

EBS/84/142

CONFIDENTIAL

June 29, 1984

To: Members of the Executive Board

From: The Acting Secretary

Subject: Viet Nam - Overdue Financial Obligations to the Fund -  
Report and Complaints Under Rules K-1 and S-1 and  
Notice of Failure to Repay a Trust Fund Loan

Attached for consideration by the Executive Board is a staff paper regarding Viet Nam's overdue financial obligations to the Fund, together with a communication from the Managing Director containing a report and complaints under Rules K-1 and S-1 and a notice of Viet Nam's failure to repay a Trust Fund loan. A proposed decision appears on page 10.

It is proposed to bring this subject to the agenda for discussion on Friday, July 27, 1984.

If Executive Directors have technical or factual questions relating to this paper prior to the Board discussion, they should contact Ms. Lachman (ext. (5)7717) or Mr. Leddy (ext. (5)8332).

Att: (1)

INTERNATIONAL MONETARY FUND

Viet Nam - Overdue Financial Obligations to the Fund -  
Report and Complaints under Rule K-1 and Rule S-1  
and Notice of Failure to Repay Trust Fund Loan

Prepared by the Treasurer's and Legal Departments

(In consultation with the Asian Department)

Approved by W.O. Habermeier and G.P. Nicoletopoulos

June 29, 1984

1. Viet Nam is at present overdue in discharging several payments to the Fund, beginning with net SDR charges that were due on February 1, 1984. As of June 25, 1984 the overdue obligations were as follows:

Viet Nam - Overdue Payments to the Fund

Type of Obligation	Date of Purchase	Due Date	SDR Amount
<u>General Department</u>			
Quarterly charges		February 6, 1984	471,934
Repurchase *	January 12, 1981	April 11, 1984	3,550,000
Quarterly charges		May 7, 1984	<u>460,837</u>
Subtotal			4,482,771
<u>SDR Department</u>			
Net SDR charges		February 1, 1984	1,037,692
Assessment		April 30, 1984	6,671
Net SDR charges		May 1, 1984	<u>2,108,218</u> <sup>1/</sup>
Subtotal			3,152,581
<u>Trust Fund</u>		<u>Date of Loan</u>	
Repayment *	August 15, 1978	February 14, 1984	<u>2,569,741</u>
Total			10,205,093

\* Note The repurchase that is overdue is still within the period of 5 years from the date of the purchase. The Trust Fund loan repayment that is overdue is still within the period of 10 years from the date of the disbursement.

<sup>1/</sup> The amount due is in respect of charges for the financial quarters ended July 31, 1983 and April 30, 1984.

Viet Nam's recent difficulties in meeting obligations date from February 1, 1984; since then no scheduled payments have been made to the Fund. Executive Directors have been informed of the nonpayment of obligations by Viet Nam. 1/

2. Viet Nam's financial relations with the Fund are summarized in Attachment II. As of June 25, 1984, Viet Nam's outstanding use of Fund credit in the General Department--including an overdue repurchase of SDR 3.6 million--totaled SDR 28.4 million, all of which relates to a purchase in the first credit tranche in January 1981. Viet Nam has a reserve tranche position of SDR 5,000.

Viet Nam has received SDR allocations totaling SDR 47.7 million. At present it has no SDR holdings, and net charges on the use of SDRs amount to about SDR 1.1 million each quarter. As indicated above, Viet Nam is overdue in the SDR Department for the assessment of SDR 6,671 and charges equivalent to SDR 3,145,910, and SDRs have been created in excess of total allocation to cover this nonpayment of charges. 2/

An amount of SDR 60.6 million, including an overdue repayment of SDR 2,569,741, is outstanding under the Trust Fund, in respect of two Trust Fund loans received in August 1978 and March 1981. Interest due on Trust Fund loans has been paid.

On the basis of Viet Nam's present use of Fund credit, Trust Fund loans received, and position in the SDR Department, Viet Nam's projected repurchase and repayment obligations, quarterly charges, net SDR charges, and interest payable are estimated as follows (projected at the present rate of periodic charges and the latest rate of interest on SDR use).

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1/ See "Viet Nam: Overdue Payments to the Fund" (EBS/84/74, 4/2/84); "Viet Nam: Overdue Payments to the Fund" (EBS/84/114, 5/18/84); and "Viet Nam - Staff Report for the 1984 Article IV Consultation" (SM/84/114, 5/18/84).

2/ See "Nonpayment of Net Charges in the SDR Department Due on May 1, 1984" (EBS/84/137, 6/22/84).

Viet Nam - Overdue and Forthcoming Obligations

(In millions of SDRs)

	1984	1985	1986	1987	1988	1989	1990	1991	Total
Quarterly Charges	1.84	1.06	0.11	--	--	--	--	--	3.01
Repurchases	10.65	14.20	3.55	--	--	--	--	--	28.40
SDR Charges <u>1/</u>	5.29	4.69	4.69	4.69	4.69	4.69	4.69	4.69	38.12
Trust Fund									
Repayments	5.14	5.14	8.63	12.12	12.12	6.98	6.98	3.49	60.60
Interest	<u>0.29</u>	<u>0.26</u>	<u>0.23</u>	<u>0.17</u>	<u>0.11</u>	<u>0.07</u>	<u>0.03</u>	--	1.16
Grand Total	<u>23.21</u>	<u>25.35</u>	<u>17.21</u>	<u>16.98</u>	<u>16.92</u>	<u>11.74</u>	<u>11.70</u>	<u>8.18</u>	<u>131.29</u>

3. A staff team visited Viet Nam for an Article IV consultation during February 22 - March 8, 1984. During the visit, the authorities raised the possibility of rescheduling of the first credit tranche repurchases and repayments of a Trust Fund loan received in August 1978, and postponing the payment of all charges until 1985. The mission explained the Fund's practices on these matters, as described in a staff paper on overdue payments and subsequently discussed by the Executive Board at the meeting on experience with overdue payments. 2/ The authorities were informed that it was the Fund's practice to reschedule repurchases only under very exceptional circumstances, where it is clear that the member would be in a better position to discharge the obligation on the new date, that repayments of a Trust Fund loan had not been rescheduled for any member under the provision of the Trust Fund Instrument referring to serious hardship, and that payment of charges could not be postponed. The mission expressed the view that, taking account of Viet Nam's present economic circumstances and policies, rescheduling of repurchases or Trust Fund repayments would not help to resolve Viet Nam's difficulties

1/ Assuming that Viet Nam's SDR holdings will remain at the present level.

2/ See "Overdue Payments to the Fund - Experience and Procedures" (EBS/84/46, 3/9/84) and the Managing Director's Summing up on Overdue Payments (Buff 84/56, 4/12/84).

in making payments to the Fund on time and would merely aggravate the balance of payments problem in subsequent years. It is the staff's view that it would be reasonable to apply general principles on rescheduling of repurchases endorsed by the Executive Board to Trust Fund repayments also.

In response to a direct communication from the authorities, the Managing Director confirmed on March 26, 1984 the response given by the mission and explained that he was not in a position to recommend Executive Board approval of a request for rescheduling by Viet Nam. <sup>1/</sup> Following further communication from the Fund urging prompt payment, the Vietnamese authorities on May 29, 1984 informed the Fund that they had instructed their American depository banks to pay overdue amounts to the IMF from Viet Nam's blocked accounts held by those banks, and suggested that the Fund seek to promote execution of these payment instructions. The Managing Director has informed the authorities that the restrictions on these accounts were notified to the Fund for security reasons pursuant to Executive Board Decision No. 144-(52/51), and that this decision was adopted to avoid the involvement of the Fund in political disputes among members. He explained further that Viet Nam's desire to use these funds for such payments had been drawn to the attention of the U.S. authorities, and that, if there were any possibility of this sort, it would be for Viet Nam to make the appropriate arrangements with the U.S. authorities. Viet Nam was informed that it is expected to discharge its obligations to the Fund regardless of the outcome of any request to use the blocked accounts for this purpose. It is understood by the staff that the funds in question will not be available.

The Managing Director underlined the need for Viet Nam's timely discharge of outstanding obligations and informed the authorities that, in light of the Executive Board's discussion in April 1984 of the general matter of overdue payments to the Fund, he would, if payment of the overdue amounts was not made promptly, need to submit to the Executive Board a report and complaints under the Fund's Rules relating to Viet Nam's overdue obligations to the Fund. The Board's consideration of these complaints could lead to a declaration that Viet Nam is ineligible to use the general resources of the Fund or a decision to limit Viet Nam's use of those resources and, with reference to the SDR Department, to suspension of Viet Nam's rights to use SDRs acquired after the suspension.

4. The most recent description of the economic situation in Viet Nam was provided in the Staff Report for the Article IV consultation (SM/84/114, 5/18/84), which was discussed at EBM/84/95, 6/18/84. In the staff report it was noted that, despite the favorable

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<sup>1/</sup> See EBS/84/114, May 18, 1984, "Viet Nam - Overdue Payments to the Fund."

trend in output in recent years, the balance of payments had remained under pressure and external payments arrears had continued to accumulate. Negotiations for the consolidation of foreign debt obligations could provide Viet Nam with some debt relief in 1984, but, in the absence of comprehensive adjustment measures, the balance of payments outlook would remain unsustainable over the medium term. The staff expressed the view, endorsed by the Executive Board, that a substantial correction of the exchange rate, accompanied by greater price flexibility in export- and import-competing sectors should no longer be delayed. In view of the difficulties in the design and execution of the economic plan--which are due in large part to the lack of management resources--greater reliance on local autonomy and on relative prices reflecting market forces would improve the allocation of resources and the performance of the export sector. The achievement of a viable balance of payments would also be contingent on a reduction in the growth of monetary aggregates and on a further restructuring of foreign indebtedness. Although the authorities intend to continue their efforts to seek bilateral and multilateral rescheduling of foreign debt obligations, the staff has no information indicating that comprehensive adjustment measures aimed at redressing the external and internal imbalances will be taken in the near future. Gross convertible foreign exchange reserves have remained unchanged at US\$16 million, a level the authorities consider an absolute minimum. <sup>1/</sup> Viet Nam holds 735,191 ounces of gold, of which 321,051 ounces are pledged as collateral for a loan of US\$102 million.

5. The situation on overdue payments by Viet Nam to the Fund can thus be summarized as follows. Viet Nam has overdue obligations in the General Department (repurchase and charges), in the SDR Department (assessment and charges), and with respect to the Trust Fund. The earliest of these have been overdue for approximately five months. The authorities have been informed that, in the absence of payment or reasonable assurance of prompt payment, the Managing Director would soon have to consider issuing complaints to the Executive Board in accordance with Rules K-1 and S-1, and of the possible consequences of Executive Board consideration of such complaints. Viet Nam has not complied with repeated requests for prompt settlement of overdue obligations, nor has it indicated definitive dates in the near future on which it would discharge these obligations. The discussions with the recent Fund mission in Hanoi did not lead to a resolution of the matter or to the prospect of the adoption of economic policies that may lead to early settlement of the overdue payments to the Fund. In the circumstances, and in light of the discussion of the Executive Board on the experience of overdue payments in early April, the Fund must now consider what steps should be taken.

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<sup>1/</sup> Foreign exchange reserves exclude US\$163 million held abroad in accounts that have been blocked since May 1975.

6. Under the Articles of Agreement, By-Laws, and Rules and Regulations of the Fund, a member that does not observe its obligations under the Articles of Agreement is subject to the application of remedies by the Fund that seek to protect the Fund's resources in the General Department and the rights of participants in the SDR Department. The Fund has a certain choice of remedies, and discretion in selecting the remedy appropriate to the circumstances.

7. With respect to the General Department, it is proposed that the Fund should deal with (i) the outstanding use of the Fund's resources, including the accrual of charges, and (ii) the question of future access to the Fund's resources. Such action would be based on Article XXVI, Section 2, which provides that:

(a) If a member fails to fulfill any of its obligations under this Agreement, the Fund may declare the member ineligible to use the general resources of the Fund. Nothing in this Section shall be deemed to limit the provisions of Article V, Section 5 or Article VI, Section 1.

(b) If, after the expiration of a reasonable period the member persists in its failure to fulfill any of its obligations under this Agreement, that member may be required to withdraw from membership in the Fund by a decision of the Board of Governors carried by a majority of the Governors having eighty-five percent of the total voting power.

(c) Regulations shall be adopted to ensure that before action is taken against any member under (a) or (b) above, the member shall be informed in reasonable time of the complaint against it and given an adequate opportunity for stating its case, both orally and in writing.

In circumstances in which the Fund is authorized to declare the member ineligible to use the general resources of the Fund, it could take a lesser action under Rule K-2, which provides that:

Whenever the Executive Board is authorized by the Articles to declare a member ineligible to use the general resources of the Fund it may refrain from making the declaration and indicate the circumstances under which, and the extent to which, the member may make use of the general resources.

8. With respect to the SDR Department, Viet Nam has no SDRs at present, but net charges are overdue and continue to accrue, and the Fund must create SDRs to the extent of the nonpayment. Therefore, it is appropriate to consider action under Article XXIII, Section 2(b), which provides that:

If the Fund finds that a participant has failed to fulfill any other obligation with respect to special drawing rights, the Fund may suspend the right of the participant to use special drawing rights it acquires after the suspension. 1/

Rule S-1 provides that:

The Managing Director shall report to the Executive Board any facts on the basis of which it appears to him that a participant is not fulfilling obligations under the Articles that could lead to suspension under Article XXIII, Section 2, and may include a complaint in his report.

9. A failure of a member to comply with its obligation to repay the loans received under the Trust Fund does not constitute a failure of an obligation under the Articles in the sense of Article XXVI, Section 2 and Rule K-1 and, consequently, the Fund has no authority to apply any of the remedies available under these provisions with respect to a member that fails to repay a Trust Fund loan. Similarly, a failure of a member to make a timely repayment of such a loan cannot lead to the member's ineligibility to use the Fund's general resources under Article V, Section 5, which allows the Fund to apply certain remedies in the case of the member that is using the general resources of the Fund in a manner contrary to the purposes of the Fund. This does not mean, however, that a member's obligations under the Trust Fund are not binding upon it or that the Fund does not regard a failure to repay Trust Fund loans as a serious violation of the member's obligations under the Trust. As Trustee of the Trust Fund, the Fund has the obligation to provide and administer loans in accordance with the terms and conditions set forth in the governing Instrument. That Instrument sets forth the schedule and terms of repayment applicable to all loans from the Trust. In carrying out its responsibilities, the Fund is bound to comply strictly with the terms of the Instrument and thus to assure the repayment of Trust Fund loans. While no specific remedies are provided under the Trust Fund Instrument in respect of the duty of the recipients of Trust Fund loans to make timely repayment, in an appraisal of a member's standing vis-a-vis the Fund, for any reason, including decisions on any request to use the Fund's resources, a failure by a member to do so would not be disregarded by the Fund.

10. It is proposed at this time to begin the process for the application of the provisions of the Fund's Articles and the Rules set forth in paragraphs 7 and 8.

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1/ The reference to "any other obligation" is an indirect reference to the main obligation under Article XIX, Section 4 to provide currency in a transaction with designation, which is not involved here.

(a) With respect to the General Department, the Fund has a choice of actions that it may take:

(i) the Fund could find that Viet Nam has not observed the relevant obligations under the Articles of Agreement referred to earlier, and declare Viet Nam ineligible to use the general resources of the Fund. This would mean that even if Viet Nam were to resume to fulfill these obligations under the Articles, its eligibility would not be restored automatically but a further decision of the Executive Board would be required, which could provide for the restoration of eligibility with or without special limitations or conditions, or

(ii) the Fund could find as in (i), but refrain from a declaration of ineligibility by adopting the course of limitation in accordance with Rule K-2, and decide that Viet Nam may not make use of the general resources of the Fund until such time as Viet Nam is fulfilling its obligations under the Articles of Agreement other than obligations with respect to SDRs, or indicate the circumstances under which, and the extent to which, the member may make use of the general resources.

(b) With respect to the SDR Department, the Fund also has a choice of actions that it may take:

(i) the Fund could find that Viet Nam has not observed its obligation to which Article XXIII, Section 2(b) applies, and suspend Viet Nam's right to use SDRs it acquires after the suspension. This would mean that termination of the suspension would require a further decision by the Executive Board, which may be taken with or without special limitations or conditions, or

(ii) the Fund could find as in (i), but provide that the suspension will terminate when Viet Nam is fulfilling its obligation under the Articles to which Article XXIII, Section 2(b) applies.

(c) With respect to the Trust Fund, the Fund could inform Viet Nam that, if Viet Nam were otherwise eligible to make use of the general resources of the Fund, the existence of any overdue obligations to the Trust Fund would nonetheless be taken into account in Fund decisions on any request by Viet Nam to use the general resources of the Fund.

(d) The following procedural actions need to be taken:

(i) The Managing Director must communicate to the Executive Board a report and complaints in accordance with Rule K-1 and Rule S-1. This requirement is met by the circulation of the present report and complaints.

(ii) The Executive Board would need to decide to consider the complaints of the Managing Director; this is to be done at the meeting at which the present paper is to be considered.

(iii) The Executive Board would formally note the complaints, determine that consideration of the complaints particularly affects Viet Nam in the sense of Article XII, Section 3(j) and By-Law Section 19(a) and (c), and place them on its agenda for a date that would afford reasonable notice to Viet Nam. 1/ This would be accomplished by taking the decision proposed at the end of this paper.

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1/ Article XII, Section 3(j) provides that:

(j) The Board of Governors shall adopt regulations under which a member not entitled to appoint an Executive Director under (b) above may send a representative to attend any meeting of the Executive Board when a request made by, or a matter particularly affecting, that member is under consideration.

By-Law Section 19(a) and (c) provides that:

(a) Each member not entitled to appoint an Executive Director in accordance with Article XII, Section 3(b)(i) may, in accordance with the regulations provided in this Section, send a representative to attend any meeting of the Executive Board when a request made by, or a matter particularly affecting, that member is under consideration. A member may waive its rights under this provision. The Executive Board shall determine whether a matter under consideration particularly affects a member not entitled to appoint an Executive Director in accordance with Article XII, Section 3(b)(i), which determination shall be final.

...

(c) Whenever the Executive Board is to consider a matter which has been determined particularly to affect a member not entitled to appoint an Executive Director in accordance with Article XII, Section 3(b)(i), the member shall be promptly informed by rapid means of communication of the date set for its consideration. No final action shall be taken by the Executive Board with respect to such matter, nor any question particularly affecting such member submitted to the Board of Governors, until the member has either waived its rights under paragraph (a) of this Section or has been given an opportunity to present its views through an appropriately authorized representative at a meeting of the Executive Board, of which the member has had reasonable notice.

(iv) In accordance with the decision, Viet Nam would be informed of the complaints, the decision of the Executive Board, of its right to present its views through a special representative, who may be the Executive Director elected by Viet Nam if Viet Nam so desires, and of the invitation to do so at the meeting or meetings to be held on the matter. This would be done by the dispatch of the text of the draft cable in Attachment I.

(v) The Fund would decide on the action to be taken on the complaints at the meeting or meetings at which the complaints are to be considered. 1/

11. The present report also serves as a notice by the Managing Director to the Executive Board on the fact that a repayment by Viet Nam in respect of Trust Fund loans is overdue. It is proposed that this notice which, as explained in paragraph 9, is not made in accordance with Rules K-1 and S-1, be noted in the decision and placed on the agenda together with the complaints in accordance with Rules K-1 and S-1 in respect of payments overdue in the General Department and the SDR Department.

#### Proposed Decision

The following draft decision, which could be taken by a majority of the votes cast, is proposed for adoption by the Executive Board.

1. The complaints of the Managing Director dated June 29, 1984 on Viet Nam, in EBS/84/142, are noted. The complaints shall be placed on the agenda of the Executive Board for \_\_\_\_\_, 1984.

2. The notice of the Managing Director in EBS/84/142, June 29, 1984, on the failure by Viet Nam to fulfill obligations under Decision No. 5069-(76/72) on the Trust Fund, is noted. The notice shall be placed on the agenda of the Executive Board for \_\_\_\_\_, 1984.

3. Consideration of the complaints in accordance with Rule K-1, Rule S-1, and of the notice particularly affects Viet Nam. The member shall be informed by rapid means of communication of these matters and of its right to present its views through an appropriately authorized representative.

Attachments: (2)

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1/ Should Viet Nam not wish to respond to the complaints, the Fund could proceed with their consideration in any event.

The Honorable Nguyen Duy Gia  
Minister, Director General  
State Bank of Viet Nam  
Hanoi, Viet Nam

I refer to the various communications of the International Monetary Fund to you concerning the nonobservance of obligations under the Articles of Agreement of the Fund.

I attach for your information the text of my memorandum of June 29, 1984 to the Executive Board setting forth the obligations under the Articles of Agreement of the International Monetary Fund and under Executive Board Decision No. 5069-(76/72) establishing the Trust Fund that appear to me are not being observed by Viet Nam.

The Executive Board has decided to place on its agenda for a meeting to be held on \_\_\_\_\_, 1984 the complaints and notice set forth in paragraphs 2, 3, and 4 of my memorandum.

Consideration of the complaint in paragraph 2 of my memorandum could result in the declaration of ineligibility of Viet Nam to use the general resources of the Fund under Article XXVI, Section 2(a) of the Articles of Agreement, or the limitation of Viet Nam's use of the general resources of the Fund according to Rule K-2 of the Fund's Rules and Regulations.

Consideration of the complaint in paragraph 3 of my memorandum could result in the suspension under Article XXIII, Section 2 of the right of Viet Nam to use SDRs that it may acquire after the suspension.

The Executive Board will also consider the notice in paragraph 4 of my memorandum, which could affect future relationships between the Fund and Viet Nam.

The Government of Viet Nam is entitled under the Articles and By-Laws of the Fund, and therefore invited, to present its views, both orally and in writing, through an appropriately authorized representative at the meeting of the Executive Board referred to above, and at such subsequent meetings as the Executive Board may hold on this matter, at the Fund's headquarters in Washington, D.C. If you so desire, the Executive Director elected by Viet Nam may represent Viet Nam at any such meetings.

I am prepared to make arrangements at your request for the full briefing of your representative on all relevant matters.

J. de Larosiere  
Managing Director  
Interfund

Attachment

June 29, 1984

To: Members of the Executive Board

From: The Managing Director

Subject: Viet Nam - Overdue Financial Obligations to the Fund - Report and Complaints under Rule K-1 and Rule S-1 and Notice of Failure to Repay Trust Fund Loan

1. Repeated communications have been addressed by the International Monetary Fund to Viet Nam, and repeated contacts have taken place with the Vietnamese authorities concerning the nonobservance of certain obligations under the Articles of Agreement of the Fund. The communications and contacts have not resulted in a resumption of the observance of such obligations.

2. The following complaint is made in accordance with Rule K-1 of the Fund's Rules and Regulations. It appears to me that Viet Nam is not fulfilling obligations under the Articles of Agreement relating to repurchases and charges in the General Department. As of June 25, 1984 these obligations were as follows:

(a) To repurchase the equivalent of SDR 3,550,000 due April 11, 1984 in respect of a purchase made in the first credit tranche on January 12, 1981.

(b) To pay charges of SDR 932,771, of which SDR 471,934 was due on February 6, 1984, and SDR 460,837 was due on May 7, 1984, under Article V, Section 8(b).

3. The following complaint is made in accordance with Rule S-1 of the Fund's Rules and Regulations. The complaint is that it appears to me that Viet Nam is not fulfilling the obligation under Article XX, Section 2 of the Articles of Agreement referred to in Rule S-1, to pay charges in the SDR Department. As of June 25, 1984, this obligation was as follows: to pay charges of SDR 3,152,581, of which SDR 1,037,692 was due on February 1, 1984, SDR 6,671 was due on April 30, 1984, and SDR 2,108,218 was due on May 1, 1984.

4. The following notice is provided in accordance with the Fund's responsibility as Trustee of the Trust Fund established by Executive Board Decision No. 5069-(76/72). It appears to me that Viet Nam is not fulfilling the obligation under Section II, paragraph 4(a) of that decision to repay a disbursement under its Trust Fund loan. As of June 25, 1984, this obligation was to repay SDR 2,569,741 due on February 14, 1984.

Fund Relations with Viet Nam

(As of June 25, 1984)

Quota SDR 176.8 million

Fund holdings of Vietnamese dong	Millions of SDRs	Percent of Quota
Total	205.2	116.1
Of which: Credit tranches	28.4	16.1

Reserve tranche position -- 1/ --

SDR position:

Net cumulative allocation	47.7	27.0
Holdings	--	--

Trust Fund:

Loans disbursed	60.6	34.3
Loans outstanding	60.6	34.3

Direct distribution of  
profits from gold sales US\$ 9.8 million

Gold distribution 53,045 fine ounces

Last Article IV  
consultation February 22 - March 8, 1984

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1/ SDR 5,000.