan will examine the possibility of assisting the Vietnamese side in implementing the abovementioned measures.

Item 36. Power sector (main power plant construction, FDI entry, tariffs and reliability)

1. The Government of Vietnam affirms that they do not apply the 20% restriction in FDI for the power sector and will exclude the prescription from the Electric Power Law. [Immediate execution] <MOI>

2. The Government of Vietnam will continue to implement an electricity tariff policy based on targets to gradually reduce cross-subsidies from production to other customer group having in mind the importance to have the electricity tariffs for production competitive with neighboring countries.. <MOI>

3. The Government of Vietnam will abolish dual pricing in electricity by the end of 2004. <MOI>.

4. The Government of Vietnam will continue its efforts to supply stable and good quality power (fewer changes in voltage) to all customers including large demand companies.<MOI>

5. The Government of Vietnam will implement power plant construction in line with the schedule of the master plan.<MOI>

The Government of Japan will examine the possibility of assisting in the construction of power plants especially those listed in the "Long List" of soft loans and ECA.

Item 37. Improvement of the telecommunication environment

1. The Government of Vietnam will continue to keep pace of the course of average of telecommunication service tariffs of the region. It would continue to reduce international telecommunication service rates (including the international call rate, the international leased line service) by promoting the production effectiveness, decreasing cost of services of each enterprise that involves into the market.<MPT:WT3>

2. From view point of maintenance, security and effectiveness, the capability of the Internet providers also need to be enhanced and this process would be supported by the Government. For these objectives, the Government of Vietnam would accelerate the FDI entry scheduled to telecommunication sector. <MPT,MPI:WT1>

The Government of Japan would examine the possibility to assist the Vietnamese side to implement the above-mentioned measures.

Item 38. Waste water and industrial solid waste treatment

1. The Government of Vietnam will conduct surveys of industrial waste and start preparing a master plan for suitable recycling, treatment and disposal structures and institutions for industrial waste [within one year]. In addition, the government shall improve the disposal facilities of public waste companies for industrial waste disposal.<MONRE>

2. The Government of Vietnam will ensure to apply environmental standards and conduct enforcement and penalties equally to all the companies for the violation of water waste discharge. <MONRE>

The Government of Japan will examine the future cooperation of assisting the Vietnamese side in implementing the establishment of master plan for waste management mechanisms.

Item 39. Promotion of JBIC's international finance use for infrastructure

1. The Government of Vietnam will disseminate and advertise the knowledge and use of international finance, cooperating with Japanese relevant organizations. The Government of Vietnam will survey the situation in ASEAN countries, study the merits and operation know-how and adopt these measures in actual infrastructure and plant projects. <MPI> The Government of Japan will examine the future cooperation of assisting the Vietnamese side in organizing seminars for PR activity.

2. The Government of Vietnam will flexibly assign government guarantees to large-scale economic infrastructure and plant projects.<MOF>

5) SUPPORT TO EXISTING INVESTORS

Item 40. Promotion of the Automobile Industry

<Industrial promotion policy and taxation system (centering on passenger cars)>

1. In preparing the development plan for the car and parts industry, the Government of Vietnam will listen to the views of foreign capital companies. The Government of Japan will examine the future cooperation of assisting the Vietnamese side in establishing a master plan for the automobile industry through various kinds of schemes (i.e. dispatching technical experts).<MOI>

2. While the Japanese side proposing that it should be noted that "* The Government of Vietnam will submit to the NA to consider the revision of SCT in case the enforcement of the Law has serious negative impact on automobile market. This impact should be evaluated in April, 2004 and regularly afterwards by the working group which consists of automotive manufactures and related ministries of Vietnamese Government. *The Government of Vietnam will maintain current CKD import tariffs until 2007. *The Govrenment of Vietnam will postpone the abolishment of CKD1 categories after January 2004 for the time being (CKD1 is necessary under a model trial) 〈MOF〉,"
While the Vietnamese side proposing that it should be deleted,
The both sides desided to continue discussing these issues through Evaluation and Facilitation Committee and to report the results of the disucussions to Prime Ministers.

3. The calculation formula of the local content ratio and the deduction items will be applied as articulated in the Annex of the Japan-Vietnam Investment Agreement. Requirements for local content will also be removed by the end of 2006. Or no later than the date when Vietnam joins the WTO or whichever is earlier. The maximum ratio of local content requirement is 5%. <MOI. MPI>

<Used Trucks>

1. The Government of Vietnam will establish a road map within one year which will impose and enforce regulations banning the import of middle sized- trucks (more than GVW5 ton), which are more than five years old (since there was no regulation on the age previously), inline with restrictions on small sized trucks (smaller than GVW 5). <MOT>

2. While the Japanese side proposing that it should be noted that "*The Govrenment of Vietnam will keep difference of tariff at least current level(50%) between some

kinds of secondhand CBU trucks and that of new CBU trucks in 2004 and onwards<MOF> *The Government of Vietnam will maintain current import tariff on CKD until 2007.<MOF>",

While the Vietnamese side proposing that it should be noted that "The Government of Vietnam will increase the import tariff on some kinds of secondhand CBU trucks to more than of that of new CBU trucks in 2004. <MOF>",

The both sides desided to continue discussing these issues through Evaluation and Facilitation Committee and to report the results of the disucussions to Prime Ministers.

3. VR (Vietnam Register) will stop the issuing of inspection certificates for trucks which are more than 25 years old. (Enforced within half year). <MOTC>

Item 41. Promotion of the Motorbike Industry

<Development policy>

1. The both sides discussed the nature of feasibility studies (F/S), which foreign enterprises are usually requested to submit to the Vietnamese Government at an application stage for their investment licenses. The Japanese side stated its understanding that the F/S only indicates their business prospect at the time of application and does not restrict their business activities in any sense. Particularly, the Japanese side considered that a production limit imposed on only foreign enterprises may be inconsistent with the Bilateral Investment Agreement and have negative impact on Japanese investment to Viet Nam. In response, the Vietnamese side affirms that the F/S, in principle, does not restrict the production level of the enterprises. The Vietnamese Government noted that it may limit the production level of the enterprises, with advance notice and consultation with the parties concerned, by taking into account the socio-economic conditions and the size of its domestic market as well as the practical capacity of the enterprises. The both sides decided to continue discussing these issues through the Evaluation and Facilitation Committee. In this line, consultative meetings are also encouraged between the Vietnamese Government and relevant industries such as the Japan Automobile Manufacturing Association (JAMA)

2. The formulation of a development strategy for the motorbike and parts industry. The MOI is to conduct hearings to substantiate the production plans of motorbike companies by organizing teams comprising of scholars and third parties who are capable of objective analyses and evaluation, and learn in detail the conditions for and the possibility of expanding the motorbike industry as a whole. Referring to the conclusions of the study mentioned above (multiple scenarios), the Government will adopt a comprehensive development strategy for the motorbike industry established by MOI with the cooperation of relevant ministries and listening to the

views of not only domestic but also foreign capital-affiliated motorbike makers. [execution within one year]（There are many urgent issues Vietnam should study in order to become a “core production and export base for motorbikes in the global market,” including i) a fact-finding study and development measures for each major part; ii) clustering of parts production and the planning of technology transfer to such clusters for domestic production of parts which are now imported in large volumes; iii) meeting requirements for the industry to acquire export competitiveness; iv) cooperation and competition strategies with Japan, Indonesia, Thailand, China and other countries; and v) measures to make people observe traffic rules and to reduce accidents）.

The Government of Japan will examine the future cooperation of assisting the Vietnamese side in establishing a motorbike master plan.

<Change in the Import Tariff Classification of Motorcycle Parts and the Giving of Export Incentives>

1. Revision of the Import Tariff for Motorbike parts

The Government of Vietnam will revise the grouping of parts and tariff rates in the present Import-export tariff. Tariff rates on parts should depends on criteria of whether the parts can be manufactured domestically, either by foreign-capital or Vietnamese-capital firms, or can be procured domestically. The higher tariff rates will be applied on parts that can be procured domestically while the low tariffs should be applied on parts that cannot be procured domestically because they require high technology. Concerning the classification of parts, opinions of motorbike and motorbike parts makers should be fully reflected when making a realistic list of groupings. The Government of Vietnam will take measures to promote the parts industry. <MOF>

2. The Giving of Export Incentives

To promote the export of motorbikes, the Government of Vietnam will study and implement measures to increase export incentives through listening to the opinions of the producers. <MOF>

<Quality Control Standards, etc. for Motorcycle and Parts>

1. The Government of Vietnam will fully consult with FDI motorbike manufactures on their comments in a sincere manner, sufficiently in advance of the issuance of quality standards and inspection methodology, from a view point of ensureing economic effectiveness and transparancy. <MOST, MOTC>.

2. The Government of Vietnam will simplify procedures of quality standards through coordinating and streamlining the roles of relevant organizations <MOST, MOTC>.

Item 42. Fostering of the electronics and electrical industries

1. The Government of Vietnam will consider the new import tariff systems for kit parts in the way that promote electrical and electronic assembly companies in making continuous efforts to achieve higher local content ratios in accordance with WTO-TRIMs <MOF, MPT, MOI, MOT>

2. In order to gain competitiveness and greater localization of the electronics parts assembly industry, the Government of Vietnam will issue new import tariff systems for import materials for electronics parts assembly, as soon as possible during 2004, including, the reduction of tariff rates on import materials to 0% if they cannot be manufactured domestically, through either foreign-capital or Vietnamese-capital firms, or can be procured domestically. <MOF, MPT, MOI, MOT>

3. The Government of Vietnam will formulate the master plan for electrical and electronic industries within one year that will serve as a common guideline for both local and foreign companies in the mentioned industry. ＜MPT,MOI＞ The Government of Japan will examine the future cooperation of assisting the Vietnamese side in establishing a electronic master plan.

4. Support the updating of industrial standards, making them compatible with ISO standards, and strengthen other related standards and the functions of STAMEQ, etc. which will then verify that products standard levels. ＜MOST＞

Item 43. Abolition of the lowest investment ratio restriction (40%) for the Share of the Vietnamese Partner through Additional Investment in a Cement Joint Venture

The Government of Vietnam will remove the minimum 40% capital restriction described in the master plan of the cement industry (Prime Minister Decision No. 164 2001) and make it clear that the capital ratio should be entrusted to mutual agreement between joint venture parties. [immediate execution] <MOC: WT1>

Item 44. Problem regarding long term credit of theVietcombank (VCB)

The Government of Vietnam will require VCB to solve the long-term credit problems and therefore instruct VCB to seek for immediate resolution and will also take all possible measures such as by organizing the opportunity to discuss among parties related to this problem. This will be done by March 2004. <SBV>

5. Follow–up of the Initiative

The objective of the Japan-Vietnam Joint Initiative is to identify and prioritize concrete measures Vietnam should deal with for the realization of further economic growth. The Initiative is based on an idea that both governments should mobilize their full ownership and commitment to achieve the said objective through intensive dialogue involving leaders and high ranking officials from both countries. As a result of this Initiative, Japan and Vietnam jointly formulated an action plan. It is crucially important that the action plan be fully implemented within the agreed timeframe. Therefore, an effective follow-up system needs to be established. Since all the actions set forth in the said action plan are designed for the benefit of Vietnam and for its improvement of its business environment, the action plan should in principle be implemented under the ownership of Vietnam. On the other hand, the action plan also encompasses components to which Japanese ODA assistance could suitably be applied. Various types of cooperation from Japan including ODA are incorporated in the plan to support such components. Based on these features of the action plan, the follow-up of the Initiative will be implemented in the following manner.

(1) Categories of time frame (milestones)

The milestones of the actions included in the action plan are classified into two categories such as clear milestones (e.g. “immediately,” “within two years” “at the next revision of the ～Law” or “by the end of 2004”) and targeted milestones (e.g. “as soon as possible” ”) .No milestone longer than 2 years is set out.

(2) Identification of responsible organizations

The action plan identifies responsible ministries and organizations and states them at the end of the section on each action, with a view to making the responsibility of implementation clear.

(3) Follow-up scheme

Role of each follow-up organization

(i) Vietnam – Japan Trade and Investment Working Group
The Vietnam – Japan Trade and Investment Working Group is a forum regularly held jointly by Japan and Vietnam involving governments and industries. The Working Group will follow up and facilitate the implementation process of basically all the actions to be taken by the Vietnamese side included in the action plan, except (a) construction of the economic infrastructure (note) and (b) actions related to individual companies. As for each action which the Vietnam–Japan Trade and Investment Working Group will follow up, in addition to the names of the responsible Ministries and organizations, the name of the responsible Working Team (e.g.- [WT1]) of the said Working Group should be stated at the end of each section. The actions for individual industries (assistance measures to be given to current investors in Vietnam, e.g.

automobile, motorbike, electronics, etc.) will be additionally followed up in the frame work of policy dialogue between the Government of Vietnam and each Japanese industry association.

(Note) Improvement of regulations relating to the utilization of economic infrastructures will be followed up by the above mentioned Vietnam – Japan Trade and Investment Working Group.

(ii) Actions related to individual companies will be followed up by both sides on an ad-hoc basis.

(iii) With regard to the Vietnamese actions prescribed in the action plan to which Japanese ODA is envisaged (mainly infrastructure improvement, capacity building projects, assistance to improvement of investment related institutions...), under the present limited budget, the Japanese side, i.e., the ministries concerned, JICA, JBIC, and JETRO, will try to practically follow up the each action plan by utilizing ODA as much as possible after FY 2003, taking into consideration the recent severe budget condition and the decreasing trend of ODA budget. These activities will be also discussed within the framework of the ODA annual policy dialogue with a purpose to follow up and facilitate the implementation process.

Monitoring and evaluation schemes of the Initiative

(i) After the adoption of the action plan, the secretariat of the Initiative will submit a monitoring report to Task Force members every half a year in principle. The Task Force will be reorganized to the "Monitoring Committee" which will monitor and implement the processes of the action plan. Monitoring should be conducted every half year for 2 years in principle and the "monitoring committee" will facilitate the implementation of the Action Plan of the initiative if implementation (measures and timeframe) is not achieved as stipulated in the Action Plan.

(ii) About 1 and 2 years after the adoption of the action plan, "the Evaluation and Facilitation Committee", consisting of the Joint Committee level members, will be held with a view to monitoring these actions and take necessary measures (e.g. Report to and guidance at the Government level) to facilitate further implementation of the action plan. After this process, both sides will make necessary follow-up actions upon consultation between both sides.

(4) Linkage to the Japanese ODA policy

According to the new Japanese Country Assistance Program for Vietnam, upon consideration of qualitative directions of ODA scales to Vietnam each year, various factors including "Institution and Policy environment" will be evaluated. The outcome of the evaluation on the implementation process of the action plan will become an important element for the Japanese side in evaluating the said "Institution and Policy environment" of Vietnam.

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CHAPTER 1: SIGNIFICANCE AND PURPOSE OF JAPAN-VIETNAM JOINT INITIATIVE

On 7th April 2003, Prime Minister of the Socialist Republic of Vietnam H.E. Mr. Phan Van Khai and Prime Minister of Japan H.E. Mr. Junichiro Koizumi agreed and decided to launch "the Japan-Vietnam Joint Initiative to Improve the Business Environment with a View to Strengthening Vietnam's Competitiveness" herein after referred to as "the Initiative".

The Initiative aims to strengthen Vietnam's economic competitiveness through the promotion of FDI flow into Vietnam. A particular objective of the Initiative is to share and implement specific and prioritized polices and measures to be implemented for the further economic growth of Vietnam, by fully mobilizing the ownership and commitments of the two governments (Vietnam and Japan) through intensive discussions and with the participation of high-ranking leaders from both sides. The most significant feature of the Initiative is to form the Action Plan under which the following two key issues will be addressed. The Action Plan will be implemented vigorously and will be properly monitored.

- Strengthening competitiveness so that Vietnam can win in competition amongst other Asian countries and become a leader in ASEAN, and
- Attracting foreign investment – an indispensable factor in strengthening competitiveness.

The Joint Steering Committee established under this Initiative herby presents the Final Report and Action Plan commissioned by the leaders of Socialist Republic of Vietnam and Japan. Detailed analysis of the current economic environment surrounding Vietnam and issues related to FDI promotion on which the Action Plan is based are stated in Chapter 2 and 3.

CHAPTER 2: PRESENT ENVIRONMENT SURROUNDING FDI IN VIETNAM

1) Current situation regarding the Vietnamese economy

Outline of the Vietnamese economy

Vietnam established its Doi Moi policy at the end of 1986 and has been making efforts to move from a planned economy to a market oriented economy. The Vietnamese government has strengthened its policies which focus on promoting FDI and private sector development with a view to changing its economic structure which was previous led mainly by a structure of state-owned-enterprises. As a result of this shift and these policies, Vietnam has succeeded in attaining high economic growth levels since 1992, especially in comparison with other neighboring ASEAN nations, due to the growth of FDI and the private sector. During the middle of the 1990's, Vietnam achieved economic growth levels of 10%. This declined due to the impact of the Asian currency crisis in 1998 and in 1999. However, growth rates recovered to 6.7% in 2000, 6.8% in 2001 and 7.0% in 2002 thanks to an expansion in production by private enterprises enhanced by the enacting of Enterprises Laws, and the recovery of FDI.

Development features of the Vietnamese economy to today

- Vietnam has gained an international reputation by actively promoting its integration into the world economy marked by Vietnam's accession to ASEAN and its bilateral trade agreement with the United States.

- Vietnam has been promoting trade with foreign countries, concentrating on exporting materials such as crude oil, rice, coffee and light industry commodities such as textiles and leather products etc.

Vietnam's export growth rate from 1992 to 2002 (Unit %)

	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Export growth rate	25.5	35.5	43.7	37.7	35.3	12.9	0.4	11.6	29. 4	14.9

(Source) IMF

- Trade deficits due to the import of production machinery and materials has not been covered by domestic saving resources but through FDI and ODA from abroad.

- The development of mining and exploitation industries through FDI has been the driving force for Vietnam's economic development. At the same time, the government has been implementing an economic model, with the participation of all economic sectors, gradually liberalizing its domestic market and deregulating, with the aim of developing capital intensive industries and protecting its infant industries.

At the Ninth Communist Party Congress in 2001 and during the General Election in 2002, the new leadership headed by Secretary General H.E. Mr. Nong Duc Manh has continuously confirmed Vietnam's determination to implement reform policies over the next five years and promote the market economy. However, it is apparent that some elements of its policies are maybe somewhat inappropriate with the normal structure of a market economy (for example, the control on the motorbike spare parts) and the legal system lacks consistency and transparency. These inconsistencies and the lack of concrete guidelines to promote Doi Moi policies adopted by the new leadership, though highly appreciated for its proactiveness, are not seen as transparent by many foreign investors.

Macro-economy

From the end of 1990's, the Vietnamese macro economy saw its trade deficit reduced (in the period of 1999-2001, the trade deficit was close to zero); outstanding debt to Russia and other countries also reduced (Debt service ration in 2002 is 7.5 percent, almost escaping the list of HIPC); prices were stable (price index increase less than 2 percent in 1999); foreign exchange rates settled (Exports has increased through 2.5 percent of gradual currency depreciation annually since 1994). However, in the last couple of years, a trade deficit has been clearly re-emerging, and reached US$2.1 billion in 2002 in comparison with US$900 million in 2001. Due to the decline in crude oil prices, the volume of crude oil exports, which is the main export item of Vietnam, has decreased (before the Iraqi war crude oil prices increased slightly, but continued to decrease after the war). Crude oil prices are generally affected by the world situation, however, taking into consideration the medium term actions taken by Iraq, Russia, West Africa etc., it is difficult to conclude that crude oil prices will steadily increase. Therefore there is a strong possibility that the value of crude oil exports will continue to decrease over the medium and long term. In addition, in recent years agricultural sector has also seen low growth rates due to decreases in the price of agricultural products such as rice and coffee. In the current atmosphere of general improvements in technology and the increased role technology is playing in agricultural production, there is a strong possibility that value of agricultural exports will continue to decrease. As China has already joined the WTO, there is also trend of falling prices for textile products sold in third country markets competing with Chinese production. If trade liberalization in Asian markets continues to develop, the value of exports of low value added industrial products such as textiles and garments will continue. Despite of the strong increase in exports to the US market in 2002 as a result of the Vietnam-US BTA in 2001, there are still a number of remaining issues the need to be resolved such as quality control and quarantine issues, in order to expand exports to the US market. The demand for machinery and primary material import will still be very high in Vietnam as it was in 2002 and this along with stagnant exports are negative factors to the trade deficit. This, combined with the decrease of FDI, will make Vietnam's macro-economy relatively vulnerable (Remittance capital from Vietnamese overseas Diaspora will partially help balance the balance of payment but this source is regarded as unsteady and insecure).

Statistics on International payment balance (US$ million, %)

	1994	1995	1996	1997	1998	1999	2000	2001
Balance of Payment (Current Account)	-1,872	-2,648	-2,020	-1,075	-1,074	1,177	1,106	682
(Percentage of GDP against Balance of Payment)	-11.5	-12.8	-8.2	-5.7	-3.9	4.1	3.5	2.2
Trade Balance	-1,865	-3,155	-2,775	-1,247	-989	972	375	481
Export (f.o.b)	4,054	5,198	7,255	9,185	9,361	11,540	14,448	15,027
(Annual growth rate)	35.8	28.2	39.6	26.6	1.9	23.3	25.2	4.0
Import (f.o.b)	5,919	8,353	10,030	10,432	10,350	10,568	14,073	14,546
(Annual growth rate)	42.2	41.1	20.1	4.0	-0.8	2.1	33.2	3.4
Service balance	19	159	-61	-623	-530	-547	-550	-572
Income balance	-328	-279	-384	-543	-677	-429	-541	-477
Transfer balance	302	627	1,200	885	1,122	1,181	1,732	1,250

(Source: IMF)

(Reference: Political Activities Report at the ninth Communist Party Congress, April 2001)

In the political activities report of the Ninth Communist Party Congress in April 2001, the Secretary General proposed an economic development orientation of a market economy with socialism orientation. The Congress also proposed and approved the Seventh Five Year Plan (2001-2005) and the Ten Year (2001-2010) Socio-economic development Strategy. The objectives of this Five Year Plan is (1) achieving real GDP growth rates (annual average) of 7.5 percent (GDP in the year 2005 doubles in comparison with that in 1995); (2) real growth rate in sectors: agriculture-forestry-aquaculture- 4.8 percent, industry-13.0 percent, service-7.5 percent; (3) GDP structure: agriculture-forestry-aquaculture-20~21 percent, industry-38~39 percent, service-41~42 percent; (4) Export growth rate- 16 percent annually, import growth rate-15 percent annually;(5) employment- 1,500,000 jobs annually. Regarding capital mobilization, the total investment over the five years is US$59~61 billion including US$ 39~40 billion from domestic sources, US$ 9~10 billion from FDI, US$ 10~11 billion from ODA, US$ 1~2 billion from the issuance of bonds in the international market.

In addition, with the aim of becoming an industrialized country before 2020, the main objectives of the socio-economic development strategy are (1) doubling GDP growth rates in 2000; (2) achieving real growth rates in sectors: agriculture–forestry -aquaculture-4.0~5.0 percent, industry-10.0~13.0 percent, service-7~8 percent; (3) GDP structure: agriculture- forestry-aquaculture-16~17 percent, industry- 40~41 percent, service- 42~43 percent; (4) reducing the agricultural workforce from the current 70 percent to 50 percent of the population. The Congress once again confirmed the determination to follow the socialist guidelines mentioned above and at the same time verified that private and FDI sectors are an integral part of national economic development. In addition, regarding institutional reform, the Congress confirmed the plan to implement three big reforms: SOE reform, monetary and financial reform and trade reform.

Situation on international integration and future prospects

The situation on international integration is as follows. Generally speaking, the integration process of Vietnamese economy into the world economy enjoys favorable conditions.

- Vietnam-US BTA came into effect in 2002. In November 2003, Vietnam and Japan signed Investment Agreement.

- Negotiations on accession to the WTO officially started at the beginning of 2003. Up to June 2003, a total of 5 meetings had been held.

- In preparation for AFTA, there will be tariff cuts for various products starting from 2003.

- In 2002, some agreements on ASEAN-FTA were reached and by the time the ASEAN-FTA Area is formed, it can be predicted that bilateral trade between Vietnam and China will have increased substantially.

Regarding Vietnams integration into the world economy, the Vietnamese government understands the merits of promotion trade and investment and the need for Vietnam to gain a reputation in the international community. However, if world economic integration further develops Asia as a whole, through efforts towards FTA, Vietnam will have strong competition from both China and other countries in ASEAN. Recently there have been concerns that Vietnamese manufacturing industries which still have week foundations (poor supporting industries, technology, equipment) would lose in competition with other ASEAN countries and therefore, would have to limit themselves to supplying labor and raw materials. Therefore, although Vietnam has made commitments to further international economic integration, the development of high competitive manufacturing industries should be considered a must and should be implemented as soon as possible.

Current situation and problems of manufacturing industries

(a) Structure of manufacturing industries and trends in production and investment

Vietnam is an agricultural country with a high rate of its labor force in the agricultural sector. The shift from material production, such as agriculture and mining, towards manufacturing and services is now taking place. In the different economic sectors, the state owned sector remains inefficient and controls the larger part of the economy. In other aspects, although the private sector is the driving force of economic development, analysis of the development and emergence of this sector in recent years shows that while there are many private enterprises, many of them had previously operated without licenses and were newly registered, not newly established, after the new Corporate Law came into effect.

(b) Current situation and problems of each economy sector

Currently, Vietnam is aiming for a multi-sector economy. Though Vietnam has made great efforts in its reforms, different sectors are still faced with different issues and there remains skepticism about their competitiveness once Vietnam has fully integrated into the international economy.

The FDI sector

- The FDI sector is the sector that has contributed a great part to the development of the Vietnamese economy in recent years. Even at this point, with advantages in low salaries and high quality labor force, generally speaking Vietnam has advantages in absorbing FDI because it is a good alternative to China when firms wish to reduce investment risks. However, currently the FDI sector has not developed as expected.

- Regarding future forecasts, if compared with other countries in ASEAN, which are strongly aware of the redirection of FDI flows to China and are intentionally implementing strategies to absorb FDI, it is hard to say that Vietnam has an edge in absorbing FDI due to the its current business environment. As the future prospects for FDI are not clear, there are concerns about the development of mining industries which have been considered as the driving force for economic development in Vietnam.

- In addition, as the supporting industry is unable to produce spare parts of a good quality at a reasonable price, the FDI sector is faced with difficulties in achieving localization targets. This makes Vietnam less competitive compared with other countries in the region such as Thailand where the supporting industry is well developed.

- With regards the Vietnamese business environment, through borrowing activities from donors such as WB, IMF etc. and active participation in Vietnam Business Forum, the Miyazawa Plan as well as Business and Investment Working Group, the business environment in Vietnam has improved to some extent.

- However, it is true that many foreign businesses including Japanese companies voice their frustration that the core elements of doing business (expensive public services, transportation, telecommunication fees, limits on FDI; complicated and unclear regulations and legal enforcement systems; neglect of market principles etc.) have not shown any significant changes. Therefore, the pressing issues for the near future are to improve the business environment and promote the development of the private sector.

- There are too many government agencies and institutions related to promoting and granting FDI licenses. Moreover, mechanisms to establish strategies to attract FDI and develop collaboration between related government agencies remain unclear. Therefore, the Vietnamese government should make more efforts to solve this issue.

-Basic legal provisions (the Civil Code, Commercial Law and other basic laws) which drive the market economy, are in the process of adjustment and improvement. However, there remains a lack in capacity of administrative agencies directly involved in economic activities (custom offices, tax agencies, intellectual property right administration etc) and insufficient soft infrastructure relating to investment (legal systems, juridical systems, courts, tax-accounting-auditing systems, measuring systems, industrial standards, economic statistics) as well as a lack of procedures.

-Regarding these issues, Japan should conduct more active dialogues with Vietnam and utilize ODA scheme to improve the business environment of Vietnam.

Private sector

- Analysis of just statistical data on the private sector may give the conclusion that since the promulgation of the Enterprise Law, the private sector has developed stably and favorably.

- However, for the private sector, especially for SMEs - which occupy the majority in the private sector- the access to credit is limited due to a lack of collateral. In addition, weaknesses in inspection technology, quality control and production technology are further obstacles to expanding business opportunities at home and abroad.

- The process of reform is being implemented based on the enforcement of the Enterprise Law. However, there is still discrimination between the state owned sector and the private sector in various fields such as access to credit and land leases, which has created a unlevel playing field. This issue should be urgently resolved.

-Regarding SME development, the main policy on the promotion of SMEs are regulated in Decree 90 issued in 2001 but only came into force at the end of 2002.

State-owned sector

- Since 1989, the Vietnamese government has actively implemented SOE reform but the process has not exceeded expectation. In fact, under the title of protection of capital-intensive and infant industries, the majority of the SOEs, led by general corporations, are still kept alive, though not effectively operating (ineffective operation, degrading machinery and equipment). This is due to the delay in improving the efficiency of SOEs, the deep involvement of state agencies in SOEs operation and insufficient solutions to unemployment issues.

- Despite of the current situation, SOEs that manufacture construction materials have plans to expand their output given the current construction boom. However, if international competition becomes fierce it is possible that those enterprises will get themselves into the situation of excessive machinery investment and therefore will face severe business risks.

- The SOE reform process will be strengthened through the newly issued decree in July 2002. However, if SOEs are negatively affected during the process of AFTA integration, those SOEs will be able to ask the government for protection. Therefore it is uncertain whether SOEs reform will be implemented smoothly in the future.

- Within the scope of the New Miyazawa Plan, the Japanese government agreed with the Vietnamese government to implement auditing work on 100 of Vietnams large SOEs. This auditing work is to be gradually implemented. It should be noted that Vietnam is still lacking efforts to implement the recommendations based on these auditing results.

- The banking and financial reforms which closely related to SOEs reform has produced steps such as separating the administrative management and business operation of the banking system. However, the solution to the bad debt problem remains slow. This and the delay in SOE reforms are the reasons why financial and banking reforms, which basically concentrate on improving flexibility and efficiency, remain stagnant.

Regarding the strengthening of the competitiveness of industry and promoting economic development in the future, Vietnam has to give emphasis on the following policy elements in order to maximize current advantages. At the same time as AFTA integration, Vietnam must develop itself to the level of an industrial country within the inter-dependent relations with other countries in ASEAN.

(1) Regarding FDI, the driving force for further development of Vietnam, Vietnam ought to improve the business environment in order to attract FDI to the industries which are considered as the competitive driving force of Vietnam.

(2) It will also be necessary to strengthen business management, technologies, capital aspects of the private sector and SMEs, which are considered the driving force for economic development.

In order to encourage FDI as well as to promote the development of the private sector and SMEs effectively, it is necessary to set up a strategic industrial development policy that can be applied to both the above mentioned sectors.

- Policy support could help avoid the negative effects caused by shortages of supporting industries and capital as well as strengthen the competitiveness of industries (capital-intensive industries and labor intensive industries: software, textile).

- In addition, it is necessary to enhance the role of Vietnam in the context of production network in ASEAN. In this case, it is necessary to strengthen supporting industries and distribution functions.

- Currently, manufacturing enterprises are restructuring in Vietnam. For industries (automobiles, motorbikes, electronics etc.) which are able to compete in ASEAN in certain product categories or certain phases in the production line, in order to overcome the shortages of supporting industries and the labor force, the following actions should be taken: (1) Implement an attractive import-export tariff structure and production encouragement policies in order to attract FDI to target areas and to serve the development of domestic industries, (2) Develop a labor force with high technological and management skills.

- In addition, regarding capital and technology- intensive industries, it is necessary to issue development policies in accordance with the trends of domestic and foreign markets and take into account equipment depreciation in current investment projects.

- As well as this it must also be remembered that there are many investors who have expressed their concerns about state management in reference to red tape and corruption. It is imperative to improve state management in order to better serve economic development.

2) The Current situation of FDI in the world

FDI throughout the world declined in 2002, 40 percent in comparison with peak levels of US$ 1,490 billion in 2000. In 2003, the decline is smaller but it is still reducing. The world's FDI decline in 2002 are due in the most part to the following:(1) high investment risks due to the negative factors of the international security situation (Iraqi war) causing delays in the merging of big corporations (2) falling stock prices (3) declines in investment capital inflows to the US, South-East Asia, South - Central America.

Capital inflow to the NIES and ASEAN from all over the world decreased. In 2001, the investment capital US$ 88.7 billion, a 28.4 percent decrease in comparison with the previous year. In 2002, the investment capital was US$ 75.7 billion, a 14.7 percent decrease in comparison with the previous years and stopped at the levels in 1995-1996. Most notably FDI inflow to Korean, Taiwan, Hong Kong and Singapore continuously declined to levels almost half of those two years previously. Investment capital in 2002 was just 40-60 percent of the highest levels previously seen into these countries. The FDI inflow to 4 ASEAN countries (Indonesia, Malaysia, the Philippines, Thailand) in 2002 had increased 51 percent, but this was not the case for other ASEAN countries. Faced with a decline in FDI, countries in ASEAN started to propose new FDI encouragement measures, for example Malaysia started to remove all regulations relating to foreign contribution rates in the manufacturing industry. On top of these movements in FDI, FDI inflow to China in 2001 was US$ 49.3 billion, an increase of 11.5 percent compared with the previous year. In 2002 FDI reached its highest level of

US$ 52.7 billion over two consecutive years and for the first time went over China's FDI record of US$50 billion. The FDI inflow to 10 Eastern and Central European countries was US$ 23 billion, 20.3 percent higher than the previous year and was the record to date.

3) Current situation of FDI of Japanese enterprises

The FDI outflow of Japan in 2002 (according to the international balance of payment) was US$ 32.3 billion, 15.7 percent lower than the previous year. According to detailed data on each geographical area, FDI to North America in the automobile industry was 12.7 percent higher than the previous year (US$ 8,649 billion). This was coupled by a decline in FDI flow to West Europe of 45 percent in comparison with the previous year (US$ 9,764 billion) due to the unsound operations of NTT DOCOMO. FDI to South East Asia, FDI to 4 ASEAN countries (Indonesia, Malaysia, the Philippines, Thailand) decreased 25.3 percent (US$ 2,183 billion), however FDI to Singapore increased suddenly (LCD production line). Therefore FDI to the NIES increased 20.3 percent in comparison with the previous year (US$ 2.93 billion), while FDI to China increased at a rate of 20.8 percent.

One of the reasons that more investors invested in China is that the business environment in ASEAN countries became worse due to political and economic instability which was caused by the financial and monetary crisis in 1997. There are a number of other reasons such as China having an advantage over ASEAN in terms of market scale, high growth, lower costs and a better labor force etc. Moreover, China is seen to have advantages over developed countries in ASEAN in terms of its attractive environment for manufacturing industries: developing supporting industries, a good infrastructure, and smooth transportation and distribution systems. Since the middle of the 1990s, Japanese investors have redirected their investment from garment and textiles to the production of electronic equipment and transportation vehicles in China. This redirection is the basis for export expansion to China, especially in terms of machinery, equipments and spare parts.

However, along with investment to China, Japanese investors began a number of measures to avoid the possible risks that might arise due to concentrating investment in China. In other words, they began looking for alternative markets to invest. As clearly shown in the example of the electric industry, the market share of Japanese investors in China is small but in ASEAN, where the development history of electronic industry is long, the situation shows a contrast. In ASEAN countries, Japanese companies continue to have a large share of the market and this industry is still attractive to investors. According to the survey "Current situation and Forecast on Foreign Investment of Japanese companies in the 21st century" conducted by JETRO in October 2001, the main reason for enterprises in the manufacturing industry to continue to invest in ASEAN is the prospect of expanding their market as a result of AFTA. Under the context that Japanese investors will streamline their production lines in ASEAN in order to find a better location from which they can supply products to the market, Vietnam currently is facing a challenge to improve itself, and to appeal to

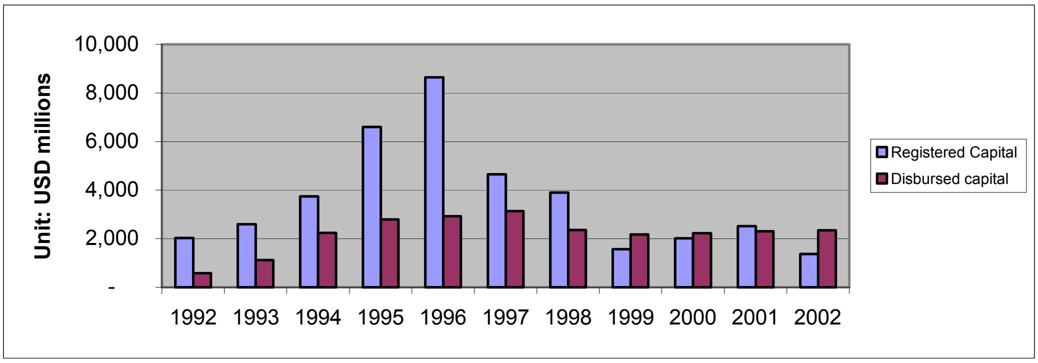
Japanese investors through an attractive investment environment with a number of successful projects while at the same time competing with other ASEAN countries, which have more experience in FDI and supporting industries.

4) Trends and the current situation of FDI in Vietnam

For the last ten years, FDI has played an important role in the course of industrial development in Vietnam. In recent years, the FDI sector held one forth of the total investment, 34 percent of the value of industrial production, 23 percent of export values (excluding oil and gas) and 13 percent of GDP. The FDI sector is developing as an integral part of Vietnam's economy. Since the end of 2002 there were more than 50 countries investing in Vietnam of which 60.8 percent were from Asia, with less than 20 percent from Europe and the United States. The top five investors of investment capital are from Asia as follows, Singapore, Taiwan, Japan, Hong Kong and Korea. (Note that investment from Singapore and Hong Kong mainly comes from the multinational corporations from Europe and the United States).

The value of FDI started to rise from 1992 and by 1996 the total value had reached US$ 8.6 billion. The emergence of FDI expresses the positive judgment of foreign investors on the business environment in Vietnam since the start of the open door and renovation policy. In 2001 and 2002, FDI recovered from a previous decline, but was still far away the peak in 1998. Moreover, FDI in 2002 once again declined suddenly to half of the level in 2001.The conclusion is that FDI in Vietnam has not fully recovered.

FDI Flow to Vietnam (1992 - 2002)



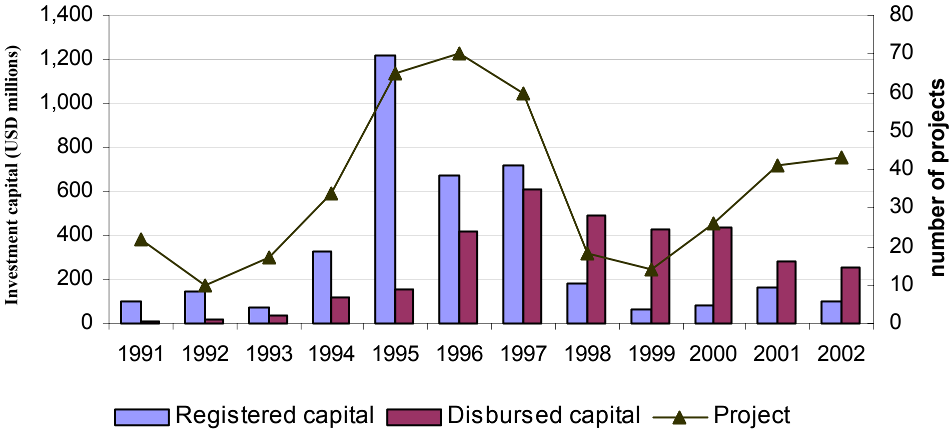
(Source) MPI

Trend of Japan's FDI

In 2002, Japan ranked the third country in terms of the number of licensed FDI businesses in Vietnam, but the first country in terms of investment disbursement value. From 1988 to June 2003, Japan's cumulative disbursed investment capital to Vietnam was estimated US$ 3.7 billion. Japanese FDI focused mainly on production sectors: 71.8% of projects and 75.2% of total investment capital is placed in the manufacturing and construction industry - which plays a core role in national economic development, whilst 21% of projects and 23% of total investment capital in the service sector. However, the current FDI flow from Japan to Vietnam is much less than the flow before the Asian financial Crisis. From 1992-97 there was a massive FDI influx into Vietnam, Japanese enterprises invested on a large scale in Vietnam - a then unexploited market. Ever since, FDI from Japan has been remarkably reduced. The licensed investment value was US$ 95 million in 2002, 15% less than the number of 1997. The total investment value increased in two consecutive years 2000 and 2001, but again dropped in 2002. This trend was similar to that of investment from other countries to Vietnam. Despite an increase in the number of investment projects, the average investment capital projects followed a downward tendency.

This situation had a number of indirect basis other than the financial crisis of 1997. There was also a structural cause: Japanese enterprises penetrating the Vietnamese market were mainly enterprises producing goods for the domestic market (for instance cars, electric and electronic products, cement and glass etc.). Compared to China, and its sectors which produce for export, it becomes quite clear that few Japanese enterprises had invested in Vietnam to produce exports. This, of course, is partly a problem of Japanese enterprises. On the other hand, there were also several problems related to Vietnamese mechanisms and policies. More concretely, the main causes for the decline from the Vietnamese side include the saturation of small scale markets due to low economic growth rate, decreasing purchasing power and other delays in the improvement of the investment environment. Other problems were also pointed out, such as inflation, delays to the improvement of the legal framework, frequent changes in terms of policy and regulations, officials' misunderstanding policies, corruption, bureaucracy, complicated administrative procedures. In 2000, the Vietnamese government had taken great efforts to improve the investment environment, for instance by amending the law on investment. This has produced some results, but progress was too slow and achievements were far from satisfactory for investors. Moreover, investments to Vietnam continue to be rated as highly risky due to unexpected changes and inconsistency in policy implementation by the government. For instance, in September 2002, the Vietnamese government suddenly imposed an import quota on motorcycle parts. Japan's FDI to Vietnam is very small in comparison with that in other ASEAN countries. Moreover, Japan's FDI in Vietnam not only decreased in terms of absolute value, but also in terms of the proportion when measured against other ASEAN countries. After the financial crisis of 1997, many ASEAN countries implemented FDI promotion policies, especially to attract FDI from the major players in Asia, such as Japan. Competition in attracting Japan's FDI has become fierce and Vietnam faces a very difficult situation. Given the situation, whether the Vietnamese government succeeds in attracting FDI for the country's economic development or not depends on how quickly Vietnam could develop and implement policies to significantly improve the investment environment.

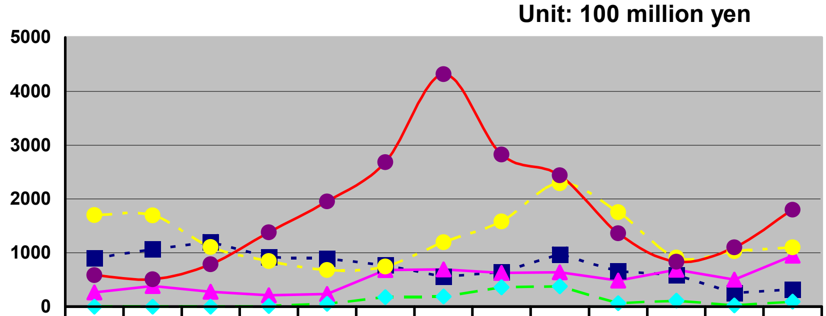
Japanese FDI to Vietnam 1991~2002



(Source) MPI

Japanese FDI inflows in selected countries during 1989 - 2001

Unit: 100 million yen



	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Malaysia	902	1067	1202	919	892	772	555	644	971	658	586	256	320
Philippines	269	383	277	210	236	683	692	630	642	485	688	506	946
Thailand	1703	1696	1107	849	680	749	1196	1581	2291	1755	910	1029	1102
Vietnam	0.23	0.63	0.32	12.7	51.7	177	192	359	381	65.3	110	23.6	97.5
China	587	511	787	1381	1954	2683	4319	2828	2438	1363	838	1099	1802

(Source) METI

On the other hand, investment prospects in Vietnam have also shown some positive signs. According to a recent survey of enterprises, many Japanese businesses investing in Vietnam responded that investment prospects in Vietnam have improved. Nearly

80% of them were planning to expand business within the next 3 years. The main reasons included positive long-term prospects, the prospect of an expanding domestic market and national political stability. More than half of enterprises feel Vietnam has better conditions for investment activities than before. Several considerable improvements have been made, such as foreign exchange control, efforts to abolish the dual pricing system, improvement in terms of business costs, etc.

Investment in the industrial sector has also diversified. After the Asian financial crisis, investment to domestic consumption oriented sectors - core sectors of the first FDI influx to Vietnam - shifted to labor intensive industries and export oriented processing industries. Since the first half of the 1990s, Japanese businesses have penetrated Vietnam's domestic markets in the form of joint ventures with Vietnamese SOEs and expanded business activities with a focus on assembling finished products using spare parts and components imported from Japan. This can be seen in such fields as electrics, electronics and vehicle manufacturing through the assembling of parts imported from Japan. This activity is bringing Vietnam an opportunity to export the domestically-assembled products. Assembling industries heavily rely on imported parts, importing more than 50% of the necessary components and spare parts, with the majority of finished assembled products then being sold in the domestic market. However, even domestic consumption oriented producers are active in strengthening their competitiveness by increasing the localization of spare parts and components. As a result, Vietnam is heading towards the export of products assembled in the country. In addition, the Vietnamese government started promoting businesses to export their products to create more jobs and earn more foreign currency. Compared with enterprises producing substitutes for import goods, enterprises which export 100% of their products are granted EPZ/EPE certification, are exempt from import tax on assembled parts and VAT, and enjoy business income tax incentives in accordance with the quantity of exported goods. Moreover, they have also guaranteed access to a low-cost and skilled labor force. Utilizing these preferential treatments, several export oriented processing and assembling enterprises have been established in the period since 2000. Furthermore, Vietnam has begun to build up its potential in mass production plants for IT products for export (e.g. CANON Corporation has built an ink jet printer-assembly plant in Thang Long Industrial Park in the outskirts of Hanoi). Foreign investors' attention has been drawn to the advantages of building manufacturing plants in Vietnam, as well as the development of software for export in Vietnam. However, as detailed above, obstacles to FDI activities remain. Moreover, other ASEAN countries are relentless in enhancing the attractiveness of their countries' investment environment. Therefore, a step-by-step removal of these obstacles is crucial in converting the positive signs into reality.

5) International Movements relating to Investment

The Vietnam-US Bilateral Trade Agreement (BTA) addressed among other things the possibility of stronger future improvements of the investment environment in Vietnam. Article 2 "Equal treatment and most favored nations status" in Chapter 4 on "Investment" of the BTA provides the provision of preferential treatment policies to be equally applied to both foreign and Vietnamese investors. In addition, according to Chapter 5 on “Transparency”, the Vietnamese government has the obligation to move swiftly in publicizing administrative procedures, legal provisions, decrees relating to investment. These BTA provisions are consistent with the Article 2 “Equal treatment and quantity control” and “forbidden trade related investment measures” (requirements on localization ratios, export obligations, foreign exchange balance…) in the Annex and consistent with the Article 6.2 on the “Guarantee of Transparency” stipulated in the TRIMs Agreement. Formulating regulations based on the spirit of the BTA and WTO aims to ensure fairness in competition for all investors.

Moreover, the BTA also mentioned the relaxation of participation restrictions in the service sector. The US government believes that reducing transaction costs is necessary to enhance the competitiveness in exporting products made-in-Vietnam, and requests the Vietnamese government to allow US enterprises to gradually take part in the service sector if domestic enterprises are unable to supply a high quality service at a low price. For foreign service enterprises to penetrate the Vietnamese market, it is necessary to consider measures to ensure a level playing field, e.g. the establishment of an Anti-Monopoly Committee and Competition Laws. Since 2002, Japan has been under negotiation with Vietnam for the Vietnam-Japan Investment Agreement. During an official visit to Japan in April, 2003 by Prime Minister H.E. Mr. Phan Van Khai, a framework agreement was signed by the two countries. On the 14th November 2003 the Agreement for liberalization, promotion and protection of Investment between the Vietnam and Japan was signed in Tokyo. When the agreement comes into force, activities to develop a legal framework to improve the international investment environment will be implemented on a large scale.

In addition, since Vietnam aims to join the WTO in 2005, investment related legal regulations should be reviewed in a comprehensive manner with the aim of abolishing the requirement of a localization ratio by 2005 or soon after.

CHAPTER 3: BASIC ISSUES OF FDI PROMOTION IN VIETNAM

Which measures are needed for promoting investment activities in Vietnam? General measures include (1) in terms of "a strategy for promoting investment": to create conditions for attracting potential investors to Vietnam, and (2) in terms of "improving the investment environment": to remove obstacles to the production and business activities of investors. The focus of the strategy for promoting investment is on the establishment of a preferential investment regime. The regime would also include incentives and provisions for high quality services to investors. In addition, strengthening and the development of auxiliary industries which are still seen as a weak point in attracting investment into Vietnam, is another important strategy. On the other hand, as to improving the investment environment, many FDI enterprises voiced the opinion that improvement needs to be carried out on a large scale for both policy development and implementation. First, regulations related to capital investments, still a barrier to enterprises, need to be reviewed. Secondly, the improvement of the basic infrastructure serving the production and business activities of enterprises (for example, poor customs services, shortcomings of both hard and soft infrastructures - fundaments for the operation of enterprises etc…). Another big issue is that the policy for industrial development is inappropriate and inconsistent, causing great difficulties for enterprises in developing their business plans. Based on these viewpoints and the opinions voiced by Japanese enterprises, in general the following issues came up.

1) Developing and implementing strategies for promoting foreign investment

To attract new investment projects from Japan and to win the trust of enterprises which have already invested in Vietnam, the investment environment needs to be improved so that it is not less than that of China or other ASEAN countries. The stages in attracting investment and those of providing a market with an enterprise's products and services have a number of similarities: First, the product development phase, followed by a search for clients. A step further is to stimulate the demand of potential clients who might not have yet been interested in their products. The above mentioned phases are called marketing activities. The activities for attracting investment are similar. There is a mutual impact between the phases: product development, improvement, and advertisement. In attracting investment, efforts should be made to improve the "product investment environment", at the same time it should be effectively advertised to potential investors. The improved product for sale here is the investment environment itself. Attention therefore should be paid regularly to the degree of satisfaction of enterprises that have previously invested in Vietnam. Until today, around 30,000 Japanese enterprises have penetrated the Chinese market. On top of this around 60% of Japanese enterprises have the intention of investing in China. The main issue for Vietnam - which does not posses many comparative advantages over China and other countries in the region in many aspects except for its labor force, is to design a strategy for promoting foreign investment which is a great deal more attractive than that of China or other ASEAN countries. This strategy is needed to attract investments from Japanese enterprises, who are currently considering plans for building new factories to avoid risks when investments are mainly concentrated in China. After WTO-entry in November 2001, the Chinese government made a plan to gradually dismantle tax incentives in the post WTO accession period. In this situation, if Vietnam can maintain its tax incentive regime in sectors predicted to have comparative advantages over China for a certain period, it is entirely possible for Vietnam to attract part of the investments intended for the Chinese market. Next, considering its specific geographic and national features, Vietnam should develop a strategy for promoting investment, taking into account the potential of strengthening the competitiveness of its industries. Once changes to the investment environment (for example official integration into AFTA etc.) are identified, the Vietnamese government should evaluate and compare these industries competitiveness with those of other countries in the region and develop effective policies on import - export taxes, VAT and income tax incentive.

2) Concrete measures to significantly improve the investment environment

(1) Review all investment-related legal rules and regulation

Regarding rules and regulations that are directly related to business and production activities of private sector and foreign invested enterprises, many FDI enterprises have voiced their concerns on various issues still to be improved in the current legal system including Foreign Investment Law, Labor Law, Land Law etc… The issues have been raised under the Japan - Vietnam trade and investment mission conducted by VCCI earlier. Key points are as follows:

(a) Foreign Investment Law

The Foreign Investment Law still restricts investment by foreign enterprises in some sectors. Many FDI enterprises believe that long-term competitiveness of industries could be enhanced if the government referred to the roadmap of the Vietnam-US –Bilateral Trade Agreement, and opened its markets gradually. Areas that have foreign investment restrictions currently includes imports, domestic transportation and circulation services, monetary and financial services, insurance, information, advertisement etc… (Due consideration must be paid when the Vietnamese government plans preferential tax regimes which aim to attract geographically mobile activities, such as financial and other service activities, in order to avoid this regime being viewed as a "harmful" tax practice by the Committee on Fiscal Affairs of the OECD). Some consider the disclosure of the list of sectors eligible for 100% foreign investment as well as restricted sectors as helpful in encouraging potential investors who may not have much information about Vietnam. On the other hand, for FDI enterprises which are operating in Vietnam, regulations on export duty, compulsory proportion of product localization, compulsory unanimity of the management boards of joint venture enterprises and dual price mechanisms are seen as limitations to the operation of enterprises with foreign investments.

(b) Labor code

As to the labor code, concerns were voiced on its negative impacts on the soft and flexible recruitment opportunities for enterprises with foreign investments. Many enterprises expressed their concern on the regulation requiring enterprises to sign permanent employment contracts with employees where those old contracts of a fixed term had been extended 3 times, according to the amended Labor Code.

(c) Other issues

There are legal provisions which obstruct a free operation of foreign investors and are barriers to the flexible development of enterprises and the consolidation process of the foundation of industries in Vietnam (for example, the registration of export plans required by the Law on Foreign Investments, ceiling limits in terms of time and the value of technology transfer contracts in accordance with Decree No. 45, limits on advertisement costs (not exceeding 5% of total costs), as stipulated in the Law on Corporate Income Tax, enterprises with investment capital from the Vietnamese side of no less than 30% are obliged to build business establishments or purchase equipment and machinery through bidding; the use of capital and assets by credit institutions in foreign countries is also restricted in line with the circular of the State Bank of Vietnam and the Insurance Law.

(2) Enhancing capabilities of implementing agencies

The Government's implementing agencies: customs, tax authorities, courts, management agencies for intellectual property rights, statistic offices- administrative agencies, which directly manage the production and business activities of private economic actors, still face many problems in terms of management mechanisms and capabilities. The efforts to improve the business environment through the enhancement of the capabilities of these agencies are closely connected with the improvement of investor's business situation, and contributes a great deal to attracting FDI into Vietnam.

(a) Customs

Many problems have been pointed out with respect to the transparency and reliability of customs' operations. Vietnamese customs face the need to simplify and synchronize customs procedures and formalities. In general, significant progress has been made in terms of simplifying customs procedures, improving the system of advance submission of import and quarantine plans as well as import and export formalities at seaports etc. There still remain a large number of complicated import-export procedures involving many administrative agencies, which should be improved quickly. To speed up the improvement process of the above mentioned issues, organizational functions of customs agencies should be consolidated and staff capacity strengthened. Besides, the reform and strengthening of the legal framework based on the Kyoto convention - adaptation to be compatible with WTO regulations is also very necessary. In addition, the complicated and cumbersome import export procedures and formalities involving many administrative agencies should be combined and reduced. Formalities should be simplified in a comprehensive manner.

(b) Tax authorities

With the efforts of the Vietnamese government, the tax authorities have made remarkable improvements. However, problems still exist and need to be addressed, such as the reduction of the time required to complete tax formalities, the reduction of time for tax refunds, strict application of tax regulations, elimination of overlaps in tax regulations, abolishing the mechanism of regular control visits of tax authorities to enterprises, clear tax guidance documents etc… These issues received a great deal of interest from private enterprises. Strengthening the functions of tax authorities and staff capabilities are indispensable issues if problems mentioned above are to be solved thoroughly.

3) Developing soft infrastructure for investment

To support private economic actors in managing business activities, the government should develop the soft infrastructure, which is considered the basis for these activities. Since the establishment and improvement of the legal system and judicial regimes, the development of industrial standards and measurement management systems in Vietnam have moved forward slowly, such issues need to be addressed gradually in a concentrated manner.

(1) Legal systems and judicial regimes

Vietnam has many legal provisions. The interrelationship between many legal provisions remains unclear and difficult to understand. Furthermore, the voice of enterprises with foreign investment - an economic element closely linked to the legal system and judicial regime - has not yet been listened to and reflected adequately, therefore investors always lack legal information. Besides, other issues remain, including quick and thorough implementation of civil court verdicts, fair application of economic arbitration to enterprises with foreign investments, quick preparation of the Law on competition and the Law on combating monopolies and so on.

The quality and qualification of legal experts does not yet meet demand. Due to the stagnation of legal education in Vietnam before the renovation process (Doi Moi), judges and lawyers are in short supply and weak in term of qualification (in many cases, judges have not been through any legal training). This leads to a relatively low confidence in the competence of courts'. Many enterprises expressed negative opinions on seeking a court solution to conflict issues. Hence, improving the competence of judges and strengthening the court's functions is an urgent requirement.

(2) Development of industrial standards and measurement management system

The promotion of the universalization of industrial standards is closely related to strengthening competitiveness through the improvement of quality and productivity. Enterprises in Vietnam have their own internal standards systems and a low level of quality management. The development of industrial standards, the measurement, control and management of quality are not universalized and fail to meet the requirements of the integration and internationalization process. The majority of Vietnamese enterprises have little or no equipment for controlling and testing, and industries do not have sufficient equipments for calibration. Therefore, the development of industrial standards and measurement systems should be promoted to develop auxiliary industries -an important element in investment promotion activities.

(3) Economic Statistics

Statistical data, or economic statistics, are used to analyze and assess the investment situation in Vietnam. However, Vietnam's statistics authorities are struggling with problems such as low reliability of statistical data, difficulties in collecting and using data, little statistical information made public, the mandate to publish statistical data not clearly defined etc… Hence, an immediate and urgent task is to strengthen the functions and capabilities of agencies in charge of statistics, first and foremost the General Statistics Office. Recognizing the need for upgrading statistics authorities, the Vietnamese government issued "Orientation for Consolidation of Statistics Authorities until 2010" in 2002. Furthermore, the Law on statistics will come into effect in January 2004. In the new Law on Statistics, there are provisions on the principle of openness, the effective use of statistical data and the channeling of statistics activities back to the General Statistics Office. Since many enterprises place their hopes on quick survey and statistical activities, and promote the effective use of statistical data, the capacity of agencies in charge of statistics will be enhanced.

4) Building economic infrastructure

Issues related to strengthening the economic infrastructure include urban transportation and urban functions, improving effectiveness in transport and distribution, the power sector, the improvement of the international telecommunication environment, the treatment of waste water and industrial wastes and the effective use of JBIC loans to improve the economic infrastructure.

(1) Urban transportation and urban functions

In big cities, such as Hanoi and Ho Chi Minh City, many issues arise such as the intricate road network, low traffic safety and frequent traffic congestion. In addition, many other issues, for instance poor compliance to traffic laws and the restriction of vehicles, still exist. The relocation of urban functions is also another pressing issue. The architecture of theses cities is also not designed for cars and motorbikes to be used as a major means of transportation. Parking spaces for cars and motorbikes are still underdeveloped compared with demand.

(2) Improving transportation effectiveness

Transportation has a number of other problems: there is a restriction on 100% foreign investment in transportation and the high cost of transporting containers to other countries as well as domestic transportation, namely from the South to the North.

(3) Power sector

With regards to the power sector, problems include electricity prices and the stability of the power supply and the development of power plants to meet the increasing demand. Foreign investment in the form of IPP is another issue.

(4) Improving international telecommunication infrastructure

Japanese companies voiced their concern on the reliability of internet services.

(5) Waste water and industrial waste treatment

Where accidents and mishaps in industrial waste treatment, causes damage to environment and public health, the negative impact on business activities of Japanese companies is remarkable. Thus, it is necessary to strengthen the structure of the agencies responsible for waste treatment as well as to develop waste treatment and recycling facilities. In addition, there is still discrimination in monitoring compliance to regulations on waste water treatment between foreign invested and state owned enterprise.

(6) Effective use of JBIC financial resources to improve economic infrastructure

Compared with other countries in the region, Vietnam has a shorter history of utilizing international financial institutions. However, given the future financial demand for development, relying only on ODA and domestic funds will no longer meet the requirements of socio-economic development. Hence, the Vietnamese government should consider utilizing international financial institutions including JBIC.

5) Measures to support existing Japanese investors in Vietnam

Many potential Japanese investors consult those who already made investments in Vietnam before making decisions on whether or not to invest in the country. Potential investors not only consult with other investors, potential investors also examining lessons from both successes and difficulties, even those who experience failure.

Potential investors not only consider the experiences of other companies, but also conduct broad-based surveys using various sources of public information and other relevant information from companies operating in the same business sector, competitors, foreign invested companies from other countries, banks, trading companies, securities firms, analysts knowledgeable about the situation of the target country, scholars, government officials, and so on, and conduct tests simulating future business activities. The assessment of enterprises that have already invested in Vietnam will greatly influence potential investors in Vietnam. Thus, if Japanese companies that have already invested in Vietnam do not say "our investment in Vietnam is successful" or "In spite of some obstacles, our investment in Vietnam is going to be successful", one cannot expect Japanese investment in Vietnam to continue to grow. Therefore, actively supporting the resolution of the obstacles encountered by investors in Vietnam should be one of the first steps the Vietnamese government should take in order to attract foreign investment. This shows the significance of support to Japanese enterprises already investing in Vietnam.

The fact that the Vietnamese government expects to attract foreign investment, especially in the production of components and spare parts, is another reason explaining a policy of support for current investors in Vietnam, notably assembling enterprises with foreign invested capital operating in the domestic market. Large scale Japanese assemblers - which have the capacity to build up supporting industries in Vietnam – have already made investment in manufacturing parts of their product range in Vietnam. All these corporations with activities covering various manufacturing sectors, such as electrical and electronic components, computer, office equipment, motorbikes, cars, etc., enjoy close relationships with component and spare part manufacturers, as well as a command over cooperation networks including the strongholds of Japan and Asia in terms of capital and technology at global level. Due to the pressing need to expand their production and enhance their compositeness, these corporations are willing to cooperate with partners who can reliably provide high quality components and spare parts. Therefore, many Japanese component and spare part manufacturers have invested in other Asian countries to meet the demand of the above mentioned corporations - considered big customers of enterprises manufacturing components and spare parts. In the future, if large corporations decide to expand their operation, it is highly possible that more and more component and spare part manufacturers would invest into the Vietnamese market. Whether or not component and spare part manufacturers invest in Vietnam depends on the success of finished product assemblers. Success and failure experiences are shared among Japanese companies and global trading organizations as well. Furthermore, the success of the investment of large corporations is also an important factor affecting the decision of current investors in Vietnam on whether or not to expand their investments in the country.

A number of current investors say, in many cases obstacles are not arising from the companies business strategy, but competition between imported and domestically manufactured goods, and a lack of appropriate industrial development policies. Some typical issues are listed below.

- Restrictions imposed on business: restrictions on a number of imported components and the restriction of production output based on feasibility studies.

- Introduction of policies which unexpectedly change the scale and structure of the market.

- Unexpected requirement to change the ratio of contributed capital when expanding investment.

- Imported counterfeit goods competing with the products of foreign invested enterprises. The increased import of used goods competing with domestically produced products.

6) Measures to attract potential investors

In recent years, Vietnamese people are increasingly aware that Vietnamese cuisine and sundries for daily use have come increasingly similar to those in Japan. . However, for potential investors from Japan, Vietnam remains distant and misunderstood as accurate information is hard to obtain. Regardless of the significance of this fact in attracting potential investors, FDI enterprises pointed out that this problem, together with the sudden change, lack of transparency and consistency in policy implementation in Vietnam are major obstacles and risk in attracting potential investors. The process of change should be open to the public so that foreign investors can predict changes and minimize negative effects. The country's five-year plan has stated clearly: "foreign direct investment is an important part of the Vietnamese economy". For the time being, many foreign invested enterprises would like the Vietnamese government to establish relationships based on mutual trust with investor community through dialogues. Although the Vietnamese government is making efforts to improve the investment environment, it has not been very active in publicizing relevant information to potential investors. This joint initiative is very important because it widely propagates information on the Vietnamese investment environment to many investors. There is no miracle remedy for attracting foreign investment. Nevertheless, the Vietnamese government can make foreign investors feel secure about their investment activities through continuous efforts to improve the investment environment and increase its dialogue with investors.

CHAPTER 4: CONCRETE MEASURES TO PROMOTE FOREIGN DIRECT INVESTMENT

Part 1: Establishment and implementation of FDI attraction strategy

Item 1. Development, introduction and utilization of supporting industry in Vietnam

< Development of supporting industry in Vietnam>

1) Background

Amongst FDI operating in Vietnam, whether they sell their products locally or export to overseas markets, there is a great need to procure locally, plastic moldings and metal molds. The demand for these items is followed by that for mechanical parts and electronic parts. Although there are some 200 local enterprises engaged in plastic molding, which is a representative supporting industry, the technological levels of most of them are only high enough to make sundries for daily use. For example, in the electronics industry, at present, there are very few enterprises capable of manufacturing molded plastic parts for industrial use, or for use by foreign makers of home and office appliances. The companies capable of making such parts are limited to those of the countries in which the electronics industry is well developed, such as Japan, Taiwan, South Korea, Hong Kong, Malaysia and to a certain degree China. The implementation of AFTA and the influx of low-priced Chinese products are forcing Japanese companies in Vietnam to cut costs and shift their products into those with higher added value. In order to meet these needs of Japanese primary contractors, the Government of Vietnam needs to nurture local parts and materials makers from a medium and long-term perspective.

2) View from Investors

The supporting industry includes plastic molding and metal molds, metal processing through machinery, forging and casting, welding, heat treatment and surface treatment. There are several Vietnamese companies engaged in supporting industries who have the technology and are producing parts. However, few Vietnamese local companies have the capability to meet the demand of assembly companies (especially foreign assemblers) due to their low quality, low performance, and low precise.

3) View from Vietnam's governmental bodies

Although the Government of Vietnam is greatly interested in the development of local supporting industries, it has yet to write a stable, long-term industrial policy for their development. In the area of human resource development, there is a vestige of emphasis on ideological education in elementary education, and not enough time is given to natural sciences, such as physics, chemistry and biology. The government is educating people at universities both at undergraduate and post-graduate levels, and offering posts to those who have studied abroad. However, it does not have well organized programs for the nurturing of engineers and technicians through education at laboratories or technical training centers.

< Introduction and utilization of foreign supporting industry in Vietnam>

1) Background

For those foreign capital companies engaged in 100% direct exports or 100% indirect exports, the Government of Vietnam accords the status of a company operating in EPZ or an EPE company and offers such incentives as preferential treatments regarding tariffs, VAT and corporate income taxes. On the other hand, it does not offer any incentives to attract foreign companies manufacturing parts and materials for the domestic market. In addition, the Ministry of Finance issued on 12th September denying application of CEPT tariff rates to exports from EPZ/EPE enterprises to the domestic market, (formerly CEPT rate has been approved by local customs), has had a strong negative impact on EPZ/EPE enterprises selling their products to the domestic market which were contributing to the development of Vietnamese economy.

2) View from Investors

For example, in order to develop the electronics industry in Vietnam, Vietnam should introduce foreign companies in supporting industries, regardless of whether they manufacture for the domestic market or for exports. Foreign companies already operating in Vietnam as assemblers should also immediately enforce the incentive policies, as proposed action plans, in order to attract foreign parts and materials producers. Domestic sales of products by EPZ/EPE enterprises will then increase rapidly which will have an essential role in further strengthening the competitiveness of the Vietnamese economy. Investors recommend that the Vietnamese government increase the utilization of products from EPZ/EPE enterprises by applying CEPT rates to these sales.

3) View from Vietnam's governmental bodies

In order to develop local firms that manufacture parts and materials, for example in the electronics industry, as well as to attract foreign firms in this sector, the government should create a master plan for key industries including a study of the incentive systems. A master plan should fully incorporate the impact of and the strategy against changes in the international environment brought on by AFTA, BTA, WTO, FTA, etc. Concerning the application of CEPT rates to domestic sales by EPZ/EPE enterprises, the Vietnamese government should remember that these enterprises already receive strong preferential tax incentive (ex. CIT). MOF is to issue decrees as guideline to revised Laws for CIT during 2003, which will provide guidelines only for CIT, including the preferential tax regime stipulated in the FDI Law.

4) Proposed Action Plans

1. Development of Supporting Industry

Government of Vietnam will take the following measures immediately in order to develop a supporting industry in Vietnam.<MPI>

(1) Establishing a master plan for supporting industry development
(2) Establishing business management & technological training centers and technical assistance centers for SMEs.
(3) Establishing a data bases on local supporting industries
(4) Developing some industrial parks particularly for supporting industry enterprises.
(5) Applying preferential measures for supporting industries (assistance in finance, training and human resources development, receiving technical information, taking part in products introduction fairs)

The Government of Japan will examine the future cooperation to assist the Vietnamese side in implementing the following measures.

(6) Policy advices for the development of supporting industries (i.e. establishing the master plan for supporting industry development)
(7) Technical assistance (establishment of a Technical Assistance Center for SMEs, dispatching technical experts for round technical diagnosis)
(8) Management diagnosis
(9) Exchanges between SMEs (trade fairs, business talk missions, exchanges between Japan's SMEs and Vietnam's SMEs)
(10) Providing technical information (list of local enterprises, organizing seminars for each sector, matching between FDI and local enterprises, "Reversal trade fair" which will provide foreign assemblers seeking local parts and material makers to meet assemblers demands)

The Government of Japan will also examine the possibility of assisting in the facilitation of Japanese FDI supporting industries to invest in industrial parks designated by the Vietnamese side.

2. Attraction of FDI supporting industries

In order to strengthen tax incentives to investment by supporting industries, the Government of Vietnam will strengthen tax incentives to certain types of supporting industries through issuing a new CIT guideline decree. The Government of Vietnam will issue the new CIT implementing guideline decree as soon as possible.<MPI, MOF:WT7>

3. Utilization of FDI supporting industries

(1) [Calculate parts and materials supplied by EPZ/EPE status enterprises into local

content ratio]
Even in the case where assembly companies purchase parts or materials from enterprises with an EPZ or EPE status, the Government of Vietnam should allow them to calculate such parts or materials into local content ratios the Government of Vietnam will issue the guidelines for calculating local content ratios in such cases within 2004. <MPI, MOF: WT9>

(2) [Simplify procedures for EPZ/EPE status enterprises in domestic sales]
In the case where EPZ/EPE status enterprises sell their products to assembly companies that sell their products to the domestic markets, the Government of Vietnam will apply simplified procedures (similar to the procedures for enterprises within the bonded transactions filed in some foreign countries including Japan) (within half a year or so). <MPI, MOF: WT9>

(3) Import tariffs applied to EPZ/EPE status enterprises on the occasion when they sell their products to domestic market.
The Government of Vietnam will provide regulation for application of CEPT/AFTA to domestic sales of EPZ/EPE enterprises as far as the products meet the conditions for CEPT application.<MOF:WT9>

Item 2. Clarification of corporate income tax incentives for FDI Companies

1) Background

Under the new law, Law on Corporate Income Tax (New CIT law) effective on the 1st January 2004, the standard tax rate will be 28% for both FDI companies and local companies, which currently stands at 25% for FDI company and 32% for Local Company. In turn, the Profit Remittance Tax for FDI company will be abolished. Details will be made clearer in the new implementing guidelines to be issued shortly.

***Laws and regulations concerning this issue:**

New CIT law 09/2003/QH10, Existing CIT law 05/1997, Law on Foreign Investment 18/2000/QH10, Degree 24 /2000/ND-CP, Degree 27/2003/ND-CP

2) View from Investors

Under greater competition in attracting FDI, there is a concern that the CIT tax rate rise may give a negative message and effect the attraction of new investment. It makes investment conditions worse for FDI, especially for their cash flow balance even though the profit remittance tax is to be abolished.

3) View from Vietnam's governmental bodies

The new CIT law will create a level playing field for both FDI companies and local companies in accordance with the WTO rules. The government believes the 28% CIT rate is level with that in neighboring countries. Thus Vietnam still has competitiveness in attracting investment. Depending on individual companies, the CIT tax burden will be decreased substantially since the profit remittance tax will be abolished. The concept of the new CIT law is a lower CIT rate, providing more new investment and greater tax revenues. Regarding the concerns of existing FDI, the tax incentives current rate is, 10%, 15%, and 20%, and will be kept even though the Profit Remittance Tax is to be abolished. This measure intends to broaden the tax base through promoting foreign and domestic investment. Accordingly, tax revenue from existing enterprises is supposed to decrease. Regarding the concerns of newly arriving FDI, they can also enjoy the current tax incentive levels of 10%, 15% and 20%. The maximum tax incentive is a 4 year exemption and 9 years of deduction. These conditions will be made clearer in the coming ordinance.

4) Proposed action plan

1. Keeping tax incentives in accordance with the Law on the Foreign Investment: The Government of Vietnam affirms that the coming revision of the CIT law doesn't have any adverse effects on the current preferential tax treatment articulated in the Law on the Foreign Investment, in sum 10%, 15%, and 20%. [Immediate execution]. In addition, it should be articulated in the new CIT implementing guideline decree [as soon as possible before the end of 2003.<MOF: WT7>

2. Securing current tax incentives for existing investors: The Government of Vietnam affirms that the coming revision of corporate income tax does not have any adverse impact on the current tax incentive scheme given to existing investors. [Immediate execution]. Moreover, the new implementing guidelines issued later shall articulate this as soon as possible before the end of 2003.<MOF: WT7>

Item 3. Improvement of Personal Income Tax

1) Background

The current tax rate for the personal income tax of foreigners is 50%, maximum, and is considerably higher when compared to neighboring countries. Existing investors have not been satisfied with this rate for a long time. 70:30 rule has been adopted as a transitional measure. However, this rule was abolished in 2002 because the government cut the tax rates for Vietnamese people. Consequently, the tax burden of FDI companies increased in terms of foreign employees (In turn the PIT for Vietnamese employees was reduced. It is also problematic that tax rate of the PIT for Vietnamese employees is even higher than that of foreigners). Besides this, Vietnam does not have a law on the PIT, and just an Ordinance for Higher-Income Earners.

The majority of taxpayers are employees working for foreign enterprises.

***Laws and regulations concerning this issue**
Ordinance on High-income earners 35/2001/PL/UBTVQH10
Circular15／2000／TT-BTC

The highest PIT tax rate

Vietnam	Thailand	Malaysia	Singapore	Philippine
50%	37%	28%	26%	32%
Indonesia	China			
35%	45%			

(Source: Vietnam-Japan Investment-Trade Working Group report)

For reference, below is a comparison with China about CIT.

Items	Vietnam/ New CIT law	China
Standard CIT rate	28%	33 % (including local tax 3%)
Profit remittance tax	N/A	N/A
Typical CIT incentives for typical FDI manufacturing company	10%, 15%, 20% CIT tax incentive rate. Maximum 4 years exemption and 9 years deduction.	15%, 24% CIT tax incentive rate 2 years exemption 3 years reduction for manufacturing company
Timing of applying tax incentives	First accounting profit making year (Not to consider loss carry forward)	First taxable profit making year (To consider loss carry forward)
Duration loss carry forward	5 years	5 years
Limitation on the marketing and advertising expense	10% of the total expenses	No limitation
Limitation on entertainment expense for manufacturing company	Included in marketing and advertising expense	0.3%-0. 5% of total sales
Transfer pricing tax	Stipulated in 1997	Stipulated in 1991, implemented in about 1995

2) View from Investors

The PIT on foreign employees is considered a fixed cost for the company that is incurred regardless of any profit. This gives FDI companies a heavy tax burden. The high level of PIT rates amongst neighboring countries reduces the motivation of potential investors. The Vietnam Business Forum has put a high priority on their requests for long time, but it is yet to be improved. Furthermore, foreign investors are doubtful whether there are any Vietnamese individuals who earn enough taxable income and where they do may not declare PIT or CIT. The tax authority may be stricter on FDI companies. As a result, foreign investors request that the government reduce the PIT tax rate on foreigners and establish a fair PIT system.

3) View from Vietnam's governmental bodies

The government plans to revise PIT regulation in two stages. First, they will amend the existing ordinance effective 2005. In this change the rate of the PIT for foreigners and Vietnamese may be standardized and the highest rate may be lowered. Second, in 2006, they plan to issue the new PIT law in which a wide range of the Vietnamese peoples are expected to bear the burden of paying tax as the market economy progresses, they will also introduce personal allowances or a deduction system in this stage of PIT revision. It is not easy to capture the income of the Vietnamese population in general due to the high level of cash transactions. In this regards, they expect technical assistance from the Japanese government, such as in developing a withholding tax system.

4) Proposed action plan

Recognizing the important role of PIT as a basic tax, the Government of Vietnam should firmly put into practice the following action plans as well as increasing the minimum tax basis and enlarging tax coverage.

1. Reducing the maximum tax rate: In 2004, the Government of Vietnam will submit the draft amendment on the Ordinance on Higher-income Earners to the National Assembly, which will reduce the highest tax rate in view of enhancing Vietnam's competitiveness of investment attraction against neighboring countries. [the next revision of the PIT Ordinance within 2004] <MOF: WT7>

2. The Government of Vietnam will submit the draft of the new PIT Law to the National Assembly within 2006, which will introduce a personal allowance or deduction system suitable for Vietnam. [issuing PIT Law within 2006] <MOF: WT7>

The Government of Japan will examine the future cooperation of assisting the Vietnamese side to implement the above mentioned measures.

Item 4. Strengthening of FDI promotion activities (One stop service for FDI)

1) Background

In July 2003 the Ministry of Planning and Investment reformed its FDI related organization and established the first "One-stop agency" in Vietnam. The FDI Department, Project Monitoring Department and the Southern Office were put together and became the Foreign Direct Investment Agency. The investment promotion function was also transferred to this Agency. This Agency has 6 departments and functions. Policy and strategy making and statistics, Foreign corporation and investment promotion, Industry and construction sector department, Agriculture, forestry and aquaculture sector department, Service sector department and Administration department.

Furthermore, North, Central and South investment promotion centers are being established. The Southern foreign investment promotion center has additional functions besides promotion such as receiving investment license applications and project monitoring. One of the notable things in this Agency is that it has 3 sectoral departments. These departments have functions to serve from pre-licensing to post-licensing for further connections with FDI companies. These 2 functions were divided between the FDI department and the Project Monitoring Department previously. The Investment Legislation Department and EPZ, IZ Monitoring Departments remain independent for law making and management of EPZ and IZ.

Note: There have been many suggestion and recommendations from donors regarding FDI arrangements such as (i) the agency directly belonging to the Office of the Government, and chaired by the Prime Minister, (ii) they should assign experts from other related ministries, (iii) the agency should be established out of the governmental structure. This Agency is set in the MPI, once restructured its functions are to move from administration oriented to investor oriented.

***Laws and regulations concerning this issue**

Law on Foreign Investment 18/2000/QH10, Degree 24 /2000/ND-CP, Degree 27/2003/ND-CP

Promotion is under way to encourage direct investment in Vietnam by Japanese companies or to shift production bases by Japanese and ASEAN companies to Vietnam. In this endeavor, a major role is being played by Japanese companies (trading firms, banks and securities companies), which engage in the business of operating and managing industrial zones (IZ) or export processing zones (EPZ) they have constructed in Vietnam. As a result, 80% of Japanese companies operating in Vietnam for production are sited in IZ and EPZ. Some of these Japanese companies have their staff members or departments specializing in investment promotion in Japan. The Vietnamese government, on its part, conducts activities to induce Japanese companies to investment in Vietnam by allowing regional people's committees to hold seminars in Japan and reinforcing the invitational function of the MPI, a central government body. In response, JETRO, a Japanese government organization, is assisting Japanese companies in their investment in Vietnam through, for instance, the recently dispatched investment promotion mission.

2) View from Investors

Investors welcome the establishment of the new organization, and expect this will be a big mile-stone for FDI promotion. From an investor's point of view, there should be 2 functions in such a one-stop agency. The first is to promotional function or a pre-licensing function, providing information, receiving investors and license issuing. The second is a post-licensing function such as monitoring FDI projects, trouble-shooting and giving feedback to the government to improve the investment environment.

Previously the MPI was not aggressive in investment promotion activities, with difficulties being found for potential investors just in making an appointment with the MPI. For examples, investors need a letter of introduction to get organize a meeting, and could not contact the MPI by telephone or E-mail effectively. As a result, the potential investors may hesitate in approaching the MPI. We expect MPI to improve these matters initially. It may also be beneficial to establish an MPI library so investor can collect information on investment in Vietnam. In China the leadership of each province is very eager to receive potential investors, and also send missions to Japan frequently.

Regarding the second point, we have frequently discussed with the MPI trouble-shooting activities. However, some problems have not been solved as expected. This may be because some problems may be out of the jurisdiction of the MPI. In Thailand or Malaysia, there are seconded experts from FDI related ministries within the one stop agency. Once a problem occurs, they are able to respond quickly. Investors would like such a trouble-shooting system for Vietnam.

3) View from Vietnam's governmental bodies

To deal with the requests of investors, in addition to previous promotional activities, the government plans to introduce more effective promotional activities on a project basis, such as designing a promotional strategy, processing a project-calling list by location or by sector as well as FDI data collection and analysis. They will request support from the Japanese government to put such a plan into practice quickly, including:

1. The updating of a web site for investment promotion and translation into Japanese.
2. Advisors for the promotion strategy
3. Advisors for the selection and calling for projects by sector and by location
4. Constructing information systems in MPI and DPI for FDI matters.
5. Constructing a data base on potential investors and sectoral analysis

6. Setting up a library

Regarding trouble-shooting, MPI closely keeps in touch with experts in-charge within other ministries. A trouble shooting mechanism once existed but will needed to be strengthened. The government will delegate many functions to people's committees and industrial zone management boards, thus they will be reporting periodically more often. The three new sectoral divisions will be more effective in supporting FDI. The government referred to ideas within the JICA development study report to formulate this organization.

However it should be noted that the many of the problems that investors often fall under the power of other ministry. There is a limitation in what the MPI can do to solve them.

4) Proposed action plan

The Government of Vietnam will take the following action plan in enhancing the newly established FDI related agencies and departments.

1. The Government of Vietnam will take necessary budgetary measures for FDI promotion activities from the annual budgets of relevant ministries and peoples committees. <MPI: WT1> The Ministry of Finance will be responsible for the specific guidance to implement this regulations articulated in the Resolution No. 09/2001/NQ-CP issued on 28 August 2001.

2. In the cases of conflicts related to licensing or trouble-shooting, MPI as the contact point will co-ordinate with related ministries to ensure the legal and practical application of measures consistent with FDI laws or international agreements.<MPI:WT1>

The Government of Japan will examine the cooperation for strengthening the following assistance to the Vietnamese government in implementing FDI promotional activities.

1. Dispatching regular investment missions to Vietnam in cooperation with MPI
2. Assistance to the Vietnamese side in organizing FDI seminars in Japan for each sector (especially for supporting industries)
3. Capacity building to MPI (FDI agency and three Investment Promotion Centers in North, Central and South of Vietnam) related to FDI promotion activities and the one stop service agency.
4. FDI related legal assistance with a view to observing international commitments (i.e. Vietnam- Japan Investment Agreement)
5. Assistance to Vietnamese side in the establishment of the investment promotion service office in Japan through JETRO's scheme.

Item 5. Establishment of Strategy and M/P for Basic Inductries

1) Background

In Vietnam, the government has developed the "Industrial Development Strategy" and the "Master Plan (MP)" as a medium- and long-term vision for major industries, under which various measures have been implemented. The original plan for the "Strategy" and "MP" were formed primarily by the Ministry of Industry (MOI), which is in charge of most manufacturing industries (the Ministry of Post and Telematics is in charge of the electronics industry), and its annexed research institutions. However, the original plans for certain industries were made by the MPI, while those for other sectors, such as construction materials and iron and steel, were framed by the other ministries and agencies concerned. In practice, it is often the case that state-owned enterprises in the said industries were also heavily involved. In principle, the "Strategy" is developed first, followed by the "MP." They are almost the same in terms of content, but differ in that the former shows the course of development for respective industries, while the latter usually gives numerical targets to attain. The original plan for both the "Strategy" and "MP" are put to discussion in the ministries concerned, referring to the views from other related ministries and agencies, and then passed to the Office of the Government. After further examination and ministerial coordination, they take effect with the approval of the Prime Minister. As of July 2003, MPs had been developed for more than 23 industrial sectors, and revisions are scheduled for a period 2001-2005 for a certain number of these MPs and for a period 2001-2010 for most of them. MPs (including some revised versions) for some sectors, such as automobiles, chemicals, ceramics/glass and mining, will be completed shortly. The preparation of the MP for regional economic development is also under way, while that for motorbikes, which comprises a vital element of the machine industry and their parts, and electronics industry remains pending.

Based on the "Strategy" and "MP," cross-industrial policies and policies peculiar to individual industries are implemented, depending on occasional changes in the environment, primarily through ministerial ordinance. Such policies may be worked out not only by the competent authorities but also by other related ministries and agencies. In the automobile industry under the control of MOI, for instance, these policies include the MOF's tariff policy and the National Assembly's resolutions regarding special consumption tax, while in the motorbike industry, they include the Prime Minister's Decision which consequentially restricted total quantity in the market, the Ministry of Trade's (MOT) quantitative restriction of parts imports and the forced application of the motorbike quality standards were set by the Ministry of Science and Technology (MOST) and the Ministry of Transport and Communication (MOTC).

2) View from Investors

The "Strategy" and "MP" work as the guidelines indicating the course of Vietnam's industrialization, and as such they should be followed by foreign firms as well as by domestic capital companies. These guidelines are supposed to allow both domestic and foreign companies to stand on an equal footing. However, the "MP" itself sometimes contains an unfair point in favor of certain state-owned enterprises. An example is the MP for the cement industry, which has an unexpected, sudden entry for possible scrapping of a joint venture (JV) contract. For industries for which "Strategy" and "MP" are to be developed or amended from now on and where foreign companies are one of the important player, it is earnestly hoped that due attention is paid to foreigner investors views in the process of preparation, or discloser of the main point of discussion in the course of examination as well as the content of arguments at appropriate stages, or make advance release of documents before they are officially announced (or take effect). Such measures can make a significant contribution in that they greatly help enhance the general trust in Vietnam's industrial policy and ensure equal national treatment to foreign companies. Incidentally, the involvement in industries by a broad range of ministries and agencies is not unnatural. The problem is whether a policy is consistent and transparent, and whether it is based on foresight. The fact is a lack of consistency, transparency and predictability often poses a problem.

For instance, regulations concerning the reduction or exemption of special consumption tax on cars, quantitative import restrictions on motorbike parts, and the change of terms of import conditions for domestic capital glass companies are sometimes issued by ministries and agencies other than those in charge. This practice makes us doubt whether they are based on a consistent policy for genuinely fostering these industries. There are fundamental matters for corporate management, such as markets for individual industries, conditions for production, export and import, local content ratio for foreign companies, competition among companies, and new investments in Vietnam or additional investment by the present market participants. These basic policies, when issued from time to time by more than one ministry and agency other than the competent authorities, tend to impress that a consistent underpinning policy for industrial development is missing. The process of discussion and determination of the policy is unclear and invisible to foreign companies. No views are adequately sought from foreign companies in the process of policy examination, nor is the process of discussion made public. This abruptness in issuing regulations to take effect leaves a doubt about its advisability.

No specific and concrete content is indicated in the medium-term tariff policy towards AFTA, or in the medium- and long-term policy with an eye for the admission to the WTO. This lack of foresight now poses a major problem for corporate management. Having just launched into industrial development, Vietnam, while opening its market, may well protect some specific industries to help them attain adequate competitiveness. In tariff negotiations for AFTA with developed ASEAN nations, Vietnam should make the first move. It should be noted that after all corporate management is an act invariably based on predictability. It is hoped, therefore, that the Vietnamese government will disclose its policies for medium- and long-term tax policy, legal affairs, markets, and infrastructure construction, which all can critically affect the environment for corporate management.

3) View from Vietnam's governmental bodies

The government is aware of the lack of policy consistency in many of the industries embracing FDI because of the involvement of a number of ministries and agencies. It also recognizes the importance of correcting the present practice of excess participation by governmental enterprises in the drafting process of the "Strategy" and "MP." At present, the work is under way to define the wording in "Strategy" and "MP" and drastically reexamine the process of their compilation. A draft is being prepared that will help the MPI (and the Development Strategic Institute) issue a decree and then the Central Institute for Economic Management (CIEM) will develop an ordinance. The typical and conventional process (of going through public corporations, MOI and the Approval of the Prime Minister) does not always show a comprehensive vision for an entire industry. From this experience, in preparing the new "Strategy" and "MP," efforts are being made to bring them closer to the principle of a market economy by stressing the following three points.

- To increase the policy's flexibility to cope with the changes in the environment.
- To intend the new "Strategy" and "MP" to serve as a soft type of guideline for industry (intended for indirect guidance of industry).
- To form them into company-oriented ones to enhance freer corporate activity.

4) Proposed action plan

1. The Government of Vietnam commits itself to giving foreign investors room to make comments in the process of establishing "Strategy" and "MP" [immediate execution]
2. The Government of Vietnam establishes "Strategy" and "MP" for basic industries as soon as possible in accordance with import tariffs and tax policies.

The Government of Japan will examine the future cooperation of assisting the Vietnamese side in implementing the above mentioned measures. <MPI: WT1>

Item 6. Visa waiver for short-term stay

1) Background

Vietnam is the only country to require Visas for Japanese citizens for short-term stays amongst major ASEAN countries. Currently one month single Visas and 6 months multiple Visas are used mainly for business trips.

2) View from Investors

The current system is inconvenient for existing investors especially in the case of urgent machinery maintenance, conferences, and site visits. It is also disadvantageous from the

investment promotion point of view. For example, it is complicated to get a Visa, especially for a company located in a local area in Japan. Vietnam may be missing out from investment delegations. Visa acquisition in the airport does not work well and is risky for a visitor.
According to the Vietnam News on August 5, China may abolish the short-term stay Visa for Japanese citizens sometime soon. A visa waiver could be a strong message to welcome investors.

3) View from Vietnam's governmental bodies

The Vietnamese government (MOFA together with other relevant ministries) is now considering visa waivers for the short–term stay of Japanese citizens.

4) Proposed action plan

The Government of Vietnam will grant visa waivers for short-term stays, possibly including business purpose, to Japanese citizens as soon as possible with an earliest timing of 2004. <MOFA>

Part 2: Specific policies and measures for drastic investment environment improvement

1) REGULATIONS RELATED TO INVESTMENT

Item 7. Schedule of establishment of commercial presence and deregulation for foreign trading companies

1) Background

The Vietnam-Japan Joint working group has requested Vietnam to make less restrictive rules when FDI is established in service industries including trade, distribution, finance, insurance, telecommunications and advertisement. It has also requested the allowance of manufacturing companies to import finished products. For example, finance, insurance, and advertisement service have an A group project classification, where a decision by the prime-minister is necessary in case–by-case basis, as well as trading and distribution services, while telecommunication projects can be approved only under the Business Cooperation Contract (BCC) form. Besides this, the role of foreign trading companies, which have broad networks all over the world, is very crucial in promoting the market economy in Vietnam in terms of marketing and facilitating foreign direct investment. Despite this Vietnams business (export and import) climate remains unfavorable with room for the Government of Vietnam to improve it.

*Laws and regulations concerning this issue

Law on Foreign Investment 18/2000/QH10, Degree 24 /2000/ND-CP, Degree 27/2003/ND-CP, Vietnam, Agreement between USA and Vietnam on trade relations (USBTA)

2) View from Investors

Many companies are interested in investing in these fields. Thus, the volume of foreign investment is expected to increase by means of de-regulation. Investors expect the Vietnamese government to set forth clear criteria for getting an investment license being fair to all investors. As for trading companies in Vietnam, foreign companies are only allowed to carry out import and export business in a limited number of products and ways, which prevents foreign trading companies from showing their comprehensive functions (international marketing, efficient trade and service, attracting FDI etc). The limitations on the functions of foreign trading companies are an impediment for the export of Vietnamese products and attracting foreign investment.

3) View from Vietnam's governmental bodies

The road map of the Vietnam-US Bilateral Trade Agreement (USBTA) is applied to investors from other countries in principle.

For example in the field of trading and distribution services, joint ventures may be established with Vietnamese partners, and the capital contribution of the US side may not exceed 49% after 3 years from the date of entry into force of the Agreement. 100% US invested companies may be established after 7 years the date of entry into force of the Agreement. The distribution of a finished good by a manufacturing company is subject to an amendment of its investment license which may not be restrictive in line with the agreement. The Government would appreciate technical assistance from Japan regarding new investment laws and their related regulations, investment agreements, and WTO related matters to enact or implement them properly. As for the trade and distribution of Japanese companies, the government intends to liberalize business in accordance with the roadmap of the Japan-Vietnam Investment Agreement. However, the existing laws and regulations don't articulate business models such as Japanese Sogo-Shosha.

4) Proposed action plan

1. The Government of Vietnam will follow the road map described in the Vietnam - Japan Investment Agreement to approve the commercial establishment of FDI in the field of manufacturing, trade and distribution (including import and distribution by manufactures), finance, insurance, telecommunication and advertisement. The Government of Vietnam will issue implementing guidelines for the commercial establishment of FDI in the field of trade and distribution trade as soon as possible after enacting this agreement. <MPI:WT1>

(Proposed Note of Japanese side: As for the preferencial tax for financial and other service sector, it should be paid special attention no to be harmful tax under the OECD rule)

2. The Government of Vietnam will loosen the limited function of branch offices of Japanese Sogo-Shosha, integrated general trading companies. The Government of Vietnam will submit the amended Commercial Law to the National Assembly in order that the number of commodities to be dealt with in imports and exports is enlarged and the rule of import-export balance is less restrictive according to regional and international economic integration schedule of Vietnam.<submit to the National Assembly as soon as possible in 2005> <MPI, MOT: WT1>

Item 8. Removal of the restrictive investment rule

1) Background

In Vietnam-Japan Joint Trade and Investment Working Group, the Japanese side has requested the Vietnamese side to remove the following restrictions or rules.

- Investment projects must have at least 80% export,
- Unanimous or consensus rule,
- Requests for purchasing or using products of a domestic origin, and
- Dual pricing.

According to the Working Group meeting, the sectors requiring 80% export have been gradually eliminated and only 14 items remain (Decision 718/2001/QD/BKT). Discriminatory prices are being removed. Consensus rule remains, but may be removed under the coming investment law. The local content restriction and export ratio stated in the license are to develop incentive and establishment conditions for enterprises. If the investment agreement between Vietnam and Japan is signed, the restrictions will be removed as scheduled.

*Laws and regulations concerning this issue

Law on Feign Investment 18/2000/QH10, Degree 24 /2000/ND-CP, Degree 27/2003/ND-CP, Vietnam, Agreement between USA and Vietnam on trade relations (USBTA)

2) View from Investors

Investment-related regulations such as export requirements and localization requirements are restrictive and bind the activities of FDI companies. Besides this, unanimous or consensus rule, which is not seen in other countries, is also a bottleneck effecting the smooth management of joint ventures. Dual pricing is also a problem. Thus, Investors expect the Vietnamese side to abolish them immediately.

3) View from Vietnam's governmental bodies

Under the USBTA, the road map of eliminating these restrictions and rules are scheduled. Regardless of the USBTA, the government will gradually remove these, as mentioned in the Working Group meeting. Besides this, the government plans to abolish dual pricing by the end of 2004.

4) Proposed action plan

Upon the date of the enactment of the Vietnam-Japan Investment Agreement, the Government of Vietnam will eliminate 80% of export requirements (except in some sectors) and also unanimous or consensus rule. The Government of Vietnam will eliminate local content requirements and dual pricing systems according to the roadmap of the Investment Agreement. <MPI: WT1>

Item 9. Clarification of sectors where 100% FDI Companies are approved

1) Background

Many manufactures wish to invest in the form of 100% FDI. In the annex of Degree 27, some industries under the restricted list are permitted only to operate in the form of a Joint Venture, BCC or under specific conditions. Some industries are prohibited. In Article 114 of Degree 27, industries are listed where the prime-ministers decision is necessary. Unless stated in the "negative list" an industry can approve the operation of a 100% FDI Company. Most of the manufacturing operations can be established in the form of 100% FDI.

*Laws and regulations concerning this issue

New CIT law 09/2003/QH10, Existing CIT law 05/1997, Law on Foreign Investment 18/2000/QH10

2) View from Investors

Investors understand the regulation. But practically, local people's committees may not be clear about this interpretation. Therefore they make enquiries to MPI or other relevant authorities, which are very time consuming. For example, this happens in areas such as manufacturing, engineering consultancy services, maintenance services, and the IT industry. This may be due to the restricted list being unclear for these authorities. The positive list, which we are requesting, is more effective for investment promotion since investors can understand this at one glance. Investors may also not be familiar with interpretations of the law. Currently, there are a number of investment lists including "the list where investment is encouraged" and "the list where investment is especially encouraged" detailed in the annex. Further more there is "the list of investment sectors calling for investors". It may be possible to review these lists and develop them into an "investor-friendly positive list" suitable for Vietnam.

Note: Foreign investment industrial guidance in China classifies industries into 3 categories, "262 encouraged industries". "75 restrictive industries", "34 prohibited industries". If an investment is not stated in these 3 lists, it is considered to fall under the category of "the approved industries". Investors can see Chinas industrial policy easily.

3) View from Vietnam's governmental bodies

In general the negative list is technically better from the legal point of view. One reason is that it may take time to process the positive list. Another reason is that some industries may be excluded from the list. Thus it may be confusing for both authorities and investors. Furthermore it is not felt to be the time to process this list at the moment as we prepare to integrate into the world economy, restrictive conditions in different sectors may change year on year.

4) Proposed action plan

The Government of Vietnam will take the following steps. <MPI: WT1>

1. To submit to the National Assembly to stipulate that 100% FDI is approved in all sectors except those stated within a "negative list" on the next revision of the Foreign Investment Law.
2. To issue a more detailed "negative list" through a revision of Decree 27 on the occasion of the next revision of the Foreign Investment Law.

Item 10. Labor Code

1. Indefinite term labor contract

1) Background

The new Labor Code has been in effect since January 2003. This issue is related to Article 27 of the new Labor Code, which requires an employer to enter into an indefinite contract with an employee from the second time of renewal of a labor contract. There are 3 kinds of labor contracts, which are indefinite term contracts, definite term contract, seasonal, or specific job labor contracts. Previously an employer could renew the definite term contract every year. But the new labor code and regulation limits renewal of definite term contracts to only one time. FDI companies, which have many employees, are concerned about the impact on labor management. Under the definite term contract employers have the option that they can terminate a labor contract by letting the definite contract expire. Under the indefinite term contract, the termination of the labor contact needs mutual agreement in principle. For reference; China has a similar rule to Vietnam. After 10 years employment, employers and employees enter into a permanent employment arrangement by mutual agreement.

***Laws and regulations concerning this issue**

Law amending and supplementing certain articles of the labor code 35/2002/QH10 (Hereafter new labor code), Degree 44/2003/ND-CP

2) View from Investors

(1) A labor contract should be concluded based on an agreement between employer and employee, then it is not advisable for the government to intervene it too much excessive intervention of the government even make capacity development of employees delayed. Investors do enter into indefinite contracts with good employees. It is unfair that employees can leave the company easily while the employer is bound by the law. Furthermore, investors have not been consulted

about this important revision. This new rule may also convey a negative message regarding Vietnam's market-oriented economy.

(2) This may cost the company additionally when the company has to retrench or dismiss undisciplined employees.

(3) The potential unemployment rate is too high in Vietnam. This new rule may remove the opportunity for the potential employees. The Labor force is one of the attractive resources in Vietnam.

(4) In case of labor disputes, the concerned issue is that FDI companies usually lose in the labor courts.

3) View from Vietnam's governmental bodies

(1) This law applies to the both FDI companies and local companies and establishes a level playing field. The government has made this amendment after consultation with foreign experts and the ILO, thus this law balances between the rights of the employer and that of the employee. Vietnam is under transition from a planned economy towards a market oriented economy, therefore a minimum of interference by the government is necessary to protect employees. Vietnam expects a longer relationship between enterprises and employees to be advantageous for both employers and employees. Furthermore, employers is assumed to know the capability of their employees within 3 years.

(2) The employer may dismiss the employee if he/she breaches written internal labor regulations.

(3) This issue will be concerned.

(4) In some cases, FDI companies win labor disputes.

Technical assistance from Japan would be appreciated to restructure and strengthen vocational training centers and strengthen the knowledge of labor management matters.

4) Proposed action plan

1. The Government of Vietnam will continue to disclose more examples of labor disputes to FDI companies after 2004, and arrange seminars on labor issues at a central level with investors so that the relationship between employers and employees will further be improved. <MOLISA: WT6 >

2. The Government of Vietnam will examine the possibility to remove this restriction of indefinite contracts in the next amendment of the labor code by considering the cost of labor, the opinion of enterprises and the regulation of other countries.<MOLISA: WT6>

2. Overtime compensation on annual leave

1) Background

The below is the comparison between new labor code and old one in terms of overtime compensation. (% the hourly pay for a normal working day)

	New labor code	Old labor code
On normal days	150%	150%
On weekend	200%	200%
On holiday or paid leave	300%	200%
On annual leave	**300%**	**Unclear**

According to the labor code, employees shall be entitled to take 12 days annual leave during a year after they work for an employer no less than 12 months. For reference, in China, there are no clear guidelines on annual leave in general, or how many days an employee is entitled to take in annual leave during a year. The implementation of annual leave and its compensation is dependent upon the individual enterprise. Thus overtime compensation on annual leave is not discussed explicitly.

***Laws and regulations concerning this issue**

Law amending and supplementing certain article of the labor code 35/2002/QH10 (Hereafter new labor code), Degree 114/2002/ND-CP

2) View from Investors

- The overtime compensation for annual leave is too high. The employee may not take annual leave because of this high compensation level.
- Some employees wish to work annual leave even if the overtime compensation is 100% only. This should be decided by mutual agreement between the employer and the employee.

Foreign investors understand legal division of this rule. But it is not advisable to change too much too suddenly. Many FDI companies have been paying 100% in practice, since the law was unclear. The sudden change of the regulation is a surprise to FDI companies. This creates a negative image of the investment environment. No 114/2002/ND-CP should be amended as following. “Article 10 C) 3. On holiday or paid leave as stipulated in 73 and 78 of the Labor Code, at rate of at least 300%”

3) View from Vietnam’s governmental bodies

- Annual leave is a time of rest for the employees to refresh themselves.
  The employer should encourage them to take annual leave. This level of 300% for annual leave is a clarification of the old labor code.
  The law may not be taken into account in such cases.

4) Proposed action plan

The Vietnamese government will report to the National Assembly concerning the necessity and appropriateness of the regulation (compensation for annual leave) in the next amendment of the Labor Codes.<MOLISA: WT6>

3. Issues on an employee who is working for more than 2 employers

1) Background

Under the Labor Code, employees have the right to work for two or more employers simultaneously. On the other hand they are obliged to fulfill their tasks for each employer.

***Laws and regulations concerning this issue**

Law amending and supplementing certain article of the labor code 35/2002/QH10 (Hereafter new labor code)

2) View from Investors

Our concern is that an employee who works for more than 2 companies may leek confidential information of the company. According to the Labor Code, an employer can dismiss an employee who leaks confidential details of the company. But it is not easy to find such evidence. Article 30 of the Labor Code should add one condition for employees "Employees shall get permission from their employer."

3) View from Vietnam's governmental bodies

This article encourages employees to use their free time effectively.

An employer can prohibit the employee to work for their competitors through their internal labor regulations. The company solves this problem through this implementation.

4) Proposed action plan

Please refer 1. Indefinite term labor contract

Item 11. Land Law

1) Background

Article 17 of Foreign Investment Law in Vietnam stipulates that the duration of land use by foreign investment projects shall be no more than 50 years. However, it also stipulates that such duration may be extended to no more than 70 years when it is based on regulations of the Standing Committee of the National Assembly.

Article 46 Clause 3 of the same law authorizes foreign owned capital may mortgage assets attached to land and the value of land use rights as security for borrowing loans from credit institutions permitted to operate in Vietnam.

2) View from Investors

Since infrastructure is not sufficiently developed in Vietnam, many Japanese companies are operating in industrial parks or export processing zones. However, as the duration of land use by investment projects is set at no more than 50 years, this creates a problem in the management of investment projects for developers of industrial parks or export processing zones, because there is a period of 5 to 10 years after they obtain investment licenses in which there is no income due to time required for compensation to residents, purchasing, development and building of standard factories and their sale. As it is difficult to recognize land lease for indefinite periods under the socialist system of public ownership of land, there is a strong request from foreign developer to extend the duration of land use by 10 to 20 years.

In addition to the problem of not being able to use the land for 50 years in practice, the tenant firms have the problem of not being able to assign, lease, invest in kind or use the rights to land use as security when they borrow from other enterprises, including their parent companies.

3) View from Vietnam's governmental bodies

The Government of Vietnam made public a draft of the revised land law in August 2003. The draft identifies land as a special commodity and also tries to strike a harmony between the national treatment principles of the WTO and the socialist principle of public ownership of land.

4) Proposed Action plans

The Government of Vietnam revised the Land Law including the following points at the last session of the National Assembly in 2003 <MONRE: WT4>

1. All FDI companies may obtain land use rights with a lump-sum payment.
2. Land use rights and attached assets (buildings, etc.) which have been leased with a lump-sum payment may be leased, used as investment in kind or may be mortgaged against loans from credit institutions permitted to operate in Vietnam.
3. The assets (buildings, etc.) bought but attached to land which are being leased on annual payments may be assigned, or may be mortgaged against the types of loans mentioned above.
4. In cases where the land use duration is 50 years (70 years); it may be extended for another 50 years (70 years).

Item 12. Abolishment of import plan registration for parts and raw materials

1) Background

Article 71 in Decree 24/2000/ND-CP dated July 31 2000 requires all foreign investors or parties to BCC to register all of their import plans for the capital construction phase and for each year there after; the import plan may be adjusted each year.

2) View from Investors

The approval regulation system of the present quarterly import plan change has not been flexible enough for production needs. Therefore, FDI companies have requested a quicker set of approval procedures for import plan changes to enable changes at any time. As a result of this request, changes were made and accepted and the import plan procedures have been improved to some extent. However, in business it is essential to change production in reaction to the market and it is often too much trouble for companies to apply for changes to their import plans. FDI companies feel a fundamental solution would be to abolish import plan registration requirements. Since Vietnamese companies do not need to register import plans and foreign companies are obliged to register their plans, it appears incompliant with WTO rules. Therefore, the current import plans requirements should be abolished in line with WTO accession preparations, as soon as possible. Tax exemption could be administered by the General Department of Customs.

3) View from Vietnam's governmental bodies

The Ministry of Trade insists that duties on imported parts are mostly exempt as products using these parts are exported. Moreover, imported machines for new facilities are also tax-free. Therefore, the import plan is necessary to administer tax exemptions. Exports do not require export plans. In addition, foreign currency management requires import plans. These procedures will be reduced in the future, but administration at present is necessary for processing tax exemptions.

4) Proposed action plan

The Government of Vietnam will abolish the import plan registration system for parts and raw materials. <within 2 years> <MOT: WT9>

Item 13. Promotion of Technology Transfer

1) Background

In order to encourage investment projects in Vietnam, the Government of Vietnam protects the rights and interests of all parties in technology transfer and promotes the prompt transfer of technology through Decree 45 (45/1998/ND-CP) which came into effect in July 1998. MOST (the Department for Technology Assessment and Inspection) has jurisdiction over this matter. Decree 45 sets forth the definition of technology transfer and makes it mandatory to execute technology transfer agreements between parties, requires assessment and inspection and approval by or registration with MOST. It also stipulates that the period of an agreement should be no more than seven years (which may be extended to up to 10 years in special cases) and sets forth the maximum amount of the agreement. It authorizes four formulas for setting the amount of an agreement (royalty). Many Japanese companies are adopting the formula where the amount is set as a percentage of net sales (the present ceiling is 5%). At the "4th Meeting of the Investment and Trade Working Group between Japan and Vietnam" held on July 15, 2003, MOST stated that it planned to raise the ceiling from 5% to 8%. The Japanese side acknowledged this as a "step forward," but requested the Government of Vietnam to continue discussions on "the lifting of the restrictions on the period of an agreement and the ceiling on the amount of royalty and to make technology transfer agreements subject to registration rather than approval."

2) View from Investors

***Basic views of Japanese businesses**: The common international practice with regard to technology transfer agreements is for the parties concerned to consult and agree on the period and the amount of the agreement and write them into the agreement. In other words, the parties are free to write any agreement. The Government of Vietnam has not stated the reasons for setting ceilings for the period and the amount of an agreement that has convinced Japanese businesses to their necessity. Therefore, Japan strongly requests the lifting of these restrictions.

***Major problems caused by the ceilings on the period and amount of agreements:**

- The Japanese side does not accept the reasons given by the Government of Vietnam in setting ceilings on the period and amount of agreements, and feels this requirement is eroding Japanese businesses' incentives for providing technology. For example, one of the reasons that a Japanese company specializing in specialized parts for motorbikes (whose chief business weapon is the technology it holds in a specific area) has hesitated in making an investment in Vietnam due to the low ceiling on royalties. This is strong example of a loss of opportunity for technology transfer to Vietnam.
- Although it is stipulated that the period of an agreement "may be extended to up to 10 years in special circumstances," there is no concrete definition of "special circumstances." Similarly, although it is said that the amount "may exceed 8% of

net sales for technologies that are chosen for special promotion (now under consideration by the Government of Vietnam)," concrete definitions of the technologies to be covered by this provision have not been given. There is a possibility that the period of agreements and the calculation of the amount of agreements may be arbitrarily determined at the "discretion of the person in charge" within MOST.

- "Net sales", which is utilized as a basis to calculate the amount of royalty, is based on the factory price levels less the value of imported parts and components, and selling and other costs. The exclusion of selling costs in calculating royalty reduces this royalty amount. This is hampering flexible technology transfer because a smaller royalty level means that the Vietnamese venture is unable to receive sufficient technological assistance through the temporary dispatch of engineers from Japan, such as at times when new equipment is introduction or at the start of the production of new models. This is due to the lack of a royalty to cover these expenses. Increasing the amount of royalty payments to a parent company will help to smooth the transfer of much needed technology.
- The setting of ceilings on the period and amount of agreements and the setting of royalties as a certain percentage of "net sales" represent a major divergence from global standards. For example, in Thailand, Indonesia, Malaysia and the Philippines, there are no restrictions on either the period or amount, and parties are free to write any agreement without being hampered by governmental regulations. Those companies that are operating internationally, in particular, are not able to accept the existence of these extraordinary rules in Vietnam.
- It is hard to believe that industrial policy-makers in Vietnam fully understand the " value of technology." It is feared that some people assume "technology is gratis." We hope to assist the promotion of technology transfer to Vietnam by spreading the basic philosophy of "recognizing the value of technology in a fair manner and paying an appropriate price for it" throughout Vietnam's business community and making sure that this concept takes root in Vietnam. Many Japanese businesses hope that Vietnam, which is aiming at global standards, will also begin to share a global understanding in the area of "the assessment of the value of technology" and that the industry as a whole, including supporting industries, will develop through the promotion of technology transfer.

***Other Japanese views:**

- In writing a technology transfer agreement, it is mandatory to explicitly state 12 items. Other requirements concerning application documents are not clear. Because there are no detailed rules of execution concerning Decree 45, application and other procedures are very cumbersome. Also, it takes a long time to have an application assessed, inspected and approved by MOST. On the other hand, Vietnam is given high marks because so far no application from Japanese businesses has yet been denied.
- Japanese companies assume that one of the reasons that MOST sets a limit on the period of an agreement is to promote prompt transfer of technology. However, Japanese companies believe that there is a very low correlation between the period

of an agreement and the speed of technology transfer.

3) View from Vietnam's governmental bodies

The Government of Vietnam is working on the revision of the five-year-old Decree 45 and hopes to complete it by the end of 2003. Since the draft of the revision is still being prepared, it is impossible to say with any degree of certainty, but planned revisions include the following:

- The period of an agreement will be extended to 10 years for all technology transfers. The parties concerned will be allowed to extend this through mutual agreement.
- The maximum amount of a royalty will be set at 8% of product prices. This provision may be applied only to projects in which the Government of Vietnam has made an investment and joint ventures with state-owned enterprises. It is being contemplated to allow 100% Vietnamese-owned enterprises and 100% foreign-owned enterprises, to set royalties freely without any ceilings.
- Many other details are being discussed, such as changes in the methods of calculation of royalties (discussions include whether this is to be based on profits, whether it is to be based on after-tax profits or before-tax profits) and the diversification and speeding up of payment methods.

The objective of setting ceilings to the periods and amounts of agreements by Decree 45 is to protect inexperienced Vietnamese enterprises so that they do not fail in transferring technology. The Government of Vietnam would like to move towards free agreements between agreement partners concerned, in line with international practices and standards.

The Government of Vietnam hopes to improve the environment for technology transfers through the implementation of relevant legislation, etc. and to improve the capability for assessment and inspection of technologies introduced by Vietnamese businesses or from abroad. The government hopes to obtain cooperation from the Japanese government and others.

4) Proposed action plan

1. As a result of the on-going work to revise the Decree 45 (related to technical transfer), the Government of Vietnam will abolish the ceilings on the value of technology transfer agreements applied to private companies [executes within one year] and loosen towards even abolishment of the ceilings on the value of technology transfer agreements applied to companies which have the participating interest of State-owned enterprises.<MOST: WT5>

2. The Government of Vietnam will submit to NA the draft of Civil Law to loosen towards even abolishment of the ceilings on the period of technology transfer agreements on the next revision of the Civil Law. <MOST:WT5>

3. The implementation of educational activities for relevant people in Vietnam concerning the value of and the compensation for intellectual properties, such as technology and know-how. <MOST: WT5>
   - Both sides will jointly hold seminars on technology transfer and intellectual property rights in several major cities in or around June 2004 with the participation of relevant government officials and business executives in Vietnam.

The Government of Japan will examine the possibility of assisting the Vietnamese side in implementing the abovementioned measures.

4. Tax deduction for technology transfer
   In order to encourage the technology transfer, the Government of Vietnam will consider introducing tax incentive schemes of a specified duration promoting technical transfer on the occasion of next revision of Decree 45. <MOF, MOST: WT5, WT7>

Item 14. Removal of the deductibility limit on marketing and adverting expenses

1) Background

Under the existing corporate income tax (CIT) regulation, marketing and adverting expenses as well as some other expenses (including entertainment expenses that are not detailed in the regulation) has a limit on deductibility of 5-7% of the total expenses allowed. According to new CIT laws effective in 2004, this limitation will be raised to 10% of total expenses.

*Laws and regulations concerning this issue

New CIT law 09/2003/QH10, Existing CIT law 05/1997, Circular 18/2001/TT-BTC)

2) View from Investors

Marketing and advertising expenses should not be capped since this cost is common in a market-oriented economy. Vietnam is the only country that does not allow a full deduction of this. We appreciate the new CIT law and wish to remove this cap in the future.
Under the existing regulation, only the 14 items detailed in the regulation can be used against expenses for taxable income. The definition of the items is not very clear and always raises controversy at the tax authority. According to a report from the Vietnam Business forum, the effective tax rate is between 25-35%, where the company applies the CIT the rate is15%.

3) View from Vietnam's governmental bodies

Regarding marketing and advertising expenses, the limit will be 10% from 2004.
The government will remove this cap gradually. One reason for the cap is to protect small and medium sized companies that do not have enough funds for advertisement. Furthermore, if this is unlimited, non-deductible expense may be included.

Based on the tax policy strategy to 2010, we may process the details of the deductible expenses list of which there are currently detailed 14 items.

4) Proposed action plan

1. The Government of Vietnam will consider the possibility of removing the deductibility limits on marketing and adverting expenses during the amendment of the CIT law in accordance with the roadmap being implemented under international commitments in integrating into international economy. <MOF: WT7>
2. The Government of Vietnam may examine the definitions of 14 expense items for taxable income in the CIT guideline decree in 2004. <MOF: WT7>

Item 15. Abolition of bidding requirements in the placement of orders for equipment, buildings, etc. by joint ventures in which the participating interest of a Vietnamese enterprise is 30% or more in the form of the value of the land use right

1) Background

There is a corresponding rule in Article 100 of the detailed regulations on the implementation of Foreign Investment Laws in Vietnam relating to this issue. However, the source of Article 100 originated from regulations on tenders as follows;

(1) Article 2 Clause 2-b "Joint venture projects, business co-operation contracts or shareholdings in which the participating interest of State owned economic organizations (State owned enterprises) are thirty (30) per cent or more of the legal capital, business capital or equity."

(2) Article 10 Clause 8 "Tenderers participating in tendering in Vietnam must undertake to procure and to use materials and equipment which are suitable in terms of quality and price and are manufactured, processed or available in Vietnam."

(3) Article 10 Clause 8 "Where international tendering is organized in Vietnam in respect of projects specified in Article 2 Clause 2 of these Regulations, preferential treatment shall be given to domestic tenderers and domestically produced goods."

2) View from Investors

In order to promote joint venture projects, Japanese partners suggest that the use of a bidding system be left at the discretion of the joint venture. This change will not work against the interests of the government and the partners of Vietnam.

3) View from Vietnam's governmental bodies

The present laws in Vietnam stipulate that bidding is mandatory for the purchase of equipment by joint ventures in which the participating interest of state-owned enterprises is 30% or more. This is a provision to protect the ownership of the assets of the Government of Vietnam. The Government of Vietnam views its rights as the owner of enterprises as important as its position as the overseer of enterprises.

4) Proposed Action Plans

The Government of Vietnam will assign the concerned ministries to draft amendment of Bidding Ordinance and submit it to the Standing National Committee of the National Assembly to abolish bidding requirements in the placement of orders for equipment, buildings, etc. by joint ventures in which the participating interest of Vietnamese enterprise is 30% or more in the form of value of the land use right as soon as possible.
<MPI:WT1>

Item 16. Regulations on fund operations abroad by foreign bank branches and insurance companies

1) Background

Regulations state that there is a ceiling limit of operating funds abroad for foreign bank branches of less than 30% of contributed capital, while insurance companies may only use their idle funds for investment purposes in Vietnam.
Laws and regulations:
State Bank Circular 08/2000/TT.NHHNS
Law of Insurance, Item 2 of Article 98

2) View from investors

Many customers of foreign bank branches are relatively new enterprises with foreign invested capital. Foreign bank branches have an increasing amount of paid-in capital and export earnings as deposits and currently do not have many opportunities for operating funds in Vietnam due to high risk considerations. Under these circumstance foreign bank branches must seek opportunities for operating funds abroad. By eliminating the ceiling regulations, it is expected that the business of foreign bank branches with foreign invested enterprises will be encouraged and activated, leading to an indirect promotion of FDI. It is also recommended not to prohibit insurance companies from making use of idle capital by investing in overseas markets in order to vitalize the Vietnamese insurance sector.

3) View from Vietnam's governmental bodies

The State Bank developed its policy to encourage foreign banks to operate funds within Vietnam. As for insurance companies, the Law of Insurance was put into implementation only two years ago, therefore it is currently appropriate that funds are only invested in Vietnam as regulated by the Law.

Relevant authorities:
State Bank of Vietnam, for banks
MOF for insurance companies

4) Proposed action plan

The Government of Vietnam will abolish the restrictions on overseas fund operations by foreign bank branches, and insurance companies, as soon as possible in accordance with international commitments. <SBV: WT8>

Item 17. Abolishment of capital requirements according to the Foreign Investment Law

1) Background

Article 16 of the Foreign Investment Law in Vietnam forbids capital decreases. However, it is reported that this issue is now a matter to be decided by the Prime Minister under a revision of the law made in July 2000. However in contrast to this Articles 43, 50, etc. of Enterprises Law in Vietnam allow capital decreases for Vietnamese private enterprises.

2) View from Investors

There have been a number of requests from Japanese enterprises to be allowed to decrease capital in order to bring the scale of their investments to an appropriate level or in relation to their discretional rights.

3) View from Vietnam's governmental bodies

The Foreign Investment Law presently in force does not allow capital decreases.

4) Proposed Action Plans

1. From a view point of assuring flexibility in business operations, the Government of Vietnam will submit a draft of the amended Foreign Investment Law to the National Assembly allowing FDI to decrease their capital under specified conditions during the next revision of the Foreign Investment Law. (remark: now capital decreases are strictly limited) <MPI: WT1>

2. The Government of Vietnam will submit the draft of amended Foreign Investment Law to the National Assembly relaxing minimum capital requirements (at least 30% at present) during the next revision of the Foreign Investment Law. <MPI: WT1>

Item 18. Definition of total investment in relation to imported fixed asset

1) Background

Under the Law on Foreign Investment, FDI companies are entitled to enjoy import tax exemption for imported fixed assets under certain conditions.

They are required to acquire an import license from the department of trade (DOT) in the people's committees where the import tax exemption is to be applied from. The DOT checks the investment license/ feasibility study and may issue the import license within the value of total investment stated in the investment license. Problems occur when a manufacturing company imports a fixed asset for renewal purposes. The DOT may then request a revision of the investment license to increase total investment and legal capital, as it views an accumulation of imported fixed assets which exceeds the total investment stated in the investment license. A DOT may not consider this as fixed asset depreciation in such cases regard.

***Laws and regulations concerning this issue**

Law on Feign Investment 18/2000/QH10, Degree 24 /2000/ND-CP, Degree 27/2003/ND-CP

2) View from Investors

It is not efficient for a company to have to expand its total investment amount stated in its investment license when importing a fixed asset for renewal purposes. The import of fixed assets should be considered as depreciation rather than an expansion of an investment amount. The depreciation amount should be deducted from the total amount of imported fixed assets.

3) View from Vietnam's governmental bodies

We also feel the depreciation amount should be considered when calculating total imported fixed assets. We will discuss this with relevant ministries.

4) Proposed action plan

The Government of Vietnam will promulgate the legal document to clarify that depreciation should be considered in relation with the import of a fixed asset. [half year] <MOT: WT9>

2) CAPACITY BUILDING OF IMPLEMENTING AUTHORITIES

Item 19. Ensuring transparency, reliability, harmonization and speed-up, the simplification of customs procedures

1) Background

Recently the Government of Vietnam has embarked upon the establishment of laws for the facilitation of trade and the speeding-up of procedures to promote FDI and realize international commitments. Therefore, the modernization of customs procedures is required based on ASEAN's "Fifteen Fields Necessary for Modernization of Customs Procedures (1999 to 2004)" and APECs Customs Cooperative Action Plan. Furthermore, Vietnam has also been preparing for the acceptance of the "International Convention on the Simplification and Harmonization of Customs Procedures (the revised Kyoto Convention)". However, the reform is extremely drastic and diversified and even if the fundamental legal framework was to be established, institutionalization of implementation and administration may be delayed. In addition, in cases where the new institution does not strengthen all field officers, problems in supervising field officers may be found. Moreover, human capacity building to implement a number of newly introduced institutions and procedures may be delayed considerably and the quality and capability of the officials responsible for the customs procedures of imports and exports will not reach international standards.

2) View from Investors

There are a number of problems of inconsistency of the implementation of procedures amongst customs offices and arbitrary judgments by responsible officials. In addition, Japanese companies complain of the complicated procedures for import and export customs clearances.

3) View from Vietnam's governmental bodies

Customs procedures require about ten kinds of papers, which led to a number of complaints about complicated procedures leading to substantial simplification. The knowledge of user's has been developed through the dissemination of information prior to doing procedures. The Government of Vietnam is planning electronic systems using the Internet to integrate and receive applications for related ministries, but this has not yet been made concrete. A pilot test program of such systems which connected port administration and exchange information has been implemented. The results show that procedures have becomes faster than before, but connection between these terminals and forwarders is weak and it still requires support from official papers. Although the General Department of Customs planned to develop computerization of customs procedure during 2001 to 2005, this was delayed and is scheduled for completion during 2003 to 2006.

The General Department of Vietnamese Customs punishes its officials based on the six laws such as the government official's laws, corruption prevention laws and extravagance prevention laws in cases where they may receive bribes. It is a sensitive social problem and the General Department now conducting a public duty campaign.

4) Proposed action plan

The Government of Vietnam will take the following measures. <MOF: WT9>

1. Early ratification of the Revised Kyoto Convention
2. Smooth implementation of new institutions
3. Complete execution of suitable customs clearances
4. Establishment of enforcement institutions and inspection methods against illegal trade
5. Promotion of cooperation and coordination structures amongst administrative organizations
6. Improvement of customs office staff quality
7. Publishing information on custom procedures
8. Step-by-step implementation of customs value definitions according to GATT/WTO: gradually reducing the goods whose customs values are defined by minimum prices.
9. Study and promulgate regulations on customs procedures relating to protection of intellectual property rights at borders.
10. Implementation of Advance Classification Ruling System.

The Government of Japan will examine the future cooperation of assisting the Vietnamese side in implementing the abovementioned measures.

Item 20. Tax administration system

1) Background

The tax administration has been improved in recent years. But there are still numerous cases of inconsistent tax assignment or tax collection. There are two aspects here, the revision of regulation and the matter of implementation. The following are cases from the Vietnam-Japan Investment and Trade Working Group and the Vietnam Business Forum reports.

- VAT refund systems have improved. But there is still some delay especially in the case of ODA related projects.
- The interpretation of tax treaties is interpreted differently by different people and may not be within international practice.
- There is an overlapping of regulation, i.e. between Circular 18 and Circular 13.
- Tax audit is repeated over the same taxable years.
- Unclear guidelines and implementation of foreign contractor tax and VAT on export of services.

The VAT refund of Yen loan projects is not carried out in a timely manner. The General Department of Taxation and JBIC follow the manual processes. MOF and JBIC solve problems on an individual case basis.

2) Views from Investors

The local tax authorities make tax assignments and collections from FDI companies. It is often reported that the interpretation and implementation are different inspectors depending on the relationship with the company. The MOF guidelines may not reach a local tax authority in a timely manner. A FDI company cannot always make claims to the MOF in every case, even if the MOF has an intention or is able to help the FDI company. The smooth implementation of local tax administration is the largest issue after regulation.

3) View from Vietnam's governmental bodies

The VAT refund system has improved year on year, in general. We are executing appropriate measures to improve the tax administration step by step.

4) Proposed action plan

1. The Government of Vietnam will proceed with continuous improvements in the tax administration (effectiveness, upgrade of tax system, level-playing-field between local enterprises and FDI etc). The Government of Vietnam will make a number of case studies to trouble shoot the problems felt with the participation of Japanese ODA experts'.<MOF: WT7>
2. In terms of ODA VAT refund and tax treaty matters, the Government of Vietnam could develop a "Public Consulting Desk" to solve these issues within the central ministry as soon as possible. <MOF: WT7>

The Government of Japan will examine the future cooperation of assisting the Vietnamese side in implementing the modernization of tax systems (such as capacity building for tax officials, tax windows and tax investigations).

Item 21. Improvement of the administration of intellectual property rights

1) Background

Since the protection of intellectual property rights (IPR), is one of the conditions of accession to the WTO, as regulated in TRIPS, Vietnam is in a position to enhance its legal framework and enforcement mechanisms. The National Office of Intellectual Property (NOIP) is the only agency responsible for receiving applications, examination and registration of inventions, utility solutions, industrial designs, and trademarks (details further in the report), of all IPR, under the Ministry of Science and Technology (MOST). The main activities of the NOIP are:

- Issuing of certificates of industrial property rights by the request of applicants (persons or juridical persons).
- Extension of the duration of certificates, registration of the transfer of agreements, cancellation and decision on the scope of industrial property rights by the request of applicants.
- Management and protection of IPR for holders under the lawful rights of the nation.
- Drafting of laws relating to IPR and policy making on IPR administration.
- Coordination with the World Intellectual Property Organization (WIPO) and foreign counterparts for the purpose of international cooperation of IPR administration.
- Guidance for related organizations and popularization of and enlightenment about IPR systems to the general public for the purposes of the smooth operation of the IPR system.

However, while the number of applications of IPR has been increasing yearly (from 9,000 in 2001 to around 15,000 in 2002, of which trademark applications were around 10,000), the registration procedure remains not fully automated and has a low efficiency, which then leads to a long time for the procedure of an application through to registration.

To tackle this issue, the Project of Modernization of the Industry Property Rights Administration, (MOIPA) is in progress, which started in April 2000 with the technical cooperation of JICA. The MOIPA project promotes the modernization of IPR administration processes in order for NOIP to grant IPR more promptly and with increased accuracy. This is through technical transfer, development and operation of Industrial Property Administration Systems (IPAS). It is expected that the IPAS will be fully operated by the end of September 2003, enabling a more standardized and efficient IPR administration.

***Relevant laws and regulations:**

The Civil Code in Part 6 (Copyrights in Chapter I, Section. 745-779; Industrial Property in Chapter II, Section. 780-805)

Decree No. 76/CP dated October 24, 1996
Decree No. 63/CP dated October 24, 1996
Circular No. 3055/TT/SHCN, which took effect on January 15, 1997
Decree No. 12/1999/ND-CP dated 6 March 1999
Decree No. 54/2000/ND-CP dated 3 October 2000
Decree No. 06/2001/ND-CP dated 15 February 2001

Transfer of trademark administration responsibility
Through Decree No. 54/2003/ND-CP dated 19 May 2003, which came into effect on 22 June 2003, NOIP changed its name from the National Office of Industrial Property to the National Office of Intellectual Property and now has tasks and powers over "intellectual property excluding copyrights over literature, arts and goods labels." This means NOIP no longer has tasks or powers over trademarks, which accounts for a major part of all IPR administration. It is alleged that the Market Management Department of the Ministry of Trade will be the agency overseeing trademarks, but an official decision has been delayed. NOIP continued to receive applications for trademarks after 22 June, under the direction of the Office of the Government, though it has not practiced any official examinations or notifications, only preliminary examinations, resulting in a large accumulation of trademarks awaiting examination. Trademarks awaiting examination amounted to several hundred by early August 2003. It is also of concern that the transfer of responsibility may have a negative impact on the gains made through the MOIPA.

Regarding this issue, a number of foreign countries including Japan have expressed concern about possible confusion on trademarks. This issue was discussed in the Japan Vietnam Working Group Meeting on Trade and Investment held on the 15 July, 2003. However, the situation is still unclear and remains as mentioned above.

Industrial Property Rights

Objects	Definition	Certificate of protection	Duration of protection
Inventions	A technical solution which is new compared to the technical level of the world, creative in character, and capable of being applied in economic and social fields.	Inventions	20 years from application
Utility solutions	A technical solution which is new compared to the technical level of the world and capable of being applied in economic and social fields.	Utility solutions	10 years from application
Industrial designs	The outer appearance of a product, manifested by means of contours, three-dimensional forms or colors, or a combination of such elements, which is	Industrial designs	5 years from application. Extendable every 5

	new in character in the world and which may be used as a model for manufacturing handicrafts or industrial products.		years, up to two times.
Trademarks	Symbols used to distinguish goods or services of the same type from different business or production establishments. A trademark may be in the form of words or images, or a combination of such elements, in one or more colors.	Trademark certificate	10 years from application. Extendable for every 10 years, without limitation

2) View from Investors

It takes a long time from application to the issuing, or rejection, of industrial designs and trademarks. For one motorbike manufacturer, the procedure for issuing an industrial design took 20 months in total, causing a market loss to the manufacturer's. One of the reasons for this was that the application procedure is unnecessarily complicated and then requires simplification. As for trademarks, it is necessary to first solve the transfer responsibility problem as early as possible and then to make an effort to shorten the examination period.

Vietnam should become a member of the Madrid Protocol or the "Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks" as soon as possible. Whereas Vietnam joined the Madrid Agreement in 1949, the country is not a member of the Protocol, as a result Japanese enterprises are unable to register their trademarks in Vietnam through the Protocol.

3) View from Vietnam's governmental bodies

As for the simplification of the procedures for the application of IPR, the draft of the amendments to "Circular 3055" on IPR has been prepared, but due to the restructure of trademark responsibilities, this is still under revision.

In general Vietnamese laws on IPR are in compliance with the TRIPs Agreement of the WTO. Sure and efficient implementation is the issue to be tackled. IPR application procedures including IPR administration, have been improving thanks to the project assisted by Japan.

4) Proposed action plan

1. The Government of Vietnam will continue to advance the simplification of the procedures of application for IPR. The Government of Vietnam will set up a data reference and management system on the internet (website) in order to provide necessary information to enterprises (within two year). The Government of Vietnam will improve the function and capacity of NOIP as the contact point, where

inquiries of all kinds regarding IPR coming from existing and potential investors will be responded to promptly (within half a year). <MOST, MPI: WT5> The Government of Japan will examine the future cooperation of assisting the establishment of a data reference and management system on the internet (website).

2. The Government of Vietnam will amend Decree No. 54/2003/ND-CP, so that the treatment of trademarks is kept under NOIP [immediately]. <MOST: WT5>
3. The Government of Vietnam will become a member of the Madrid Protocol as soon as possible, taking the priority of other international commitments including WTO-TRIPs into consideration. The Government of Japan will examine the future cooperation of assisting the Vietnamese side in becoming a member of the Madrid Protocol. <MOST: WT5>

Item 22. Enforcement and protection of intellectual property rights

1) Background

Since protection of IPR, is one of the conditions of accession to the WTO, as regulated under TRIPs, Vietnam is in a position to enhance its legal framework and enforcement mechanisms. However, the level of public awareness of IPR, including inventions, utility solutions, industrial design and trademarks, is still low by any standard and IPR infringing goods are easily found and numerous in Vietnamese market.

On the other hand, as Vietnamese SMEs are not necessarily used to protecting their trademarks, some incidents have taken place where foreigners have registered the trademarks of Vietnamese brand goods abroad. This has happened for goods such as foods, seasoning, and coffee, which has in turn made it impossible for Vietnamese companies to export their own goods under their original brand names. This is why the Government of Vietnam and business associations are eager to promote the awareness raising activities for the protection of trademarks.

Government agencies concerned with IPR infringing products such as counterfeited goods, include the Market Management Department under the MOT, the Economic Police, the Inspectorate of MOST, the General Department of Customs and People's Committees at various levels. Administrative remedies include; imposing monetary fines, confiscating or destroying infringing goods, payment of compensation to an IPR holder, and the revoking of business licenses.

Although the NOIP, does not have a direct role in investigating and exposing IPR infringing goods, it is responsible for cooperating with other authorities in order to apply for the rules for the protection of IPR.

Many government agencies are involved in IPR protection, however, coordination between these agencies is not sufficient and it is alleged that their response to infringements is slow. Capacity building of all these agencies and the improvement of knowledge and skills of the staff concerned, as well as a clear demarcation of the functions of each agency is required.

***Relevant laws and regulations:**
Decree No.31/1999/CT CT-TTg, dated 27, October, 1999
Joint circular 10/2000/TTLT-BTM-BTC-BCA-BKHCNM, dated 27 April, 2000

2) View from Investors

A large number of counterfeit goods and trademarks are found in the Vietnamese market, which obviously infringes on IPR. Famous brand motorbikes are the main target which results in immeasurable damage being incurred, while electrical goods and seasoning are other victims.

The protection of IPR and the investigation and exposure of IPR infringement is not current sufficient or fairly carried out. Although there are numerous authorities able to investigate and expose IPR infringement, their actual operation and activity is somewhat doubtful, as shown in the table below. MOST should take the initiative in cooperating with other agencies to strengthen the activities of investigation. It is important to establish a system quickly to respond to IPR holders' requests.

While NOIP is responsible for responding to requests to examine IPR infringements, the examination methods used sometimes appear improper in the light of laws and regulations. Appropriate measures are required.

IPR Protection Related Authorities: Duties and Actual Situation (Evaluation by the Private Sector)

Agencies		Duties	Actual situation
MOST	NOIP	Issue certificates Judge violations	Occasionally issue "non-violation" letters without exact/careful judgment No effective actions follow "violation" conclusion, resulting in continuing violations
	Inspectorate	Inspection and punishment for IP infringement	Very few inspection cases, with few staff available only in main cities
Market Management Department		Inspection and punishment for market ill-behavior, incl. IP infringement	Inspections only upon IP holders' claim
Economic Police		Inspection and punishment for economic crimes incl. IP infringement	Inspections only upon IP holders' claim

Customs	Inspection and seizure for IP infringing goods at borders	Inspections only upon IP holders' claim and IP holders are responsible to specify shipment containing infringing elements
Management bodies of each industry	Monitor the industry, mainly the production and distribution, incl. IP	Checking only before granting production permits, unable to prevent infringement

3) View from Vietnam's governmental bodies

The government fully recognizes the significance of IPR and the seriousness of its infringement. However, the level of awareness by the general public is still low as the concept of IPR is new to Vietnam. Therefore it is important to promote PR and educational activities in order to strengthen IPR protection. Human resource development for IPR treatment is another key issue.

Although the IPR related laws and regulations of Vietnam are consistent with the TRIPS agreement of the WTO, enforcement of laws and regulations are not effectively practiced in some cases. It is necessary to make efforts to improve effectiveness in cooperation with concerning authorities.

4) Proposed action plan

1. The Government of Vietnam will strengthen the investigation and exposure of counterfeit goods at three levels, such as the import, production and distribution (market) of goods. The Government of Vietnam will introduce concrete measures including strengthening of the Steering Committee 127 which is to conduct and monitor all the IPR enforcement activities and provide results of investigations on infringement cases (including suspected cases) upon investors' requests. <OOG:WT5>

The Government of Japan will examine the future cooperation assisting the Vietnamese side to strengthen the investigation and exposure of counterfeit goods including PR activities on the infringement of IPR.

2. The Government of Vietnam will conduct a campaign to investigate and expose counterfeit goods at a national level in 2004. The Government of Vietnam will amend Decree No.12/1999/ND-CP regulating sanctions against IPR violations, so that penalties against IPR infringement will, in principle exceed the benefits gained by such infringement as soon as possible.]. <OOG, MOST:WT5 > The Government of Japan will examine the future cooperation of assisting the Vietnamese side in implementing campaigns to investigate and expose counterfeit goods and amend the decree.

Item 23. Corruption eradication

1) Background

The Government of Vietnam has viewed corruption as an important social problem since the latter half of the 1980s. Socio-economic development strategies for the period 2001-2010, which was approved in 2001, treats corruption as a social evil to be eradicated. Furthermore, the Master plan of the Public Administration Reform approved in 2001 tries to improve corruption problems from the viewpoint of the establishment of administrative systems which are transparent and accountable. The background of corruption in Vietnam is complicated and similar to that of other developing countries. Since laws and regulations are ambiguous, the extent of administrative official's discretion remains wide and consequently corruption is brought about.

2) View from Investors

Japanese companies recognize that the Government of Vietnam has moved to tackle this problem through the Ordinance against Corruption dated 1998, the installation of hot-line and an anticorruption campaign in 2000. However, this issue still remains an important issue in executive organizations such as customs and tax offices and the security police with further measures still being necessary.

3) View from Vietnam's governmental bodies

There are six laws and ordinances such as the public officials law, corruption prevention laws and waste prevention laws. Corruption is punished according to these laws. It is a sensitive social problem. A public duty campaign has been conducted, but it is still recognized as a social evil that cannot be ignored.

4) Proposed Action Plan

1. The Government of Vietnam will continue to implement an action plan for corruption prevention with numerous concrete measures. <OOG>
2. Reinforcement of the hot-line between the business sector and the government <OOG>
3. Continuation of efforts to promote fairness, neutrality, transparency and the accountability of tax, customs and other administrative procedure simplification <OOG>

Item 24. Restriction on the fraudulent import

1) Background

Despite the fact that the Government of Vietnam has been making serious efforts to contain fraudulent imports, a number of foreign firms still consider that there are still significant amount of goods illegally imported from overseas. A typical case of fraudulent import is known as “under value”; under which importers notify an amount smaller than the actual CIF price to the custom. Smuggling, import of products that do not satisfy the domestic criteria, and illegal application of tax incentives (e.g., in the case of flat glass, more import tax incentive is given to the glass for processing purposes than the final products), are also typical cases of fraudulent import.

2) Views from investors

It is hard to compile the firm evidences of such fraudulent import activities, but it seems that there are quite a few numbers of importers making profits out of those illegal imports, judging from the movement of markets and others. A fair competition is not likely to be achieved in a market where such unfair activities are prevailing. Therefore, this issue provides a profoundly negative image regarding the investment environment of Vietnam. Particularly it is really a drawback in inducing new investments in facility and technology intense businesses requiring huge capital expenditures into Vietnam because they need a healthy environment to gain competitiveness to live through the upcoming open market era.

3) View from governmental bodies of Vietnam

The Government of Vietnam as a whole has been taking various measures against smuggling, illegal application of tax incentive and others. The campaign has been widely advertised on the mass media as well. These measures seem to have been making progress but each time the Government succeeds in containing a case, there always seems to be another new case being born somewhere.

4) Proposed action plan

The Government of Vietnam will continue to introduce effective measures and strengthen coordinating function of a focal point against fraudulent import of all kinds of products (including flat glass) <within one year><OOG>

3) IMPROVEMENT OF INVESTMENT RELATED INSTITUTIONS

Item 25. Improvement in the promulgation process of legal normative documents

1. Review of opinions of the period of composing legal normative documents

1) Background

It had been pointed out that during the period of composing legal normative documents, opinions of organizations which would be affected by such documents must be gathered in advance. In response to this, the Law on Promulgation of Legal Normative Documents had been amended and was approved by the National Assembly on 16 December, 2002, and promulgated. The guidance on its implementation is under preparation.

2) View from Investors

It is problematic that during the period of composing legal normative documents, in practice, the opinion of SOEs which would be affected by such documents are gathered in advance, but no such opportunities are given to foreign invested enterprises with the same interest. In the amended Law on Promulgation of Legal Normative Documents, it is clearly prescribed that during the composition period of legal normative documents, the opinions of parties who have related rights and obligations must be heard. However, what is of concern is whether foreign invested enterprises and foreign business associations are included in such consultations during the composure and implementation of Laws.

3) View from Vietnam's governmental bodies

The amended Law clearly prescribes: during the composition period of legal normative documents, the opinion of parties who have related rights and obligations must be sort. As the guidance on its implementation is under preparation, opinions are invited.

2. Contradiction between legal normative documents

1) Background

In Vietnam, as there is no equivalent to Japan's Cabinet Legislation Bureau which professionally examines contradictions between legal normative documents, contradictions between legal normative documents occasionally occur at both an equal law making level or between superior and inferior levels. In addition, although the Law on Promulgation of Legal Normative Documents defines the hierarchy between legal normative documents, in implementation, superior laws do not necessarily prevail when contradiction is found between superior and inferior legal normative documents, as there is little awareness of the hierarchy system between law making bodies.

Although Decree No.62/2003/ND-CP dated 6 June, 2003 regulating functions, responsibilities, organizing rights of the Ministry of Justice, stipulates in Article 3 that the MOJ has a Department of legislative writings, a specialized department similar to Japan's Cabinet Legislation Bureau, this has not yet been set up.

2) View from Investors

Contradiction between legal normative documents may impede business activities.

3) View from Vietnam's governmental bodies

By establishing in the MOJ a specialized department to examine legal normative documents and assigning the department the right to correct the documents which are contradictive, the problem will be solved

4) Proposed action plan

1. The Government of Vietnam will, as early as possible, promulgate guidelines on the implementation of the amended Law on the Promulgation of Legal Normative Documents.The Government of Vietnam will consult foreign enterprises for their comments on the process of promulgating of Legal Normative Documents that related to foreign enterprises. <MOJ: WT2>

2. The Government of Vietnam will strengthen the functions and organization of newly established specialized departments (such as the "legal normative documents check department" and "international law department") to examine the conflict of legal normative documents. [Within one year]. <MOJ: WT2> The Government of Japan will examine the future cooperation of assisting these departments' capacity building.

Item 26. Improvement of the implementation of judgments

1. Implementation of civil judgments

1) Background

Since the implementing organization of civil judgments, the Justice Department, is not fully independent from the People's Committee and the Communist Party, there is a tendency of delays in the implementation or even a lack of implementation of civil judgments.
Within the Japanese technical cooperation project "The Formulation of Key Government Policies on Legal Systems", experts are providing assistance in composing the draft of Ordinance on Judgment Implementation (including both civil and criminal judgments).

2) View from Investors

Effective implementation of civil judgments is indispensable for enterprises' business activities. It is desirable to transfer the implementing organization of civil judgments from the Justice Department of the People's Committee to the Court, at district and provincial levels.

3) View from Vietnam's governmental bodies

This problem will be solved with the promulgation of the Ordinance on Judgment Implementation. The transfer of the implementing organization of civil judgment requires the decision of the National Assembly. The matter also involves the Supreme People's Court.

2. Improvement in arbitration

1) Background

The Ordinance on Commercial Arbitration; No.08/2003/PL-UBTVQH11, came into force on July 1, 2003. Until then the implementation of domestic and international arbitration judgments were not been covered in the Law on Civil Judgments Implementation and there was no legal basis for the implementation of arbitrations, separate domestic judgments were required to implement arbitration judgments. With the new Ordinance, domestic arbitration judgments have gained immediate effectiveness.

However, there are some concerns about the implementation of the Ordinance as it has just come into force.

2) View from Investors

It is possible to interpret the Ordinance of Commercial Arbitration in a way that states that unless a dispute involves "foreign elements", the parties cannot select foreigners to

act as arbitrators. Therefore it is doubtful whether a foreign invested enterprise can select foreign arbitrators for a dispute in Vietnam.
In addition, in one article of the Ordinance it is stated that in a dispute involving foreign elements, the parties can now apply foreign laws subject to the condition that the selection and application of foreign laws are consistent with the basic principles of Vietnamese legislation. This condition could be broadly interpreted, imposing restrictions on laws to be applied in arbitration.

3) View from Vietnam's governmental bodies

The Ordinance clearly prescribes in Article 2.4 that a dispute involving a foreign element is a dispute which arises from a commercial activity to which one or more parties are foreign, whether an individual or a legal entity, where property relating to the dispute is located abroad or where the grounds on which the disputed relationship is established, altered or terminated originates abroad, or involves property located abroad. It is decided under the agreement of the two parties if they should resolve a dispute through arbitration. Accordingly, if both parties agree that they can select a foreign arbitrator before or at the time of a dispute, then they can do so.
The article stating "consistent with the basic principles of Vietnamese legislation" was cited from the New York Treaty, which prescribes that international arbitration should be consistent with the "Public Policy" of the country. "Public Policy" has a broader meaning than "basic principles of legislation". Discussion on this issue was frequently brought up in Working Group meetings with the Vietnamese side, at the request of Japanese It was promised that no restriction on laws to be applied for arbitration will be imposed.

3. Better communication on legal systems between central and local authorities

1) Background

It sometimes takes substantial periods before legal normative documents, which were promulgated and came into force, are fully publicized and understood by local authorities. In some cases different interpretations of the same legal normative document are observed. It appears that these incidents happen because communication between the central and the local authorities are not enough and the legal normative document itself is not clearly described, and does not properly functioning as a guideline.

2) View from Investors

Lack of unity among the various authorities in interpretation of legal normative documents and the delay in implementation of laws and regulations could be an uncertain factor for a private enterprise when doing business activities, and will also impede new investment. (However, no specific claims from enterprises have been identified.)

3) View from Vietnam's governmental bodies

Nil

4) Proposed action plan

1. The Government of Vietnam will take appropriate measures to ensure the effective and sufficient implementation of civil judgements without delay.<MOJ:WT2>

2. The Government of Vietnam affirms that, according to the new Ordinance on Commercial Arbitration, foreigners may be appointed as an arbitrator in the case of disputes involving foreign invested enterprises within the territory of Vietnam. The Government of Vietnam affirms that, regarding the selection of foreign legislation to be applied to disputes with foreign elements, the judgment on the consistency with the basic principles of Vietnam laws should be based on international practices. <MOJ: WT2>

3. The Government of Vietnam will set up a legal information window at each relevant ministries, local people's committees, and governmental organizations which are required quick, certain and publicized responses to investors' inquiries about legal matters (within one year). <MOJ. MPI:WT2>

4. The Government of Vietnam will establish common rules and give strong guidance to relevant ministries and organizations in following points.<MOJ, MPI: WT2>
   *to make public to FDI the criteria of permission and standard examining periods.
   *to provide information of current procedure statuses.
   *to quickly deal with applications from FDI

5. As part of Japan's technical cooperation project "The Formulation of Key Government Policies on Legal System: Phase 2", the National Legal Database, networking system to provide information on legal normative documents to 23 provinces, was established. The Government of Vietnam should extend the network to all provinces, the legal information windows mentioned above, and People's Committee at the District level, so as that the latest information on legal normative documents is available anywhere in the country. <MOJ: WT2> The Government of Japan, in cooperation with MOJ, will examine the future cooperation of assisting the Vietnamese side in implementing the revised Law on the Promulgation of Legal Normative Documents.

Item 27. Human resource development in the legal field

1) Background

Since Vietnam suspended law education before Doi-Moi, there are a number of judges and other legal professionals without appropriate knowledge. It is only since quite recently that the qualifications of legal professionals have been prescribed. Therefore judges and other lawyers with sufficient knowledge are short in number even today and it is urgently required to train such legal professionals.
As of July 2001 there were 3,235 local judges and 97 Supreme Court judges. Bar Associations have been established in all 61 provinces and cities. By August 2001, there were 1,763 practicing lawyers.

2) View from Investors

The capacity of judges, especially local judges, is not adequate, while legal procedures and proceedings are complicated and lengthy. As a result, private enterprises tend to be unwilling to put cases to trial. Vietnamese enterprises often prefer to find alternatives for the resolution of their disputes. There are also delays in the enforcement or execution of court judgments.
It is alleged that judgments have a tendency of being unfavorable to foreigners. This situation seriously damages public confidence in the justice system, making private enterprises hesitate in doing business and making investment.

3) View from Vietnam's governmental bodies

In an effort to implement the targets of the Strategy on Socio-Economic Development 2001-2010, the Vietnamese government undertook a comprehensive legal needs assessment (LNA) in 2001. As part of the LNA an Action Plan has been proposed and a Legal System Development Strategy (LSDS) for the period 2001-2010 has been formulated by the government. The government, while strengthening the country's legal system, endeavors to upgrade legal professionals and officials, both in quality and quantity, in line with the Action Plan of the LNA and the LSDS.

4) Proposed action plan

The Government of Vietnam will issue "LSDS" as soon as possible and make the utmost efforts for human resource development of legal professionals and officials, as well as capacity building in courts, in accordance with the Action Plan of the LNA and the LSDS. The Government of Japan will review the possibility of action plans as stated above. <MOJ>
The Government of Japan will examine the future cooperation of assisting the Vietnamese side in human resources development in the legal field.

Item 28. Promulgation of the Competition Law

1) Background

Vietnam is still in a transition process to a market economy, as a result it is lagging in legislation to promote fair competition. Since it is recognized that privileged state-owned enterprises (SOEs) have a dominant share in the market, preventing activities and the development of the private sector, the promulgation of anti-monopoly and competition laws has long been sought after. The Resolution of the National Assembly, No.19/1998/QH10 dated 20-12-1998, entrusted the Ministry of Trade with drafting a Competition and Anti-monopoly Law. Although a draft Competition Law has been prepared several times to date, the Law is yet to be promulgated due to difficulties such as a defining criterion for the identification of the dominant position, calculation of overall market share, etc. As the Competition Law is related to the BTA and TRIPS regulations of the WTO, the US-STAR (Support for Trade Acceleration) project is expected to support a workshop on the draft law.

2) View from Investors

A lack of laws that guarantee an environment for fair competition could be an obstacle for business activities and investment promotion.

3) View from Vietnam's governmental bodies

Early promulgation of the Competition Law is an issue to be tackled with priority. Support from Japan is requested.

4) Proposed action plan

The Government of Vietnam shall strengthen relevant organizations to realize the early promulgation of a Competition Law. <within the year 2004> <MOT: WT2>
The Government of Japan will examine the future cooperation of assisting the Vietnamese side in implementing the abovementioned measures.

Item 29. Introduction of International Accounting Standards

1) Background

Vietnam adopted accounting for business in 1990 in line with its transition towards a market oriented economy. In 1995, the Vietnamese Accounting System (VAS) was promulgated. This was applied gradually for both FDI companies and local companies. At first VAS had a number of differences from the International Accounting Standard (IAS) and FDI companies felt a number of inconveniences in adopting VAS.
In 1999, in order to introduce IAS concepts into VAS, the Vietnam Accounting

Standard Committee was established. They have been developing and gradually implementing a number of Accounting Standards, which follow IAS concepts.

To set and spread the Generally Accepted Accounting Standard (GAAP) is indispensable not only for FDI companies but also for Government agencies, SOEs and the private sector in Vietnam. This provides a basis for accountability in the states financial budget and in investors, as well as the basis for management decisions and fair tax collections. In this regard, Vietnam enacted a Law on accounting in 2003 which referred to other foreign accounting regulations. It is also important to simultaneously promote certified public accountant (CPA) and accounting experts as well as setting Audit Standards to support accounting practices. For reference, China dramatically changed their accounting standards in 2002 to some very close to IAS.

Laws and regulations concerning this issue
Vietnam accounting standard (1141TC/QD/CDKT), Circular 55/2002/TT/BTC, Circular 89/2002/TT/BTC, Law on Accounting (03/2003/QH11)

2) View from Investors

Uniformity of VAS with IAS is necessary to ensure a basis for the comparison of financial statements between countries. Furthermore, since the consolidation of financial statements is common especially by multinational companies, uniformity of accounting policy is a necessity. IAS is an invisible infrastructure aiding integration into the international economy. In this regard, the remaining gap between IAS and VAS should be removed as soon as possible.

The following problems were identified by FDI companies.

- Developing new accounting standards is too late and companies will have difficulty in applying this retroactively.
- The difference between accounting and tax is not very clear.

It is critical to get a financial statement for local company when making transactions and business with them. Financial statements produced in conformity with GAAP and disclosure systems encourage economic transactions. However in reality local companies may not have true and fair financial statements, or they may refuse to disclose it, which is often the case.

3) View from Vietnam’s governmental bodies

10 accounting standards have been promulgated and another 24 standards will be published before 2005. Furthermore 21 audit standards have been promulgated already and another 15 standards will be published before 2005. Hence, Vietnam should eliminate most of the gaps between the VAS and IAS before 2005.

In connection with tax policy reform, the Laws on Accounting provide the basis of tax collection. This law is viewed as progressive as accounting is not under the control of the State but is a management tool. Disclosure systems and the penalty on breaking the law will be stipulated.

In Vietnam, the MOF enacts accounting and audit standards at present, Vietnam looks forward to seeing non-governmental organizations taking over this role in the future in line with international practices. In this regard, the Vietnam Accounting Association has been established though their functions and responsibilities need to be strengthened. Technical assistance from Japan in the above matters as well as in bookkeeping examination.

4) Proposed action plan

1. The Government of Vietnam will promulgate all accounting and auditing standards until 2005 to unify the VAS into IAS. <MOF: WT7 >
2. The Government of Vietnam will implement educational activities concerning accounting systems in conformity with the Law on Accounting from 2004. <MOF: WT7>

Item 30. Introduction of the system of bills and checks

1) Background

There is no law for bills and checks in Vietnam. Actually, payments between enterprises are mainly made in cash (including payments into bank accounts) as there is no circulation system for bills and checks in Vietnam.

2) View from Investors

In light of the increasing amount of commercial transactions between enterprises within Vietnam, which has seen high growth in recent years, the measures for payment need to be diversified. Several steps should be taken, (i) establishment of a system of bills and checks (ii) the launch of institutions and organizations facilitating payments by bills and checks (such as a clearing house for bills and checks) is one of the policy alternatives. With a view to strengthening credit reliability, which will give a strong prerequisite for a system of bills and checks, the restructuring of weak local banks and safety nets for local banks will be a necessity.

3) View from Vietnam's governmental bodies

Directives studying many methods of payment and the support for should be undertaken with the assistance of the Japanese.

4) Proposed action plan

The Government of Vietnam will establish a working team to study alternative payment

methods, including bills and checks according to a revision of Decree 30 related to checks (within one year). <SBV: WT8>
The Government of Japan will examine the future cooperation of assisting the Vietnamese side in learning from the experiences of Japan in this area.

Item 31. Industrial standardization and metrology improvement

1) Background

Promotion and dissemination of industrial standardization is a key technical infrastructure necessity for upgrading the quality of manufacturing goods, improve the efficiency of production and strengthen competitiveness. Nevertheless, in Vietnam, the levels of in-house standardization and quality control are still low. Industrial standardization, metrology, testing and quality control to keep up with the levels required in global integration are yet to be introduced. Most Vietnamese enterprises have few testing machines and equipment and lack the facilities for industrial metrology and calibration.

The Directorate for Standards and Quality (STAMEQ) is the government agency under the Ministry of Science and Technology, responsible for industrial standardization, metrology, testing and quality control. The institutional capacity of STAMEQ should be strengthened.
Relevant laws and regulations:
Ordinance on Goods Quality 24/12/1999 No.18/1999/PL-UBTVQH10
Decree 86/CP 08/12/1995
Ordinance on Measurement, 06/10/1999, No. 16/1999/PL-UBTVQH 10,
43-LCT/HDNWB

2) View from Investors

Vietnam needs to improve the quality of its products to conform to international standards such as ISO if the manufacturing sector is to strengthen its export competitiveness. At present, however, the quality standards of Vietnamese products are still at a low level. Vietnamese manufacturers do not seem to have a policy of producing quality goods, partly because the country has no appropriate industrial standards or systems for accreditation and testing. Although industrial standards do exist in Vietnam, the scope and content are not sufficient and not fully functioning. From the point of the view of Japanese companies, the ISO standards accredited in Vietnam (mainly conducted by foreign companies) appear to of a low-grade. Strict accreditation by government authorities is required.

If Vietnamese industrial standards are improved and government agencies have appropriate functions of accreditation equipped with testing and inspection facilities, providing the private sector with fee-based services, this will help promote Vietnamese supporting industries, which is a significant factor for FDI promotion.

3) View from Vietnam's governmental bodies

STAMEQ, while making efforts to improve standardization systems in line with the Industrial Standardization Master Plan that was formulated with the assistance of the Japanese government in 1998, still has many issues to solve such as the development of national standards, renovation of old facilities for testing, inspection and metrology, and services for the private sector, but is limited by budget constraints. STAMEQ hopes to establish a research institute for metrology within the Hi-tech Industrial Park located near Hanoi.

4) Proposed action plan

1. The Government of Vietnam will make a continuous effort to promote industrial standardization and metrology systems, especially the modernization of Vietnamese standards and harmonization with ISO standards, in accordance with the Master Plan.<MOST: WT5>

2. The Government of Vietnam will work out specific measures for the improvement of services to the private sector, including a certification system, testing and inspection facilities, etc. (within one year). <MOST: WT5>

The Government of Japan will examine the future cooperation of assisting the Vietnamese side in promoting industrial standardization and metrology systems, especially the modernization of Vietnamese standards and harmonization with ISO.

Item 32. Human Resources Development (vocational training and IT manpower)

1) Background

In general the current curriculum tends to place a large emphasis on knowledge and ideology and not enough hours are given to subjects in the natural sciences, such as physics, chemistry and biology. The Government of Vietnam is training students to a high academic background through undergraduate and post graduate courses and by offering places for foreign study. However, it does not have enough organized programs for nurturing engineers and technicians through the use of laboratories and skills-training facilities. As a result, there is a severe shortage of experienced skilled workers, engineers and technicians. In recent years, central and local governments have needed to build networks using information technology. At the same time, e-commerce among private enterprises has been growing. The Government of Vietnam is focusing on the fostering of software programmers. The human resources development of Vietnams IT manpower is very important.

2) View from Investors

Japanese enterprises are implementing in-house training and education as shown below to develop employees whose education has mostly been geared towards the acquisition of knowledge, into engineers, technicians and in other technical areas, whether they are hired straight from school or are in mid-career. Such education and training takes considerable time and money;

- Bringing numerous Japanese engineers and technicians to Vietnam to conduct on-the-job training for Vietnamese employees,
- Send Vietnamese employees to parent company plants in Japan or elsewhere for short periods. Prior to leaving for overseas training, Vietnamese employees are s given training, including Japanese language lessons, in Vietnam,
- Training is sometimes conducted by utilizing vocational schools in Vietnam, and
- Systems, such as AOTS, are frequently used.

Smooth execution of large-scale IT development projects requires project managers, who control the number, quality and cost of programmers. However, there is an absolute shortage of project managers.

3) View from Vietnam's governmental bodies

Although the Government of Vietnam is working hard to increase vocational schools, programs and the curriculum offered by these schools are not sufficient. Laboratory facilities and facilities for skills-training are obsolete and old and are not up to the standards for Japanese enterprise needs.

IT project managers must have at least five years experience. Therefore, their shortage is inevitable as it is only recently that the IT industry has emerged in Vietnam. However, given the competitive environment with neighboring countries, Vietnam will lose out on this opportunity of receiving large-scale orders due to its shortage of project managers.

4) Proposed Action Plans

The Government of Vietnam will enhance the system of vocational training and IT human resources development. <MPI>
The Government of Japan will examine the future cooperation of assisting the Vietnamese side in implementing the abovementioned measures.

Item 33. Improvement of economic statistics: capacity building of statisticical organizations

1) Background

Vietnamese statistics systems need improvement as the reliability of statistics is generally low and their availability and the utilizations of data is generally difficult. Taking into account the importance of statistics, the government released in 2002 its "Directions for the Development of Vietnams Statistics to 2010", and the Statistics Law will come into effect in January 2004. The new Statistics Law stipulates the publication and the utilization of the data in principle, as well as the policy of concentrating statistics activities with the General Statistics Office. It is expected that statistical surveys will be conducted effectively and the utilization of data will be promoted.

The General Statistics Office has been given assistance from a number of international donors in its capacity building. Some recent programs include a capacity improvement project for economic statistics by SIDA, a household survey project by UNDP and a capacity improvement project for economic information analysis by the French Government.

Relevant laws and regulations:
Statistics Law No./QH11
Decision of the Prime Minister on approval of the Direction of Vietnam Statistics to 2010 No.141/2002/QD-TTg

2) View from Investors

Investors utilize statistics, economic statistics in particular, of a country when they make their decision to invest. However, statistics in Vietnam seem to have a number of problems:

- It is unclear whether specific data is available, or available for publication, even if it exists.
- Because the monthly statistics data is built using planned figures, it does not show the exact economic situation.
- The classification of industry statistics is not detailed enough for investors to make investment decision using the data.
- Goods and services used for production and price statistics are not updated regularly, while those goods with a large demand, such as mobile phones, are not included at all.
- Data is unreliable. For instance, accumulated monthly data does not equal annual totals.
- Very little demand side statistical data is available.

These kinds of problems may cause a delay in the decisions of investors and may lesson the credibility of the Government of Vietnam.

3) View from Vietnam's governmental bodies

Due to the increasing concerns about statistical data, the Prime Minister approved the "Direction for Development of Vietnam Statistics to 2010" and the Statistics Law was also promulgated in June 2003 and will come into effect in January 2004. Under the Law a decree stipulating the organization for statistical systems is expected to be announced. New organizations will be characterized as efficient with user-oriented services and will ensure the capacity strengthening of their staff.

However it is true that the development of the Vietnamese statistical system has lagged behind and that data lacks accuracy. It is important to improve economic and industry statistics in order to strengthen the competitiveness of the Vietnamese economy in the middle of the globalization.

4) Proposed action plan

The Government of Vietnam strives to enhance the capacity of the General Statistics Office, especially by improving its services to users, in the wake of the introduction of the new Law on Statistics. The General Statistical Office will have a system to promptly provide data in response to requests by investors, in cooperation with MPI. <GSO>

The Government of Japan will examine the future cooperation of assisting the Vietnamese side in implementing the abovementioned measures.

4) IMPROVEMENT OF ECONOMIC INFRASTRUCTURE

Item 34. Urban traffic and urban functions

1) Background

Buses and trams served as urban transport in Hanoi and HCMC until the 1970s. Individual transport measures at this time were mainly the bicycle. Motorbikes were introduced increasingly from 1975 and public transport was seriously neglected during the 1980s. Motorbikes increased substantially after market economy measures were implemented and buses began disappearing due to a lack of profitability. Trams were also removed. As a result public transport all but stopped. Congestion increased rapidly and in frequency, during the 1990s through increases in motorbikes, bicycles and cars.

As a result urban transport problems have increased environmental concerns, traffic transport times and economic problems related to transport.

Public transport has seen an increased interest in its development since 2000 with the subsidization of bus services. Traffic signals, signs and markers were increasingly installed under a World Bank project.

The increased regulation of motorbikes was also implemented in an attempt to control traffic. Motorbikes registration fees were increased, restrictions on motorbikes ownership of one per person was implemented and road use fee collection started.

2) View from Investors

In Hanoi and HCMC, the roads are congested and FDI companies have trouble in commuting, carrying out their business and other logistical problems. In Vietnam, motorcycles numbers have increased and are common. A similar pattern was seen in cities such as Bangkok and Jakarta when cars gradually increased in number. The mixing of cars and motorbikes causes several safety problems such as accidents and environmental problems such as air pollution and noise.

Public transport implementation, traffic control systems such as signals, traffic regulations and education and dissemination of traffic rules are necessary to reduce urban traffic congestion and accidents.

Regarding logistics, large trucks are restricted in entering inner cities. Although it is reasonable that the entry period is restricted, it seems necessary to construct terminals in the surrounding areas. Small-scale trucks are in severe competition limiting their ability in being able to renew vehicles. In order to avoid such a concentration of logistical transport and commuting into cities, it is necessary to consider dispersion of factories, wholesale functions and finally business from inner cities to surrounding areas as has happened in Japan. In addition, urban structure is unable to respond to the needs of motorbikes and automobiles, making parking space for cars and motorbikes a major problem in cities. Taking into consideration a possibility of future motorization, parking space preparation seems essential.

3) View from Vietnam's governmental bodies

Urban traffic plans for Hanoi and HCMC have been established under a JICA study. In addition, a feasibility study on the suitability of subways and elevated railways is being conducted with the aid of Germany. However, Germany cannot commit to actual construction. The routes in this feasibility study are the same as those in the JICA study.

A campaign for traffic safety is conducted by the Traffic Safety Committee, in schools and party youth groups. Mass media is also used. In schools, experimental complementary classes have traffic safety curricula. Kindergarten education includes this also. Enforcement is also being strengthened. Traffic police are using speed measuring instruments and punch a hole in driving licenses for each violation. At three holes violators must go to driving school. Motorbikes are seized when violations occur.

Although parking systems have not been developed, the Ministry of Construction imposes parking space on new housing. In addition, new building architecture requires submission and explanation to the city transport department. Without parking the construction will not be approved.

4) Proposed action plan

1. The Government of Vietnam will construct the urban traffic infrastructure steadily in accordance with the master plan, in Hanoi and HCMC, and will improve urban traffic management (especially traffic control and parking facilities in main cities). <MOTC>
2. The Government of Vietnam will implement urban function dispersion in the long- and medium-term, and in this connection, clarify the central administrative authority for urban development. <OOG>
3. The Government of Vietnam will take continuously concrete measures such as traffic rule obedience, education and dissemination of traffic appropriate traffic etiquette and the strengthening of the enforcement of traffic violations. <MOTC>

The Government of Japan will examine the possibility of assisting the Vietnamese side in implementing the abovementioned measures.

Item 35. Transport efficiency

1) Background

Vietnam has constructed transport infrastructure using ODA and has established an environment of competition. Competition policies have been introduced and the transport sector has become increasingly competitive through the entry of the private sector. In international trade, maritime freight accounts for more than 80% and plays a central role. In domestic transport, transport by trucks dominates but coastal maritime transport plays an important role in long distance transport. Railway freight transport is relatively small.
As detailed earlier, 100% foreign invested business is prohibited in this industry including forwarding businesses.

2) View from Investors

FDI companies think that the high costs of international container transport in comparison to costs in neighboring countries are an important constraint. A JETRO survey shows the costs of 40-foot container transport including land transport which is as follows.

Comparison of Container Rates between Asian Ports and Yokohama, Japan
(40-foot container)

Country (port)	Cost in 2001 (US$)	Cost in 2002 (US$)	Country (port)	Cost in 2001 (US$)	Cost in 2002 (US$)
China (Tianjin)	870	734	Malaysia (Port Klang)	697	884
China (Shanghai)	700	700	Indonesia (Tanjung Priok)	675	820
China (Hong Kong)	1,161-1,216	850	Philippines (Manila)	1,084	700
Singapore	540	550	Viet Nam (Hanoi-Haiphong)	1,500	1,470
Thailand (Laem Chabang)	1,451	1,304	Viet Nam (HCMC)	1,500	1,078

Note: Data collected in Nov. 2001 and 2002
Source: JETRO, "Comparison of Investment Costs in Asian Major Cities," 2002 and 2003

The result of the international container transport costs survey in the JBIC transport sector study shows that the cost of ocean freight accounts for a large part of transport costs. Major ports in Vietnam are not currently deep enough and large container vessels cannot call. Therefore, containers are transported between Vietnamese ports and neighboring hub ports such as Hong Kong, Kaohsiung and Singapore by feeder vessels and then transshipped from these hub ports to and from Europe, North America and Japan. Therefore, feeder transport and transshipment costs have to be added to shipment costs raising Vietnamese costs to above those of neighboring countries. One solution would be the reduction of international container transport costs in order to promote the construction of planned ports and so enable larger container ships to call and provide direct services between Vietnam and Europe, North America and Japan. If demand increases to approximately one million TEUs annually through the facilitation and simplification of port management system procedures such as one stop services and the amalgamation of large container ships costs with plural shipping company services through one line, international 40-foot container costs in Vietnam could fall to around US$800 inline with neighboring countries.

The relatively high cost of domestic transport between the north and south is caused by the following reasons.

- The long distance (approximately 1,800km).
- Freight from the south is lower than that from the north
- As a result truck transport is not efficient in making a round trip.
- Vietnamese transport service quality is not high enough to meet the demands of Japanese companies.

One solution therefore is that freight demand from the south increases and that Vietnamese truck, railway and domestic coastal maritime transport service quality, including speed, improves. To enable this 00% foreign forwarding businesses can contribute to the stimulation of transport service quality.

3) View from Vietnam's governmental bodies

The Government of Vietnam has introduced competition policies in the transport sector and has been planning deep-water ports in Thi Vai and Cai Mep in the south and is constructing Cai Lan and Haiphong ports in the north and the port of Danang in the center through Yen loans. These ports will enable large container vessels to call directly.

4) Proposed action plan

1. The Government of Vietnam will examine the approval of the further entry of FDI into the transport sector (more than 50% investment share). <MOTC, MPI>
2. The Government of Vietnam will proceed in strengthening the functions of ports in the south and north and strengthen the road infrastructure between the cities and ports gradually. <MOTC>

The Government of Japan will examine the possibility of assisting the Vietnamese side in implementing the abovementioned measures.

Item 36. Power sector (main power plant construction, FDI entry, tariffs and reliability)

1. Main power plant construction and deregulation of IPP share limits

1) Background

The annual rate of electric power sales growth for the ten years to 2000 was 13.7%. It appear that this two-digit level of increase will continue in the future and more power plants and capacity will be necessary. According to the fifth power master plan and a revision, a number of new power plants are planned.

On the other hand, the master plan restricts foreign investment, such as IPP and BOT, to 20%. If Vietnam constructs power plants to meet this high demand only through public fund and ODA, funding will not be sufficient as the EVN will need enormous amounts of investment to the necessary amounts of power plants.

The Electricity Law is important because it will establish the institutional and legal framework for the power sector. An important possible development is that the government will manage only transmission in the future. EVN is currently doing its structure reform. EVN itself will remain the largest and strongest players in the power market. Furthermore, companies under the groups' umbrella are being restructured towards a more enterprise related format entitled a single member limited liability of joint stock company, which is still invested in only by the government. Independent power plants, other than large-scale hydro power plant are to be constructed.

2) View from Investors

As investors in the power sector, FDI companies request that a framework to introduce private funds into the power sector is established in order to promote private participation in the power sector and deregulation and restriction on foreign investment, thereby facilitating foreign private funds to enter the sectors. As a result, power plants will be constructed and demand can be met.
The restriction of 20% should not be applied to joint ventures (only to 100% foreign investment) or thermal plants in which foreign private companies usually require joint venture partner in order to secure fuel. Foreign investment in the power sector and the construction of power plants is needed to meet Vietnam's power demand. Moreover, this will contribute to the reduction of the investment requirements of EVN reducing loan interest and repayments and improving the financial status of the EVN. As a result, it is probable that tariffs could also be decreased. However, this will depend on the purchasing price from the IPP. Although IPP promotion requires a high purchasing price, the financial improvements of EVN and the reduction of tariffs for users who demand a low purchasing price. These are trade-offs. It is necessary to set appropriate purchasing prices considering the profit and loss of the EVN when promoting IPP.

In addition, the above prospect is based on a continued demand increase and if the demand reduces as happened during the Asian Economic Crisis, the financial status of EVN may be drastically worsened as revenues will decrease as they continue payments for the IPP and repayments of the investment loan. Therefore, planning and construction of power plants based on more cautious demand forecasts and constant revision is necessary.
It is necessary to increase the use of JBIC's international finance in order to promote the entry of Japanese companies into IPP. (See Item 39 making use of JBIC's international finance).

3) View from Vietnam's governmental bodies

The Ministry of Industry holds that the restriction of 20% for foreign investment such as BOT is not absolute, although it is mentioned in the master plan. There are domestically funded IPP and BOT in addition to foreign ones. 35 power plants are planned in the master plan and the sum of the generating power of these plants and existing IPP is projected to be about 30 % by 2010.

2. Tariffs and reliability of power

1) Background

The Government of Vietnam agreed with the World Bank on power sector reform which included financial items such as a rate increase to 7c/kwh. The increase in tariffs was supposed to be achieved by 1999, but it this was not realized and the target year was extended to 2005. Therefore, tariff increases were aimed for by 2001, but failed due to public opinion. Initial tariff increases were not achieved until October 2002. The World Bank included a requirement that the SFR (Self Financial Ratio) be more than 30% in addition to tariff increases to 7c/kwh. According to new information, the World Bank has not strongly insisted on tariff increases since financial requirements appear to have been satisfied. The value of 7c/kwh is the average income unit per kwh and the official actual average (in U.S. Dollar), the tariff increase in October 2002 was to 5.6c/kwh.

2) View from Investors

Japanese companies feel that power tariffs for industry in Vietnam are higher than in neighboring countries. Labor costs are considered equal to power costs by companies. The JETRO survey shows industrial power tariffs in Asia as follows.

Power tariffs for industry (kWh)

City	Hanoi	Shenzen	Bangkok	Kuala Lumpur	Jakarta	Singapore
Tariff	US$0.07	US$0.12	US$0.04	US$0.05	US$0.04	US$0.07

Note: The survey date is November 2002.

Concerning the reliability of the power supply, Japanese companies located in industrial zones do not have problems, but some of those located outside of industrial zones complain of blackouts and unstable voltages. In addition, some companies pointed out that tariffs for Vietnamese companies are lower than for foreign companies.

It would seem an effective measure here is to actively introduce foreign investment into power plant projects as there is no substantial restriction, such as 20% limit described above and this will then improve the financial status of EVN reducing its investment outlay, expenditure and liabilities. However, FDI such as IPP do seek high returns causing a high purchasing price. Therefore, the balance between the impact of IPP on a EVN's financial status and the high purchase price should be analyzed closely. EVN and its affiliated distribution companies need to stimulate management reform and decrease expenditure and increase their cost consciousness. In addition, they need to invest in order to decrease the loss of power, maintenance costs and blackouts, raising their level of reliability. To do this it may be necessary to make analysis of state-owned power enterprise financing, focusing on the EVN in detail for each region and the possibility of new power plants so that these enterprises can find the most appropriate management direction balancing management improvement and technical investment. To make these advances it is necessary to pursue decreases in the burden of an industry, gradually balancing the tariffs of the industry for domestic users, taking close consideration of economic growth and income increases. The Government of Vietnam should try to satisfy those essential requirements of the World Bank through the financial improvement of EVN making efforts to meet the 7c/kwh goals bringing power tariffs in line with neighboring countries (e.g. 5c/kwh based on exact comparisons of tariffs in neighboring countries) and implement tariff changes while taking into account a balance between industry use and domestic uses (income increase).

3) View from Vietnam's governmental bodies

In the revision of tariffs in October 2002, while the increased rates for domestic use are higher than for industry, the tariffs for foreigner's domestic use decreased a little so that the dual price gap reduced. Power companies have therefore shifted the revenue weighting from foreign industries and foreign households to Vietnamese households. In addition, it can be said that the increased consumption, along with the lower tariffs has increased the rate differences in voltages of production from peak to off-peak times (peak time= 18:00-22:00, off-peak=22:00-4:00). Concerning tariffs for Vietnamese households, the greater the consumption, the lower the increase in unit rates except for basic minimum rates. Therefore, there is the opinion that tariff increases are possible, so tariffs in general for Vietnamese household can be higher, as tariff units for industry are relatively higher than for domestic use (the World Bank).

The production tariffs differ depending on voltages, rates for voltages higher than 110kv are 5.4c/kwh and for lower than 6kv is 6.6c/kwh during normal times (4:00～18:00). If a factory operates in a shift from 8:00 to 16:00, the average tariff rate is 5.4c/kwh for more than 110kv and 6.6c/kwh for less than 6kv (during the normal times). In the case of 2 shifts (from 6:30 to 23:20), the average tariffs are 6.0c/kwh for more than 110kv and 7.3c/kwh for less than 6kv. Thus, it is estimated that large factories or large electricity consuming factories pay 5.4c/kwh for 1 shift and 6.0c/kwh for two shifts. Thus, the 7c/kwh found in the JETRO survey seems higher than the average.

There are tariff differences between foreign and Vietnamese companies. For example, the tariff of a state-owned-enterprise is 3.4% lower during peak-times and 6.0% lower than those foreign companies in the same industry and voltage category. Therefore, dual prices do exist.

4) Proposed action plan

1. The Government of Vietnam affirms that they do not apply the 20% restriction in FDI for the power sector and will exclude the prescription from the Electric Power Law. [Immediate execution] <MOI>
2. The Government of Vietnam will continue to implement an electricity tariff policy based on targets to gradually reduce cross-subsidies from production to other customer group having in mind the importance to have the electricity tariffs for production competitive with neighboring countries.. <MOI>

3. The Government of Vietnam will abolish dual pricing in electricity by the end of 2004. <MOI>.
4. The Government of Vietnam will continue its efforts to supply stable and good quality power (fewer changes in voltage) to all customers including large demand companies.<MOI>
5. The Government of Vietnam will implement power plant construction in line with the schedule of the master plan.

The Government of Japan will examine the possibility of assisting in the construction of power plants especially those listed in the "Long List" of soft loans and ECA.

Item 37. Improvement of the telecommunication environment

1) Background

The Ordinance on Post and Telecommunications: No.43-2002-PL-UBTVQH 10 coming into effect on Oct. 1, 2002 prescribes the following.

- Article 38: There are two groups of telecommunication operators. The one is the network infrastructure provision group, which must either state-owned enterprises or companies for whom the majority of their stocks or special stocks are owned by the national government. The other group is the telecommunication service provision group, which must also be Vietnamese companies but these can be from all economic sectors including private companies.
- Article 37: c) Internet exchange services are services provided to Internet access providers and the connection of enterprise networks and connection to the international Internet. d) Internet access services are providing Internet access services to users.

As we can see, these ordinances have established competition in the Vietnamese telecommunication sector. However, Foreign Direct Investment Law allows only Business Corporation Contracts (BCC) in foreign telecommunication investment.

Furthermore, the Ordinance on Post and Telecommunication provides tariff prescriptions as follows.

- Article 44: Telecommunication service tariffs

(1) The Prime Minister is to decide the charges applicable to important telecommunications services which affect various sectors and socio-economic development.

(2) The State management body in charge of post and telecommunications is to decide the charges applicable to telecommunications services for community service purposes, telecommunications services which have a dominant market share and interconnection charges among enterprises on the base of the services cost for

services, and also on socio-economic development policies and telecommunications development targets from time to time.

(3) Telecommunications enterprises are to decide specific charges applicable to their telecommunication services, except for those services referred to in clause [1] and [2] above.

2) View from Investors

FDI companies complain of expensive international telephone rates, with rates higher than neighboring countries. The JETRO Investment Costs Survey in Asia 2002 showed rates as follows.

International telephone rates (to Japan for three minutes)

City	Hanoi	Shenzen	Bangkok	Kuala Lumpur	Jakarta	Singapore
Rate	US$2.70	US$2.90	US$2.07	US$1.42	US$3.76	US$1.00

Note: The survey date is November 2002.

International telephone rates in March 2003 are shown as follows.

International telephone rates (Unit: US$)

From country	To Region		First one minute	Following 6 seconds
Viet Nam	Depending on the region		1.4 – 2.0	0.14 – 0.20
	Japan	New	1.4	0.14
		Old	1.7	0.17
		VoIP		0.12
Japan	Viet Nam		1.83	0.15
Philippines	Every country		0.04	

Note: The rates were revised on Dec. 25, 2002

In addition, the tariffs for the Internet were compared with those of neighboring countries as follows.

Internet tariffs (Unit: US$)

Country	Internet rates by dial-up in 2001 (30 hours per month)						
	Telephone Base rate	Peak			Off-peak		
		Telephone	ISP	Total	Telephone	ISP	Total
Viet Nam	1.9	0.3	28.6	30.77	0.3	19.7	21.87
Indonesia	2.7	0.2	12.5	15.39	0.2	12.5	15.39
Philippines	13.8	-	23.9	37.69	-	23.9	37.69
Thailand	2.5	0.7	11.2	14.46	0.7	9.0	12.22
Malaysia	5.3	0.2	5.3	10.76	0.2	5.3	10.76
Japan	14.1	27.7	16.5	58.36	27.7	16.5	58.36
Singapore	4.8	0.2	-	5.09	0.1	-	4.97

Source: ITU2002 World Telecommunication Development Report

The internet service provider (ISP) rate for 30 hours per month in Vietnam decreased to US$12 in 2002.

FDI companies pointed out such problems as e-mails disappearing or it taking a long to reach external destinations from Vietnam. Although international telephone rates are decreasing in Vietnam, those in neighboring countries are also decreasing. Therefore, Vietnam needs to continue reducing their international telephone rates further. Vietnam has moved to increase local telephone rates and decrease long-distance and international telephone rates.

Internet access and ADSL rates are higher than in Japan. It is therefore advisable to avoid an oligopoly situation and stimulate competition and reduce internet rates drastically. For this purpose, the schedule of allowing foreign investment into telecommunication established through BTA negotiations should be accelerated. The rates for exclusive lines for heavy users are relatively high and also need to be reduced.

E-mail transmission reliability issues in Vietnam are due to loose maintenance and security such as attacks by hackers. Therefore, Internet providers should improve maintenance and security. In addition, the acceleration of FDI entry schedules for telecommunications will stimulate competition and improve maintenance and security of providers.

3) View from Vietnam's governmental bodies

By the Decision 158/QD-TTg, on October, 18th 2001 for the approval of the "Development strategy for Vietnam Post and Telecommunication toward 2010 and the orientation to 2020", telecommunication service tariffs in Vietnam would be brought to the average level of those in countries in the region. By April 1st, 2003, almost all the telecommunication service tariffs were reduced to reach the target (lower or equal to average level of ASEAN countries plus China, Japan, Korea). In future, The Ministry of Post and Telematics will make an effort to continue to keep the pace of course of the average level of those in the region.

Comparison of telephone call rates from Vietnam to Japan

Category	Year	First one minute	Next six seconds
Normal	2002	1.4	0.14
	Present	0.9	0.09
VoIP（171）	2002		0.12
	Present	0.75	0.075

ADSL started in Hanoi, HCMC and Haiphong from July 1. Examples of the Internet access rates at present are as follows.
Dial-up: (VDC) 213,000VND or US$13.74 for 30 hours per month excluding telephone costs
ADSL: The rates depend on the amount of bits used, but under a no-limit case (the highest rate) and average approximately one million VND or US$64.5 per month

Currently, in Vietnam, the intra-province telephone charge for Internet dial-up access is only 40 VND/minute. This rate is quite low.

The ADSL rate is now lower than the average of neighboring countries, even though it is still higher than in Japan. However, the rate in Vietnam depends on the bites used so that it is not quite expensive. By the way, at this moment, the ADSL is only provided to the big cities and the prompt expansion is necessary. The leased line rates also were reduced on April, 1st 2003, reaching lower than some countries in the region and will continue to be reduced in the future.

4) Proposed action plan

1. The Government of Vietnam will continue to keep pace of the course of average of telecommunication service tariffs of the region. It would continue to reduce international telecommunication service rates (including the international call rate, the international leased line service) by promoting the production effectiveness, decreasing cost of services of each enterprise that involves into the market.<MPT:WT3>

2. From view point of maintenance, security and effectiveness, the capability of the Internet providers also need to be enhanced and this process would be supported by the Government. For these objectives, the Government of Vietnam would accelerate the FDI entry scheduled to telecommunication sector. <MPT,MPI:WT1>

The Government of Japan would examine the possibility to assist the Vietnamese side to implement the above-mentioned measures.

Item 38. Waste water and industrial solid waste treatment

1) Background

The Environmental Protection Law established in January 1994 stipulates the discharge of water treatment and solid waste as follows.

- Article 26: Collection, treatment and disposal site selection and transportation of wastes or polluted materials shall obey the rules decided by the national environmental protection authority and local departments. Discharged water and waste including toxic, pathogenic, flammable and explosive matters must be treated appropriately before disposal. The national environmental protection authority shall designate the discharged water and waste concretely according to this article and monitor the treatment process before disposal.
- Article 29: The following activities are prohibited. (…)
    - Discharge of grease, oil, toxic chemicals, over-permissible level radioactive

matter, waste, carcasses, withered plants and harmful infectious bacteria and viruses to water resource areas
  - Landfill and discharge of over-permissible levels of toxic matters to soil

Local governments are responsible for the collection, treatment and disposal of waste, including industrial waste. However, public corporations under the jurisdiction of municipal or provincial governments are often also responsible. The Urban Environmental Company (URENCO) and the Public Services Company operates collection and manages treatment and disposal facilities in Hanoi and Ho Chi Minh Cities, respectively.

2) View from Investors

FDI companies must submit environmental impact assessment reports or the simpler environmental standard guarantee registration on the occasion of establishment under the Environmental Protection Law and decrees. Consequently, they must satisfy discharge standards and treat waste as follows.

- Entrust to public disposal corporations such as URENCO
- Entrust to recycling operators
- Self treatment such as incineration
- Storage in their sites

Amongst these, the public disposal corporations dispose of industrial waste with urban general waste in landfill sites, but landfill facilities are not necessarily designed appropriately and there is a possibility that seepage is discharged without suitable treatment. Some FDI companies are afraid of this possibility and are storing their waste within their sites. If the storage is not controlled properly, there is again a possibility of a leak. It is recognized by FDI companies that if they bring about health or environmental problems through the unsuitable treatment or disposal of waste then this will impede their business.

There is a possibility that cement companies can treat industrial waste. Nevertheless, a FDI cement company currently refuses the recycling of waste as some waste includes toxic matter and recycling requires facility investment. In addition, cement companies cannot treat all waste.

FDI companies obey the discharged water pollution standards in accordance with the law and the decree above, but it is pointed out that Vietnamese companies, especially textile companies, appear to discharge untreated waste water.

3) View from Vietnam's governmental bodies

The Environmental Protection Law and Decree No. 175 prescribe solid waste, while Decision No. 155 provides for toxic waste, though it does not cover all. For example, toxic waste is defined, but discharged standard concentration is not clarified concretely. Waste treatment infrastructure is not constructed and the level is low. There is no toxic waste treatment facility in Vietnam. If toxic or harmful levels are not to heavy, the waste maybe land-filled. The environmental protection authority recognizes that some companies are storing highly toxic waste.

The Prime Minister approved the waste management master plan to 2010. In this plan, large-scale (industrial) waste treatment facilities are planned in the north, central and south. In the south, a basic study for a facility in Dong Nai was completed. At present there are no funds and so it will be constructed gradually. The completion period is not clear. The facility operator is a state-owned-enterprise, which constructs infrastructure in Bien Hoa Industrial Park. In the north, has not yet been a study.

The National Environmental Protection Agency is examining the possibility of recycling by the cement industry. A FDI cement company has the intention to recycle waste, but this facility will require substantial investment (as much as cement business itself) and so an investment decision can not be made unless there is concrete demand. As a result it is probable more effective to impose industrial waste treatment obligations. However, it is difficult in the present situation where there is no treatment facility.

4) Proposed action plan

1. The Government of Vietnam will conduct surveys of industrial waste and start preparing a master plan for suitable recycling, treatment and disposal structures and institutions for industrial waste [within one year]. In addition, the government shall improve the disposal facilities of public waste companies for industrial waste disposal.<MONRE>

2. The Government of Vietnam will ensure to apply environmental standards and conduct enforcement and penalties equally to all the companies for the violation of water waste discharge. <MONRE>

The Government of Japan will examine the future cooperation of assisting the Vietnamese side in implementing the establishment of master plan for waste management mechanisms.

Item 39. Promotion of JBIC's international finance use for infrastructure

1) Background

In Vietnam, ODA and domestic funds (state-owned commercial bank loans or Development Assistance Funds: DAF) have mainly been used for economic infrastructure projects such as power and telecommunications and other plant projects.

In this area, while it is recognized that Japanese companies have a sufficient intention to invest in and export large-scale private infrastructure or plant projects, there have been only a few Japanese investment projects which have been financed by foreign funding and there remain a number of candidate projects for plant export. However, there have been few cases which have resulted in international finance use in Vietnam up to now.

2) View from Investors

It is clear that these projects which are expected to increase, cannot be financed through ODA and domestic funds only. In Japan there remains a level of controversy around the extent to which economic infrastructure construction in Vietnam should be supported by ODA. It is now necessary to use international finance actively in Vietnam as can be seen in other ASEAN countries and more advanced countries, especially for projects in which Japanese companies participate through investing equity or export, JBIC international finance will be positively considered as the finance source.

3) View from Vietnam's governmental bodies

The Ministry of Finance has recognized the need for international finance as a future funding source to some extent.

4) Proposed action plan

1. The Government of Vietnam will disseminate and advertise the knowledge and use of international finance, cooperating with Japanese relevant organizations. The Government of Vietnam will survey the situation in ASEAN countries, study the merits and operation know-how and adopt these measures in actual infrastructure and plant projects. <MPI> The Government of Japan will examine the future cooperation of assisting the Vietnamese side in organizing seminars for PR activity.

2. The Government of Vietnam will flexibly assign government guarantees to large-scale economic infrastructure and plant projects.<MOF>

5) SUPPORT TO EXISTING INVESTORS

Item 40. Promotion of the Automobile Industry

Industrial promotion policy and taxation system (centering on passenger cars)

1) Background

(Automobile manufactures in Vietnam)
There are 11 FDI automobile manufactures in Vietnam at this moment, 7 of which are Japanese companies. The rest are Ford, Mercedes-Benz, General Motors and Daewoo. There are also a number of local companies without their own brand. The total amount of sales for the 11 companies is 27,000 units (year 2002), which totals only 1/360 of that supplied to Japan, 1/16 of that in Malaysia, 1/15 of that in Thailand. This demand meets only 18 % of the production capacity for all 11 companies. However, market growth is very rapid according to the revisions under the Enterprises Law. (200% growth: 2000, 140% growth: 2001, 137% growth: 2002). This contrasts with import figures for CBU units of 29,000 units (2002), 80% of which were trucks and buses and the remained being mainly used cars. Most of the 11 companies received investment licenses around 1995. In initial stages, sales of most of these were very low. Although the management of the 11 companies is improving as sales increase, some of the 11 companies continue to suffer losses. Due to a lack of supporting industries for automobiles within Vietnam, these 11 companies must import most of their parts and components abroad from.

(Industrial policy)
MOI has made a draft of the “Master Plan for Automobile Industry Development” in August 2003. This Master Plan targets for 2010 with a view to 2020. The main targets of the Master Plan are (i) enough supply for the domestic market (ii) development of export competitiveness. The outlines are (i) establishment of 20 SOE and (ii) achieve high localization. The Prime Minister’s decision (Dec/2002) and the MOST circular (July/2003) stipulates a minimum Local Content Ratio for passenger vehicles of 20~25% by 2005 and 40~45% by 2010. MOST is now considering the adoption of a so-called “Points System” to calculate a formula for localization ratios. Import of parts and components for CKD1 (low localization assembly) categories will not be permitted after 2004 according to the Prime Minister’s decision (April/2003). In order to protect the domestic automobile industry, a CBU of less than a 15 seater passenger vehicle is now included in the “GEL (General Exclusion List)” within the Vietnamese CEPT list. Control schemes for import licenses of CBU and local procurement requirements from domestic KD automobile companies were abolished in January 2003.

(Tax)
The Vietnamese National Assembly has decided to drastically increase the rate of SCT (Special Consumption Tax) and VAT (Value Added Tax) for automobile sales which is to be implemented after January 2004. Import tariffs for parts and components were revised in September 2003 according to the circular of MOF (July 2003).

***SCT**

<Before revision>

	full rate	Effective
Deduction		-95.0%
5 Seaters	100.0%	5.0%
6-15 Seaters	60.0%	3.0%
16-24 Seaters	30.0%	1.5%

<After revision>

	full rate	Y2004	Y2005	Y2006	Y2007
Deduction		-70.0%	-50.0%	-30.0%	0.0%
5 Seaters	80.0%	24.0%	40.0%	56.0%	80.0%
6-15 Seaters	50.0%	15.0%	25.0%	35.0%	50.0%
16-24 Seaters	25.0%	7.5%	12.5%	17.5%	25.0%

* SCT rate for CBU will be “full rate” after 2004.

***VAT**

<Before revision> VAT is exempt in the sale of passengers vehicles by manufactures, to which SCT is already applied. 5% VAT is applied to sales of trucks. 1% VAT reduction for sales by retail agencies for Ford, Suzuki and Toyota vehicles

<After revision> VAT will be applied on all vehicles including passenger vehicles. SCT is included on a tax basis. The Tax rate may be 10%.

<table>
<tr><th>Heading</th><th>Type</th><th colspan="2">CBU</th><th colspan="2">Second hand autos</th><th colspan="2">CKD</th></tr>
<tr><td></td><td></td><td>Current</td><td>New</td><td>Current</td><td>New</td><td>Current CKD2</td><td>New</td></tr>
<tr><td>8703</td><td>V≤ 8 seats</td><td>100</td><td>100</td><td rowspan="6">70% of minimum price set by MoF ***</td><td>150</td><td>20</td><td>25</td></tr>
<tr><td rowspan="2">8704</td><td>GVW ≤ 5T</td><td>100</td><td>100</td><td>150</td><td>7</td><td>10</td></tr>
<tr><td>6T< GVW≤ 10T</td><td>60</td><td>60</td><td>90</td><td>3</td><td>5</td></tr>
<tr><td rowspan="3">8704</td><td>10T < GVW ≤ 20T</td><td>30</td><td>30</td><td>45</td><td>3</td><td>5</td></tr>
<tr><td>20T < GVW ≤ 24T</td><td>10</td><td>10</td><td>15</td><td>-</td><td>3</td></tr>
<tr><td>24T < GVW</td><td>10</td><td>10</td><td>15</td><td>-</td><td>3</td></tr>
</table>

*Possession Tax Rate (for less than 7 seaters) was increased from 2% to 5% in June 2003.

2) View from Investors

The automobile industry is recognized as a key industry in most developed countries which have broad supporting industries and contribute to increases of GDP, tax revenue and labor employment. In Vietnam also the automobile industry is a promising industry from the view point of the expansion of existing investment and the attraction of FDI supporting industries. Foreign investors are worries that the revision of the tax system this year will have a negative impact not only on the management of the existing parts industries but also on Vietnam's investment attraction competitiveness. Sales will decrease next year due to increases in consumers' payment for the tax increase. Some of the 11 established companies have no way to withdraw from Vietnam if this new tax system continues. Decreases in sales means that the deterioration of the business environment for automobile manufactures, which makes it impossible for Vietnam to attract sizable FDI in this sector. It will also be impossible to realize the localization policy under such a less attractive market. The contribution by the 11 FDI companies will be lost (tax revenues, labor employment opportunities, philanthropy, and invested capital of over 500M$). Tax rate increases will result in a decrease in tax revenue instead of an increase due to the decrease in sales. A Flood of imported CBU will cause further trade imbalances. Other countries are maintaining their policies with a view to developing their automobile industry as a key industry. Malaysia will maintain restrictions of CBU imports before 2005. With the viewpoint of strengthening the domestic industry, Thailand will continue to decrease the import tariffs for parts and components to 2005. Market growth is a prerequisite for acquiring competitiveness compared to neighboring countries. Counter measures must be the decrease of tax rates not the increase of tax rates. Foreign investors strongly hope that the Vietnamese Government will adopt a reasonable industrial policy with a view to strengthening a competitive automobile industry utilizing and attracting more FDI and developing an attractive market by formulating a "Growth cycle" (sales increase → RSP decreases → sales increase)

3) View from Vietnam's governmental bodies

The government realizes the necessity of a consistent industrial development policy, a clear tax policy and an import policy. It attaches a great importance to the fostering of supporting industries and expanding local content ratios.

The virtual increase of the special consumption tax on four-wheeled vehicles has won parliamentary approval, and thus cannot be withdrawn. Domestic cars, which have been provided with substantial protection, are currently placed in the category of GEL of CEPT, and, therefore, their protection cannot be stopped. However, the government realizes that domestic cars are expensive compared to imported cars. In considering consumers' interests, the government feels the abolishment of protective measures is unavoidable to some extent and will promote competition. Of course, the government will not hesitate in considering some relief measures separately by weighing up the after effects of the enforcement of the law.

4) Proposed action plan

1. In preparing the development plan for the car and parts industry, the Government of Vietnam will listen to the views of foreign capital companies. The Government of Japan will examine the future cooperation of assisting the Vietnamese side in establishing a master plan for the automobile industry through various kinds of schemes (i.e. dispatching technical experts).<MOI>
2. While the Japanese side proposing that it should be noted that "* The Government of Vietnam will submit to the NA to consider the revision of SCT in case the enforcement of the Law has serious negative impact on automobile market. This impact should be evaluated in April, 2004 and regularly afterwards by the working group which consists of automotive manufactures and related ministries of Vietnamese Government. *The Government of Vietnam will maintain current CKD import tariffs until 2007. *The Govrenment of Vietnam will postpone the abolishment of CKD1 categories after January 2004 for the time being (CKD1 is necessary under a model trial) 〈MOF〉,"

While the Vietnamese side proposing that it should be deleted,

The both sides desided to continue discussing these issues through Evaluation and Facilitation Committee and to report the results of the disucussions to Prime Ministers.

3. The calculation formula of the local content ratio and the deduction items will be applied as articulated in the Annex of the Japan-Vietnam Investment Agreement. Requirements for local content will also be removed by the end of 2006. Or no later than the date when Vietnam joins the WTO or whichever is earlier. The maximum ratio of local content requirement is 5%. <MOI. MPI>

Used Trucks

1) Background

(1) Production and sales

Currently, amongst the 11 foreign invested automobile manufacturers and assemblers belonging to VAMA (Vietnam Automobile Manufacture Association), six produce trucks. Other than these six manufacturers and assemblers, there appear to be several Vietnamese companies who import accessories and components from China and Korea and assemble trucks, however, there is not much information on these Vietnamese companies.

The above mentioned six member companies of VAMA obtained their investment licenses sometime during 1995 and 1997 and began production activities then. Although production has shown an increase in recent years, the total production and sales of all varieties of trucks in 2002 reached only around 2,500 units which is quite a limited number of trucks for production and sale.

For this limited number of production and sales, depreciation costs per truck are comparatively large, producing a heavy burden on the management and finance of the companies. These companies have been trying to increase local procurement with the aim of pushing down the cost of production, however, there are few supporting industries or local enterprises which are able to provide accessories and spare-parts that meet required quality standards. On top of this, due to the limited scale of production, the sector has not been successful in attracting new foreign investment for spare parts manufacturing. Therefore, it has been stuck in a vicious circle of; a limited scale of production → insufficient supporting industries for spare parts → the slow progress of local procurement and pushing costs down → production does not expand.

(2)The increase of secondhand trucks in the market

In contrast to these problems in the production sector, the Government of Vietnam has been permitting the import of cheap secondhand trucks and by 2002, the number of imported secondhand trucks was estimated to have reached 25,000 (including buses and trucks), which is ten times more than the number of trucks produced by VAMA member companies. The increase of secondhand trucks in the market is said to be the major cause of the above mentioned vicious business circle.

(3)Tax system and the import restrictions for secondhand trucks

Categories	KD import tariff		The import tariff on automobile		Restrictions on the import of secondhand trucks *2
	Until Aug.2003	Sep. and after Sep 2003	New automobile	Second hand automobile*1	
GVW less than 5t	7%	10%	100%	150%	Restricted
5t– less than 10t	3%	5%	60%	90%	No restricted
10t- less than 20t	3%	5%	30%	45%	No restricted
20t- less than 24	0%	3%	10%	15%	No restricted
24t and more than 24t	0%	3%	10%	15%	No restricted

*1 The import tariff for secondhand CBU has been increased to 150% compared to that of new CBU in September 2003.
*2 Restrictions on the import of secondhand automobiles meant a ban on the import of automobiles which are more than five years old.

2) View from Investors

The increasing flow of secondhand trucks is suppressing production activities of domestic manufacturers and assemblers. It is a major obstacle to the development of the Vietnamese automobile industry. In terms of its social aspect, a large number of secondhand trucks of a low quality, poor maintenance level and insufficient spare parts, will cause not only traffic disorder, such as accidents and traffic jams, but also a negative environmental impact such as over consumption of fuel and the generation of exhaust fumes.

3) View from Vietnam's governmental bodies

A policy of promoting the domestic production of KD products will not change. The government plans to increase the tariff on imported cars to increase competition (including new and secondhand cars) in order to give preferable conditions to low priced vehicles in price. In particular, the government plans to ban the import of secondhand trucks. For instance, as far as the category (GVW of 5-10 ton) is concerned, the import tariff on KD parts will increase only by 10-20% from current levels to 2010, on the other hand the import of secondhand trucks will be banned.

4) Proposed action plan

1. The Government of Vietnam will establish a road map within one year which will impose and enforce regulations banning the import of middle sized- trucks (more

than GVW5 ton), which are more than five years old (since there was no regulation on the age previously), inline with restrictions on small sized trucks (smaller than GVW 5). <MOT>

2. While the Japanese side proposing that it should be noted that "*The Govrenment of Vietnam will keep difference of tariff at least current level(50%) between some kinds of secondhand CBU trucks and that of new CBU trucks in 2004 and onwards<MOF> *The Government of Vietnam will maintain current import tariff on CKD until 2007.<MOF>",
   While the Vietnamese side proposing that it should be noted that "The Government of Vietnam will increase the import tariff on some kinds of secondhand CBU trucks to more than of that of new CBU trucks in 2004. <MOF>",
   The both sides desided to continue discussing these issues through Evaluation and Facilitation Committee and to report the results of the disucussions to Prime Ministers.
3. VR (Vietnam Register) will stop the issuing of inspection certificates for trucks which are more than 25 years old. (Enforced within half year). <MOTC>

Item 41. Promotion of the Motorbike Industry

1) Background

Since Suzuki Motor Corp. obtained an investment license in 1995, Honda Motor Co., Ltd. and Yamaha Motor Co., Ltd. followed suit in 1996 and 1999, respectively. These three Japanese companies (JV) are now major players in the motorbike industry in Vietnam. There are also a number of joint venture with Chinese or Taiwanese capital, who combine with approximately 45 companies which are wholly owned by Vietnamese owners (hereinafter referred to as domestic-capital motorcycle makers), which serve Vietnam's 1 million-unit motorbike market. Demand is estimated to have reached 1.6 million units in the peak year of 2001 (from 350,000 units in 1999 and 900,000 units in 2000), while approximately 10 million motorbikes have been granted circulating licenses. Imports and exports of "complete built-up (CBU)" are negligible, resulting in the fact that domestic demand directly determines production. In 2000 and 2001, low-priced copy products (assembled by domestic-capital motorcycle makers using imported Chinese parts) of Japanese models increased dramatically in the domestic market. At the beginning of 2002, Japanese JV firms introduced low-priced models. The introduction of these low-priced motorcycles expanded the market dramatically. This has aggravated such problems as traffic congestion and the frequency of accidents, but it has also proved that the motorcycle market in Vietnam is a high-growth market with very high price elasticity. Given the fact that rural areas account for 80% of the nation's population (as of 1993, per capita household expenditure in the rural areas was 55% of that of the urban areas) and that motorbike culture is part of people's lives, Vietnams market is more attractive than any other in Asia. If the production technology of parts makes steady progress, Vietnam is potentially very competitive as a production base for motorbikes to the global market.

Policy-making authority over the motorbike and motorbike parts industries are distributed amongst MPI, MOF, MOST, MOTC, MOT and others, as indicated by the Prime Minister's Decision 147/2002/QD-TTG. However, the Ministry of Industry has primary jurisdiction and encourages increases in the ratio of local content. Japanese capital-affiliated joint ventures have been increasing the ratio of local content, by producing in-house engine castings, for example, and the ratio for some models now exceeds 70%. The average ratio for Japanese capital-affiliated firms is estimated at 50-60%. For both foreign and domestic capital-affiliated motorcycle producers (those making CBU in Vietnam), major issues are as follows:

Policy related: Because of the involvement of many ministries and agencies, both market and production are greatly affected depending on the policies of these governmental bodies. Such policies include, for example, direct control over the market through the restriction of ownership to users, quantitative restrictions on production through the introduction of a quota system for the importation of parts, frequent changes in import tariffs on motorcycle parts for assembly, and abrupt changes in the standards of quality control for motorcycles and motorcycle parts.
Market structure: The existence of models that are in violation of intellectual property rights and the increase in the distribution of such models, increases the severity of price competition due to the contraction of the domestic market, etc.
Supply structure: The lack of export competitiveness due to slow progress in domestic production of parts; impediments to the development of the industry resulting from the existence of non-competitive enterprises due to slow restructuring of motorcycle makers, which presently number approximately 50; slow development of supporting industries that are capable of meeting quality requirements of foreign capital-affiliated companies, etc.
Environment for use: Frequent incidences of traffic accidents and a lack of a social climate conducive to following traffic rules; inadequate development of infrastructure, such as traffic signal systems and parking spaces in urban areas.

2) View from Investors

The major problem Japanese parties see in Vietnam in respect to the motorcycle business is heavy constraints in freedom to conduct business. There is a conflict in policies, as while the basic policy of the government is to take advantage of the dynamism of private enterprises to promote the transition of the economy into a market economy, in practice, frequent policy changes concerning actual business activities result in confusion in operation and constraints in the freedom of business management. It can be said that while Vietnam is promoting industrialization by using foreign direct investment, this problem is most acutely observed in the motorcycle industry. Specifically, the most serious problems are seen in the following two points:

(1) Constraints to businesses' power to set production volumes

Basically, the production volume of a manufacturer is to be determined by the market and the competitiveness of the firm in that market. Although annual import quotas for parts had been set for each company in the past, the central government (Ministry of Trade) in September 2002 abruptly development and notified businesses of **new quotas** that were based on the actual volume of imports in 2001 and were applicable to both foreign and domestic-capital motorbike assemblers. Since the new quotas were significantly smaller than the figures approved by the Department of Trade (DOT) of the People's Committee of the province in which each factory was located, Japanese capital-affiliated companies plunged into turmoil, as they had been planning steady expansion of production and distribution networks in line with the expansion of the domestic market. New quotas were more or less equal to the volumes of production through August, which meant that the companies were not able to continue production in September or later and some companies actually cancelled production. Although additional quotas were given to foreign capital-affiliated companies in November 2002, the basis for setting the figures are not clear. In Vietnam, imports are approved in the form of approval of import plans filed by the maker with the DOT of the People's Committee of the province, but the annual production volume was limited by the cancellation of the approval which had already been given. The ratios of the allocation of parts quotas to foreign capital-affiliated joint ventures and domestic motorbike makers were unacceptable to foreign companies. The production volumes of domestic-capital motorcycle makers in 2003 are expected to be substantially below the ceilings set by the quotas. Ultimately, combined with a direct control policy on the market which was simultaneously implemented by the government (Market controls include: A ban on new registrations for users who have made registrations in the previous 10 years, a sharp increase in registration fees, etc. These governmental controls on the aggregate ownership of motorbikes are estimated to have had a major impact on demand), quota reductions resulted in a sharp contraction of the motorbike market. Such direct control on the market may wipe out the significance of the quota policy per se. It is hoped that the government will follow a consistent and highly transparent policy for the motorcycle industry. After completing an audit of the three Japanese capital-affiliated companies, the MPI in July notified these companies of the re-confirmation of the approval of production up to the unit volume stated in their feasibility study (F/S).

(2) Business activities are constrained by the F/S, which were business plans made in 1995-99, when Japanese companies started operations in Vietnam

Foreign capital-affiliated companies submitted a F/S when they applied for their investment license. The license, which runs for several pages, shows the name of the enterprise, the format of the investment, the investor and the period of the license. In the case of a motorbike assembler, it also shows the amount of investment as well as the local content ratio (in Vietnam, an investment license is not granted unless these figures are shown. There is the view, that these figures are goals and that these items are not to be included in the license). An F/S is a medium-term business plan attached to the application for an investment license and is a thick document which includes such detailed information as plans for factory layout, year-by-year plans for the amount of investment, models to be produced and planned unit volumes of production, sales plans, expected volumes of the consumption of electricity and water and plans for waste disposal. Japanese companies believe that F/S is a "document of business plans" and take for granted that it can be changed depending on changes in the business environment after the start of the operations. They do not believe that every item stated "is an obligation" or "limits" their activities. Not only motorbike makers, but all foreign capital-affiliated firms share the belief that the essence of business management is how quickly you respond to a changing environment. They have worked hard to increase local content ratios, because they believed that the ratios shown in the licenses are items to be "observed" and are "obligatory," but they believe that the unit volume of production and models to be produced can be changed flexibly depending on changes in the business environment. Vietnamese parties, on the other hand, assume that all items shown on the F/S are "obligatory" and impose "restrictions." This is related to a number of items, and was observable when the Vietnamese government notified businesses of new quotas on the importation of parts in September 2002. That is, the Government of Vietnam assumed that the plans for unit volume of production shown on F/S were the ceilings for production and set quantitative restrictions on the importation of parts. As stated earlier, in 2003, market conditions have wiped out the significance of quotas, but depending on future developments in the market, there is still a possibility that the items shown on the F/S may again become a major problematic issue. It is hoped that that the Government of Vietnam view the F/S presented at the time of entry to Vietnam as a "document of business plans" and make it possible for enterprises to change their business plans flexibly at their sole discretion. It is hoped that an enterprise will not be bound by its FS and will be allowed to conduct business freely based on the principles of the market economy, which are that it is the market that determines corporate activities and that growing companies are distinguished from declining companies based on the quality of their business strategies. What is desirable is to allow enterprises to freely make basic decisions regarding business activities, such as production volumes and models to be produced, after they have operated in Vietnam for a certain period of time. In other words, it is hoped that the Prime Minister will issue a clear notice waiving the requirements to file an application for "any change in items shown in F/S" and obtain approval. (According to Vietnamese attorneys, investment licenses and F/S are separate under Foreign Investment Law and foreign companies are free to set production volumes at their discretion.)

(3) Other major problems

Problems related to the import and sale of CBU: Investment licenses granted to Japanese makers do not grant them the right to import and sell CBU. Some domestic-capital dealers have obtained approval to import and sell CBU, and some of them are now importing CBU from Japanese capital-affiliated companies (these dealers are purchasing them overseas on their own without any ties to Japanese makers). This is likely to give rise to the problems in the area of after-sales services and the maintenance of the brand-image of manufacturers. At the same time, allowing importation and sale of CBU to foreign capital-affiliated companies will make it possible for them to expand product lines by supplementing the models which cannot be produced locally because of small local demands or other factors. This will increase users' options in the selection of motorcycles by consumers and also benefit consumers in terms of price. It is assumed that in order to engage in importing and sales, foreign companies will be required to obtain new licenses. It is hoped that the government will make it clear whether foreign capital-affiliated motorcycle makers are able to obtain a license for importation and sale of CBU and also the conditions for and methods of obtaining such licenses.

3) View from Vietnam's governmental bodies

Available information suggests the following. (It is assumed that) the quantitative restrictions on production through a revision of the approval on the quantity of parts imports adopted in September 2002 (through the cancellation of already approved import plans of assemblers and the setting of ceilings for the volume of imports) have been removed. Due to the contraction of the market, the actual significance of the restrictions has been fading. However, the import of parts of not only motorbikes but all items requires the approval of import plans. The volume stated in the F/S should be adhered to and these volumes vary from one company to another. F/S is an integral part of an investment license. In the case of a joint venture, it requires a board of directors' resolution to make changes in a F/S. Changes must occur through the filing of an application for changes with the MPI and hearings by relevant ministries before final decisions are made. This process is the same as at the time of filing an application for an investment license.

The Vietnamese side (Ministry of Industry) believes that an F/S is not a "document of plans" attached to an investment license but is an integral part of the investment license. In its view, there is no legal problem in restricting business activities on the basis of an F/S when the government deems it necessary.

Current investment licenses do not authorize the importation and sale of CBU. The government's understanding is that not only motorbike makers, but foreign capital-affiliated companies in general are not allowed to import and sell completed industrial goods. However, there may be room for study into cases where a company that is already producing locally is to import and sell part of the product mix. It is advisable for such a company to file an application for a license.

4) Proposed action plan

1. The both sides discussed the nature of feasibility studies (F/S), which foreign enterprises are usually requested to submit to the Vietnamese Government at an application stage for their investment licenses. The Japanese side stated its understanding that the F/S only indicates their business prospect at the time of application and does not restrict their business activities in any sense. Particularly, the Japanese side considered that a production limit imposed on only foreign enterprises may be inconsistent with the Bilateral Investment Agreement and have

negative impact on Japanese investment to Viet Nam. In response, the Vietnamese side affirms that the F/S, in principle, does not restrict the production level of the enterprises. The Vietnamese Government noted that it may limit the production level of the enterprises, with advance notice and consultation with the parties concerned, by taking into account the socio-economic conditions and the size of its domestic market as well as the practical capacity of the enterprises. The both sides decided to continue discussing these issues through the Evaluation and Facilitation Committee. In this line, consultative meetings are also encouraged between the Vietnamese Government and relevant industries such as the Japan Automobile Manufacturing Association (JAMA)

2. The formulation of a development strategy for the motorbike and parts industry. The MOI is to conduct hearings to substantiate the production plans of motorbike companies by organizing teams comprising of scholars and third parties who are capable of objective analyses and evaluation, and learn in detail the conditions for and the possibility of expanding the motorbike industry as a whole. Referring to the conclusions of the study mentioned above (multiple scenarios), the Government will adopt a comprehensive development strategy for the motorbike industry established by MOI with the cooperation of relevant ministries and listening to the views of not only domestic but also foreign capital-affiliated motorbike makers. [execution within one year]（There are many urgent issues Vietnam should study in order to become a “core production and export base for motorbikes in the global market,” including i) a fact-finding study and development measures for each major part; ii) clustering of parts production and the planning of technology transfer to such clusters for domestic production of parts which are now imported in large volumes; iii) meeting requirements for the industry to acquire export competitiveness; iv) cooperation and competition strategies with Japan, Indonesia, Thailand, China and other countries; and v) measures to make people observe traffic rules and to reduce accidents）.

The Government of Japan will examine the future cooperation of assisting the Vietnamese side in establishing a motorbike master plan.

Change in the Import Tariff Classification of Motorcycle Parts and the Giving of Export Incentives

1) Background

The motorbike industry is already an important technology-intensive industry in Vietnam, while hopes are pinned on this industry as one of the locomotives of the nation’s industrialization. In other words, progress in the domestic production of motorcycle parts, which number approximately 3,000, holds the key to the nation’s industrialization. The Government of Vietnam has been promoting the development of the domestic motorcycle parts industry by i) attracting foreign direct investment (FDI) in the industry and ii) guiding motorcycle assemblers to increase local content. For example, by the end of 2002, Honda’s parts makers numbered 21 FDI enterprises and

11 Vietnamese firms. At present, foreign motorbike parts makers, those affiliated to Japanese, South Korean, Taiwanese, Chinese and other foreign firms, operating in Vietnam are said to number 120.

Meanwhile, a wide gap between the ratios of the local content of major foreign capital-affiliated motorbike assemblers (Japanese, South Korean and Taiwanese) and those of domestic assemblers (many of which are engaged in the assembly of Chinese motorcycles using imports of incomplete knock downs--IKD) has developed. It is said that while the ratios stand at more 50-60% for the former, they are only around 15%-30% for the latter.

At present, the government's policy for the systematic development of the motorbike parts industry is unclear. It seems that over the past few years, the government's top priority in its policy to develop this industry has been to directly link assembler's ratios of local content to the tariff rates it must pay on parts that are not made locally. This formula was applied to both foreign capital-affiliated and domestic-capital companies. However, frequent changes in the methods of imposing tariffs and tariff rates have dealt serious blows to the business results of parts makers.

- In January 2001, the government began to impose different import tariff rates on parts depending on the ratio of local content of motorcycle assemblers. (e.g., tariff rates of 60% for an assembler with 15% local content and 15% for an assembler with 40% local content)
- In January 2002, the government applied new tariff rates which were based on the engine displacement volume and the ratio of local content.
- In June 2002, the government introduced further breakdowns of local content ratios, changed the method of calculation of local content ratios and revised tariff rates.

Despite these frequent and unpredictable changes in tariff policies regarding imported parts, Japanese capital-affiliated motorbike assemblers in Vietnam have steadily increased the ratio of local content through their efforts, which included the following: i) attracting FDI in motorcycle parts; ii) the promotion of the in-house production of parts (through plant and equipment investment, etc.); and the purchasing of parts from Vietnamese companies, although there are only a few Vietnamese firms which can meet the quality requirements of FDI assemblers. However, the Government of Vietnam still believes that the country's motorbike parts industry has not yet developed sufficiently, because the local content ratio of domestic capital-companies, whose business is mostly the assembling of Chinese motorbikes imported in the form of IKD, is still low (half of approximately 45 such companies are state-owned enterprises). Some domestic assemblers have been responsible for problems such as the infringement of intellectual property rights of foreign companies and marketing poor-quality motorcycles for which here is no after-sales service provided.
On January 1, 2003, import tariffs on motorbike parts were revised (MOF, Ref. No. 551TC/TCT) and as of July of this year, "different import tariff rates were applied to different parts." From now on, the Government of Vietnam will study whether or not it

will reduce import tariff rates on parts to 0-5% by 2006 to meet the requirements of AFTA. So far, there has been no disclosure of vital information to assist which would assist in the development of the business plans of motorbike parts makers, such as the process of the debate and the direction of changes in tariff rates. The basic direction of the government is to develop the motorcycle and motorcycle parts industries, but partly due to a lack of long-term industrial vision for these industries, it is impossible to see concrete measures for the development of the motorbike parts industry.

Tariff Rates on Motorcycle Parts Imports as of January 2003

Image of Group	Tariff rates	Examples of parts
Group 1	50%	Frame parts
Group 2	40%	Motorcycle electronic parts
Group 3	30%	Engine parts

Tariff rates of each part have been decided according to the tariff-book generally used. The table shows the outline. Accurate tariff rates for each part are decided by negotiations and new tariff rates will be adapted from July 1st ,2003 based on Decree No 78/2003/ND-CP (Office of the Government),Circular No64/2003/BT-BTC（MPI）.

2) View from Investors

The present tariff table (MOF, Import-export Tariff) does not accurately reflect tariff rate classification for groups of parts whether or whether the parts can be manufactured domestically, either by foreign-capital or Vietnamese-capital companies, or can be procured domestically. The present group tables are ambiguous. As a result, tariff rates are determined through negotiations with customs authorities. Discrepancies in the views of the import customs bureau regarding decisions for each part are also a problem. It is hoped that data on tariff rates applied to each part can be disclosed, for example, via the Internet.

3) View from Vietnam's governmental bodies

The motorbike parts industry is an "important sector designated as an investment promotion industry under the Foreign Investment Law. In relation to AFTA, Vietnam now classifies motorbikes and motorbike parts as GEL items. It is speculated that MOF will continue to do so through and after 2006.

4) Proposed action plan

1. Revision of the Import Tariff for Motorbike parts

The Government of Vietnam will revise the grouping of parts and tariff rates in the present Import-export tariff. Tariff rates on parts should depends on criteria of whether the parts can be manufactured domestically, either by foreign-capital or Vietnamese-capital firms, or can be procured domestically. The higher tariff rates will be applied on parts that can be procured domestically while the low tariffs should be applied on parts that cannot be procured domestically because they require high technology. Concerning the classification of parts, opinions of motorbike and motorbike parts makers should be fully reflected when making a realistic list of groupings. The Government of Vietnam will take measures to promote the parts industry. <MOF>

2. The Giving of Export Incentives
To promote the export of motorbikes, the Government of Vietnam will study and implement measures to increase export incentives through listening to the opinions of the producers. <MOF>

Quality Control Standards, etc. for Motorcycle and Parts

1) Background

The policy for the control of motorcycle and motorcycle parts of October 2002 (the Prime Minister's Decision: 147/2002/QD-TTG) allowed the importation of complete built-up (CBU) of motorcycles at an import tariff of 100% (the same rate for the importation of completed engine units) beginning in January 2003. Companies other than foreign capital firms have been importing CBU, though such imports are still negligible and nearly all domestic demand is met by domestic production. Although local content is estimated to have exceeded 50-60% for Japanese capital-affiliated companies, state-owned and other major Vietnamese-capital enterprises have been slow in increasing local content ratios. Although the situation varies slightly from company to company, Japanese-capital firms are importing forged items, engine parts and other items which cannot be purchased in Vietnam from Thailand, Japan or elsewhere. Meanwhile, Vietnam-capital firms with low local content ratios are importing in large volumes and various kinds of motorcycle parts mainly from China. The level of production technology, such as the quality of parts and assembly, is one of the major factors in the competitiveness of the market place.

In order primarily to assure the safety of finished motorcycles and to protect the environment from emissions, etc., standards have been set for motorcycle performance (vehicle standard), for production control, including assembly work, and quality of parts (those relating to motorcycles among the TCVNs, which are national standards). The Vietnam register (VR) of MOTC and its approval by MOST were not mandatory. However, in June 2002, prior to the issuance of the Prime Minister's Decision 147/2002/QD-TTG, 27 items relating to safety, environment and the quality of parts of VR (MOTC) were made mandatory through a government notice. This can be divided into two groups: standards for assembly relating to safety (e.g., the illumination level of headlights) and those relating to the quality of parts themselves. The standards whose application is mandatory (or parts for which the application of standards is mandatory) include parts which are newly designated for model approval. Some parts require 100% inspections, while others call for sample inspections, such as 1% sample inspections of engine output for torques, which are not conducted in Japan. In Japan, motorcycle engines are subject to model approval and manufacturers have the sole responsibility for individual products, including engines.

The Ministry of Transport and Communication (MOTC) which has jurisdiction over technical standards for motorcycles and their parts has 27 items under VR, while MOST, which administers the quality in the registration of motorcycles and their parts based on the Prime Minister's Decision 147, has added six items to the 27 VR standards and has made quality inspections and controls, and reporting under its own rules mandatory. In other words, at present the Government of Vietnam imposes 33 mandatory standards on the motorcycle industry. The Industry is not allowed to manufacture or sell motorcycles without quality certificates and quality inspection certificates from MOST for each item. Japanese-capital firms cleared most of these standards after MOST officials visited motorcycle plants in Japan to observe the actual status of quality control measures and study control methodology, as well investment in a great deal of effort and money for the introduction of inspection equipment and improvement of production processes and negotiations with The Government of Vietnam concerning when new rules would come into effect. On the other hand, as of July 2003, it was impossible for foreign-capital firms to know the status and application of quality control standards on state-owned and other non-foreign motorcycle makers or information on the extent of their compliance to new standards, as such information were not made public.

2) View from Investors

Basic views of Japanese enterprises: Japanese businesses believe that Vietnam is highly promising as a production base for the motorcycle industry. Improvements in of quality of motorcycles and their parts is an extremely important tool for bringing Vietnam's large potential for motorcycle production to fruition. The tightening of quality control per se is not a problem because it indicates that motorcycle production in Vietnam is headed towards sound health. Problems are felt in the items chosen for quality inspection, inspection methodology, effects of inspection, reporting requirements and lingering doubts as to whether these standards are applied uniformly to all motorcycle makers. Basically, the selection of items subject to mandatory quality control and setting of quality standards are to be made based on the outcome of studies concerning quality control methodology and know-how obtained through actual quality control practices and accumulated data. Japanese-capital motorcycle manufacturers that conduct business globally have already accumulated data and experiences on the quality of assembly and parts that are acceptable globally and have within their global operations and organizations quality control methodology and efficient means of inspection. These firms should not have to continue to prove their quality and safety levels in their plants in Vietnam. Vietnam needs to confirm in an appropriate manner the reliability of the quality of parts from the country of import and disclose their results. At the same time, quality and other technological standards should be applied uniformly to all motorcycle and motorcycle parts manufacturers, regardless of whether they are foreign-capital companies or state-owned enterprises and whether they are big or small. Moreover, mandatory standards should be kept to the minimum and backed by appropriate logic and experience. In order to guarantee uniform application, it is hoped that the agency that conducts inspections discloses regularly the status of the application of standards.

The quality of a motorcycle is the most important factor in competition in the market, and it is manufacturers who should be held responsible for this quality. It is hoped that the business community of Vietnam, which is trying to accelerate its transition into a market economy, will realize a fresh and further shake up the industry to force the elimination of losers in quality competition. The results of this restructuring will be the enhancement of competitiveness for the Vietnamese industry as a whole.

Major problems facing:

(1) There is duplication between VR and MOST for approximately 80% of items covered. The duplication in itself is not a problem, but the duplication by two agencies results in unnecessary costs.
(2) There are questions as to whether certain items merit mandatory application. In Japan and Europe, the quality and performance examination at the time of the approval of a new model is considered to be sufficient and there is no need to inspect processes of assembly and parts manufacturing. In Vietnam, costs that are considered to be unnecessary are incurred.
(3) There are certain items whose effects are doubtful. Here again, unnecessary costs are incurred. Such costs could mean unnecessary burdens to the consumer as well.
(4) For some items whose applications are mandatory, it is doubtful whether the designated inspection standards and control methodology is appropriate and it is hoped that they will be reviewed.

Other views from the Japanese side: Meeting some of the requirements for new quality inspections and control rules takes time. Abrupt rule changes and the obligation to follow new rules on short notice generally makes it difficult to observe new rules as they may require changes in the production process or the introduction of inspection equipment and/or re-training of workers. It is hoped that new rules will allow for enough time before they come into effect.

3) View from Vietnam's governmental bodies

The Government of Vietnam regards the motorcycle industry as an important industry to be developed and recognizes the importance of quality control. It also recognizes that it lacks technology for and experiences in quality inspections. It is working to find solutions in the direction in which it will trust the results of approval given by factories (quality control department, etc.) of Japanese parents that are operating globally, so not all inspections will have to be conducted at the factory level in Vietnam. For parts made in China, certificates of approval issued by any of the five Chinese government's approval centers are recognized, but the Government of Vietnam is aware that the reliability of such certificates is uncertain.

4) Proposed action plan

1. The Government of Vietnam will fully consult with FDI motorbike manufactures on their comments in a sincere manner, sufficiently in advance of the issuance of quality standards and inspection methodology, from a view point of ensureing economic effectiveness and transparancy. <MOST, MOTC>.
2. The Government of Vietnam will simplify procedures of quality standards through coordinating and streamlining the roles of relevant organizations <MOST, MOTC>.

Item 42. Fostering of the electronics and electrical industries

1) Background

The Electric/electronic industry is considered to be one of most important industries to be fostered in order to achieve Vietnam's industrialization. This view is strengthened by examples from neighboring countries, which have developed supporting industries, providing parts to assemblers, and which are indispensable in the process of achieving industrial development. However, the electric/electronic parts industry in Vietnam is still very weak and now it is extremely important to find a way to foster this industry. The Government of Vietnam has been following a policy of protection for the domestic parts industry by implementing a comparatively high tariff on imported parts and imposing a local contents ratio stated in the investment licenses of assemblers. Such protective policies are not appropriate when the liberalization of trade and investment has become mainstream in the international economy. Further, fostering the domestic electric/electronic industry with protective policies over a long period is not effective as the rapid development of technology and products is being at the same pace throughout the world. This results in the electric/electronic industry tending to have excess equipment levels and over production capacities. Moreover, with fully pledged integration into AFTA (CEPT) and strong commitments to enter the WTO, it is very difficult for Vietnam to maintain its current industrial policy. On the other hand, the reduction of tariffs on complete products under the CEPT schedule will force Vietnam to lose its competitiveness in assembling, forcing to them to face high levels of risk. As a countermeasure to overcome this problem, the Government of Vietnam issued Decree No.64 from the MOF (July 2003) which aimed at facilitate by-parts importation, expanded the CEPT list range adopted with through Form D for local production certificates and abolished the minimum price for parts. This means that, under this Decree, import requirement for kit-parts, which was previously imposed on Japanese enterprises importing parts, has been finally removed. However, the rapid increase of imported cheap parts from other ASEAN countries to Vietnam will cause obstacles for Vietnam if it wishes to foster and promote its domestic parts industry, as a result effective countermeasures will be needed. In facilitating the development of the electric/electronic industry using foreign investment as an important component, Vietnam must have an overview of the global movement in the electric/electronic industry as its first step and rapidly build an appropriate system and structure based on this. For this to be achieved, the formulation of a master plan for the electric/electronic industry and the promotion of activities are indispensable.

2) View from Investors

The issuance of the Decree No.64 has certainly improved the situation in this sector, however, the competitiveness of the electric/electronics industry is still weak compared to international markets and Vietnam will feel high levels of competition when competing with other ASEAN countries. The development of the electric/electronics industry definitely requires a long-term strategy and vision, with radical changes as part of its policy in order to strengthen assemblers in terms of numbers and to foster the parts industry.

3) View from Vietnam’s governmental bodies

The government recognizes the importance of the electric/electronics industry and has the intention of building a long-term vision in accordance with its policy to “promote assembling and the parts industry simultaneously by taking advantage of other related policies” and at the same time promote local supporting industries. However, the government has not been able to finalize the vision due to dramatic changes from economic integration and the external economy, and rapid technological developments.

4) Proposed Action Plans

1. The Government of Vietnam will consider the new import tariff systems for kit parts in the way that promote electrical and electronic assembly companies in making continuous efforts to achieve higher local content ratios in accordance with WTO-TRIMs <MOF, MPT, MOI, MOT>
2. In order to gain competitiveness and greater localization of the electronics parts assembly industry, the Government of Vietnam will issue new import tariff systems for import materials for electronics parts assembly, as soon as possible during 2004, including, the reduction of tariff rates on import materials to 0% if they cannot be manufactured domestically, through either foreign-capital or Vietnamese-capital firms, or can be procured domestically. <MOF, MPT, MOI, MOT>
3. The Government of Vietnam will formulate the master plan for electrical and electronic industries within one year that will serve as a common guideline for both local and foreign companies in the mentioned industry. ＜MPT,MOI＞ The Government of Japan will examine the future cooperation of assisting the Vietnamese side in establishing a electronic master plan.
4. Support the updating of industrial standards, making them compatible with ISO standards, and strengthen other related standards and the functions of STAMEQ, etc. which will then verify that products standard levels. ＜MOST＞

Item 43. Abolition of the lowest investment ratio restriction (40%) for the Share of the Vietnamese Partner through Additional Investment in a Cement Joint Venture

1) Background

While Thailand and Indonesia each have an annual cement production capacity of 50-60 million tons, the annual capacity in the Philippines, Malaysia and Vietnam each stands at 20-30 million tons. The first two countries export large volumes of cement, primarily to other countries in Asia. With the exception of Siam Cement in Thailand, European and Mexican transnational companies occupy important positions in Thailand, Indonesia, the Philippines and Malaysia. In Vietnam, seven state-owned enterprises (affiliate companies of VNCC) and four joint ventures between foreign-capital companies and public cement corporations (Nghi Son, Chinfon, Holcim Vietnam, Luckvasi) are the major producers. In each of the four joint ventures, the foreign partner owns the majority share, while the Vietnamese partners own 30-35%. Domestic production has increased by more than 10% annually over the past few years, but domestic consumption has increased even faster. The cement industry has been booming against the backdrop of the recent construction boom, and shortages are being met by imports of clinker. Although the importation of cement was banned completely from 1997 (Note 1), the ban was lifted in July 2003, at an import tariff rate of 20% from ASEAN countries and 40% for other nations. In accordance with AFTA, the tariff on imports from the other ASEAN nations is scheduled to be reduced to 5% or less in 2006.

(Note 1: Except for clinker and other raw materials of cement. Clinker has also been placed under import controls since 1999 under Decree No. 46/2001/QD-TTG.)

With its abundant domestic limestone resources and in order to increase the capacity and international competitiveness of Vietnams cement industry, a master plan for the industry was adopted in November 2001 for the period through to 2010 under the Prime Minister's Decision (No. 164/2002/QD-TTG). The decision has posed a major problem for joint ventures, because it stipulates "In cases of future expansion, the ratio of the Vietnamese sides legal capital in existing joint venture projects should be increased to 40% or higher"

2) View from Investors

The joint venture agreement states, in accordance with Article 8 of Foreign Investment Law (18/2000/QH10), that "VNCC, the Vietnamese partner, has the right to increase its share of legal capital". But it is also stated that "the price, means and scheme are to be based on mutual agreement". FDI companies argue that negotiations for change in the share of ownership should first be based on agreements between both parties and that for the mandatory revision of share of ownership in the government's master plan can not be accepted, and that it is against the spirit of "the guarantee of equal and fair treatment of foreign investment" stipulated in the enforcement regulations of the Foreign Investment Law.

3) View from Vietnam's governmental bodies

The Government of Vietnam is now re-examining its cement industry policy. Although some argue that the share of Vietnamese ownership in a joint venture should be increased in the cement industry, others say that foreign capital and technology should be used more aggressively from a viewpoint of efficiency. Therefore, the government is examining and adjusting this question. The government wishes to have more time before it comes to a conclusion.

4) Proposed action plan

The Government of Vietnam will remove the minimum 40% capital restriction described in the master plan of the cement industry (Prime Minister Decision No. 164 2001) and make it clear that the capital ratio should be entrusted to mutual agreement between joint venture parties. [immediate execution] <MOC: WT1>

Item 44. Problem regarding long term credit of theVietcombank (VCB)

1) Background

Doi-Moi, or the Renovation policy, adopted by the Government of Vietnam since 1986, boosted the business expansion of SOEs and local authorities, promoting a rapid increase in imports of industrial products, especially automobiles, plants and machinery, from Japan, Korea and other countries. However, in the later 80s, some SOEs and local authorities went bankrupt due to a too rapid expansion and became unable to settle import payments.

It appears that private credit problems in Vietnam are difficult to solve as has been reported. One example widely publicized was that of a Korean trade company who brought a lawsuit over the default of a L/C settlement, it was decided that no arbitration agency would accept the lawsuit, and that it took the Australian government more than two years to settle this long term credit problem. As for Japanese companies, while there are cases where some Japanese creditors sold this kind of credit to American and European credit banks virtually free, a number of companies continue to hold this credit. One of the most prestigious trading companies of Japan, for example, still keeps long term L/C credit for Vietcom Bank (VCB) of more than 900 million yen, in principal and interest. Other Japanese trading companies that have amicable relationship with Vietnam also have similar kinds of long term credit. Nippon Export and Investment Insurance (NEXI) likewise has long term non-performing credit of nearly 600 million yen on a principal bases. NEXI started negotiations by sending a credit recovery mission early this year, but so far has not reached a resolution.

2) View from Investors

Vietnam, without doubt, is one of the most prospective Asian destinations for Japanese investors. Nevertheless, the fact that L/C settlement by largest state-owned commercial banks in Vietnam has been defaulted on for so long could be a factor making investors hesitate in their decisions. It should be noted that as a result these facts, VCB is not qualified for Export Credit Insurance from Japan due to its default on bills insured by NEXI.
The fact that VCB, a bank proud of functioning as international settlement bank since 1993, is not qualified for export insurance from Japan because it has failed to repay L/C credit for a long period, a problem which arose through the fault of Vietnamese side, could hamper private business activities including FDI as these activities go against international business practices.

3) View from Vietnam's governmental bodies

Although VCB currently admits the existence of credit, it takes the view that the said credit was an L/C issued under the direction of the government before 1993 when VCB had only just obtained the function of international settlement. VCB therefore does not feel it is in a position to take sole responsibility. On the other hand, VCB, admits its responsibility in part, and is requesting each creditor for the total exemption of interest and more than half the exemption of the principal, insisting total repayment is impossible. The State Bank of Vietnam and the Ministry of Finance, which governs the VCB, while providing certain kinds of support such as comprehensive institutional help and subsidized operating costs for VCB credit, mention that final settlement and resolution of these problems are a private sector matter and it is VCB that is responsible for a resolution with full authorization to do so.

4) Proposed action plan

The Government of Vietnam will require VCB to solve the long-term credit problems and therefore instruct VCB to seek for immediate resolution and will also take all possible measures such as by organizing the opportunity to discuss among parties related to this problem. This will be done by March 2004. <SBV>

CHAPTER 5: FOLLOW–UP OF THE INITIATIVE

(1) Roles for follow-up assignments

(i) The Vietnam–Japan Trade and Investment Working Group will follow up and facilitate the implementation process of almost all the actions to be implemented by the Vietnamese side included in the action plan, except (a) construction of economic infrastructure (note) and (b) actions related to individual companies. The actions for individual industries (assistance measures to be provided to existing investors in Vietnam, such as automobiles, motorbikes, electronics, etc.) will be followed up under the framework of policy dialogue between the Government of Vietnam and each Japanese industrial association.

(Note) Improvement of regulations relating to the utilization of economic infrastructure will be followed up by the above-mentioned Vietnam – Japan Trade and Investment Working Group.

(ii) Actions related to individual companies will be followed up by both sides on an ad hoc basis.

(iii) With regard to the Vietnamese actions prescribed in the action plan to which Japanese ODA is envisaged (mainly infrastructure improvement, capacity building projects, assistance to improvement of investment related institutions...), under the present limited budget, the Japanese side, i.e., the ministries concerned, JICA, JBIC, and JETRO, will try to practically follow up the each action plan by utilizing ODA as much as possible after the Japanese fiscal year 2003, taking into consideration the recent severe budget condition and the decreasing trend of ODA budget. These activities will be also discussed within the framework of the ODA annual policy dialogue with a purpose to follow up and facilitate the implementation process.

(2) The Monitoring and evaluation schemes of the Initiative

(i) After the adoption of the action plan, the secretariat of the Initiative will submit a monitoring report to Task Force members, principally, every half year. The Task Force will be reorganized into the "Monitoring Committee" which will monitor the implementation process of the action plan. The monitoring should be conducted principally every half year for 2 years and the "monitoring committee" will facilitate the implementation of the Action Plan of the initiative if implementation (measures and timeframe) are not achieved as stipulated in the Action Plan.

(ii) About 1 and 2 years after the adoption of the action plan, "the Evaluation and Facilitation Committee", consisting of Joint Committee level members, will together to monitor the actions and take necessary measures (eg. Report to and receive guidance from the Government level) to facilitate further implementation of the action plan. After this process, both sides will carry out necessary follow-up actions after consultation between both sides.

(3) Linkage to the Japanese ODA policy

According to the new Japanese Country Assistance Program for Vietnam, various factors including the "Institution and Policy Environment" will be evaluated each year taking into consideration the qualitative direction of ODA to Vietnam. The outcome of the evaluation of the implementation process of the action plan will be an important element for the Japanese side in evaluating the said "Institution and Policy Environment" of Vietnam.