



Asia-Pacific
Economic Cooperation

2005/SOM1/016
Agenda Item: V 2.

Report Of The Individual Action Plan (IAP) Peer Review Session Of Viet Nam

Purpose: Information
Submitted by: APEC Secretariat



**Senior Officials' Meeting I
Seoul, Korea
3-4 March 2005**

Report on IAP Peer Review of Viet Nam

The IAP Peer Review Session of Viet Nam was held on 2 February 2005 in Seoul, Korea. Delegates from Australia, Brunei Darussalam, Canada, Chile, Hong Kong, China, Indonesia, Japan, Korea, Mexico, New Zealand, Papua New Guinea, Peru, Philippines, Russia, Singapore, Chinese Taipei, Thailand, United States, Viet Nam were present. The APEC Secretariat, ABAC and ASEAN were also present.

The Review Team for Viet Nam was comprised of:

Moderator: Dr. Gerardo Traslosheros Hernández
Director General for Multilateral and Regional Negotiations
Ministry of the Economy
Senior Official to APEC
Mexico

Discussant: Mr. David Wang
Deputy Director, First Bilateral Trade Division
Bureau of Foreign Trade
Ministry of Economic Affairs
Chinese Taipei

Expert: Mr. Robert Warner
Director
Centre for International Economics
Australia

This report contains the following Annexes.

- Annex 1 IAP Study Report for Viet Nam 2005
- Annex 2 Presentation by Expert
- Annex 3 Discussant's Remarks
- Annex 4 Presentation by Economy under Review
- Annex 5 Moderator's Wrap-up remarks
- Annex 6 Written Questions received at the Session

2005/SOM1/016anx1

Viet Nam

IAP study report 2004

Prepared for APEC

3 March 2005

Contents

Glossary of terms	v
Summary	vii
1 Introduction	1
The Bogor goals and Viet Nam's transition to a market economy	1
2 General issues	11
Recent economic performance	11
Viet Nam's trade and investment policies	15
3 Viet Nam's Individual Action Plan	23
Tariffs	23
Non-tariff measures	25
Services	28
Investment	35
Standards and conformance	37
Customs procedures	38
Intellectual Property Rights	42
Competition policy	44
Government procurement	46
Deregulation/regulatory review	47
Implementation of WTO obligations	49
Dispute mediation	50
Mobility of business people	51
Information	51
Paperless trading	52
A Members of the review team	53
B Organisations and officers consulted	54
C Comments and questions	57
References	106
Charts	
Chart 2.1 The changing composition of the economy – sectoral shares of GDP	12

Chart 2.2 International trade by foreign invested and domestic enterprises, 1996 and 2003a	13
Tables	
Table 2.1 Growth rates of GDP 1986 to 2004	11
Table 2.2 Poverty reduction a	12
Table 2.3 International trade 1996 to 2003	13
Table 2.4 Commodity composition of exports 1996-2002	14
Table 2.5 Commodity composition of imports 1996-2002	15
Table 2.6 Foreign direct investment projects licensed 1988 to 2003 a	16
Table 2.7 Viet Nam: changes in trade and investment policy since doi moi	18
Table 3.1 Characteristics of preferential (MFN) tariff schedule 1995 to 2004	23
Table 3.2 Summary of Viet Nam's CEPT tariff schedule	24
Table B.1 Program of the in-country visit	54
Table B.2 Officials consulted	55
Table B.2 Officials consulted(Continued)	56
Table C.1 Economic growth rate	57
Table C.2 GDP structure by economic sector (current price)	58
Table C.3 Labour structure according to economic structure of Viet Nam	58
Table C.4 Poverty in Viet Nam(poverty rate is calculated in percentage of population)	58

Glossary of terms

ABAC	APEC Business Advisory Council
ABTC	APEC Business Travel Card
AC-FTA	ASEAN-China Free Trade Agreement
AEC	ASEAN Economic Community
AFTA	ASEAN Free Trade Agreement
AHTN	ASEAN Harmonized Tariff Nomenclature
APEC	Asia Pacific Economic Cooperation
ASEAN	Association of South-East Asian Nations
ASEM	Asia Europe Meeting
BCC	Business Cooperation Contract
BOT	build, operate, transfer
BT	Build and transfer
BTO	Build, transfer and operate
CEP	Closer economic partnership
CEPT	Common Effective Preferential Tariff
CPV	Communist Party of Viet Nam
CVA	Customs Valuation Agreement
EPZ	Export Processing Zones
EU	European Union
FCTC	Framework on Control of Tobacco Consumption
FDI	Foreign Direct Investment
FIE	Foreign invested enterprise
FTA	Free trade agreement
FTC	Foreign Trading Corporations
GATT	General Agreement on Tariffs and Trade
GDC	General Department of Customs
GDP	Gross Domestic Product
GOV	Government of Viet Nam
HS	Harmonized System
IAP	Individual Action Plan
ICT	Information and Communications Technology
IPR	Intellectual Property Rights

ISCID	International Center for Settlement of Investment Disputes
MFN	Most Favoured Nation
MOET	Ministry of Education and Training
MOFA	Ministry of Foreign Affairs
MPI	Ministry of Planning and Investment
MRA	Mutual Recognition Agreement
NA	National Assembly
NT	National Treatment
NTB	non-tariff barrier
NTM	Non Tariff Measure
OAA	Osaka Action Agenda
PAR	Public Administration Reform
QR	Quantitative Restrictions
ROO	Rules of Origin
SCT	Special Consumption Tax
SOCB	State owned commercial bank
SOE	State owned enterprise
SPS	(Agreement on) Sanitary and Phytosanitary Measures
TBT	(Agreement on) Technical Barriers to Trade
TEL	Temporary Exclusion List
TRIMS	(Agreement on) Trade Related Investment Measures
TRIPS	(Agreement on) Trade Related Aspects of Intellectual Property Rights
UNCITRAL	United Nations Commission on International Trade Law
USVNBTA	United States Viet Nam Bilateral Trade Agreement
VAT	value added tax
WTO	World Trade Organization

Summary

Viet Nam has been remarkably successful in achieving economic growth and improvements in the well-being of its people since it began its comprehensive program of restructuring and renovation (*doi moi*) in the late 1980s. GDP growth has averaged over 7 per cent per annum in the 18 years since the program started – one of the strongest performances in the region, and in the world. While per capita GDP remains far behind most other APEC economies, growth has brought about a spectacular reduction in poverty, with the number of people living in poverty falling from over 70 per cent of the population in the early 1990s to 29 per cent in 2002. The economy has also proved to be quite resilient, weathering the Asian financial crisis with only a small fall in the rate of growth.

Liberalisation and international economic integration — some context

Liberalisation of trade and investment, and the pursuit of integration with the regional and world economy have played a pivotal role in the renovation process and in generating growth. Exposure to international markets, foreign investors and external competition has provided strong stimulus to develop the legal, judicial and institutional underpinnings of a market economy, at the same time as they have brought resources, technology and know-how to support economic development.

The early stages of integration were pursued largely through unilateral reductions in barriers to trade and investment. In recent years, bilateral, regional and multilateral initiatives have been playing a greater role.

By signing and ratifying the bilateral trade agreement with the United States (USVNBTA) the Government committed itself to wide ranging legal and institutional change. The USVNBTA has now been under implementation for some time, as have preferential tariff reductions under the Common Effective Preferential Tariff (CEPT) system of the ASEAN Free Trade Agreement (AFTA). Viet Nam is also participating in AFTA efforts to reach trade agreements with other economies (including some APEC members). The Government has also been pressing ahead with accession to the World Trade Organization (WTO).

The WTO accession process, along with implementation of the USVNBTA, is becoming a driving force in economic and structural reform. Much of the agenda

for this reform is being shaped by a need to develop new institutional mechanisms and alternative ways of achieving regulatory and other policy objectives. As such, it has been concerned with reform of a wide range of legal instruments and administrative and judicial practices.

Viet Nam's Individual Action Plan

The progress that Viet Nam has made towards achieving the Bogor goals, and the challenges that are being confronted need to be assessed in the context of the *doi moi* processes. It is also important to take account of the implications – for government priorities and for institutional and human capacity – of Viet Nam's level of economic development. In evaluating the Individual Action Plan, it is also necessary to take account of the stage that Viet Nam has reached in the process of accession to the WTO.

The IAP and the transition process

Viet Nam's reform and development agenda over the last decade and a half has been extraordinarily wide ranging, reflecting the challenge of a transition from central planning to a market economy. Further, the process has not simply been one of policy change. It has been as much, if not more, about developing institutions and basing the interaction between the state and economic activity on a system of law. This is reflected in part in the large role that legislative development plays in the IAP.

The content of the IAP also reflects some elements of how Viet Nam has approached the transition agenda. The transition has been characterised by search and experimentation, as policy makers have piloted reforms and refined and reformulated policy on the basis of both lessons from the past and of particular pressures of the day. This is particularly true now in the area of services, where new ideas, or new modes of service delivery, are often tested before a full legislative and regulatory regime is developed. This may mean that some kinds of market access may be granted to a particular service provider, without necessarily binding the authorities to extend this access on a more general basis, pending development of a more generalised regime for management and regulation of activities.

What this means for the IAP is that there are areas where some kinds of market access is currently in place, but there is not yet a decision to formalise the situation in policy or law. What it can also mean is that implementation of new

policies can sometimes be inconsistent until implementing guidelines are fully developed and principles become entrenched in behaviour.

Finally, many of the areas where commitments on liberalisation are somewhat limited are those where Viet Nam's approach to state enterprises shapes policy. There are sectors where state enterprises play a dominant role, and where foreign entry is constrained by considerations of the impact on these enterprises. This is particularly true for some services, and some parts of industry. There are important initiatives under way to 'level the playing field' in terms of preferential treatment of state enterprises, but government policy clearly stakes out a leading role for the state owned sector in some strategic areas of the economy.

The IAP and WTO accession

The 2004 IAP is also influenced by the fact that the Government is currently engaged in bilateral negotiations on market access as part of its accession to the WTO. Much of the detail of Viet Nam's short to medium term market access commitments, particularly in services, will be determined as an outcome of these negotiations, and it is not possible at this stage to foreshadow the nature of these commitments.

At the same time, however, progress on the negotiations has meant that since the IAP was drafted, Viet Nam has made some key commitments regarding major WTO agreements. These will shape future actions on key areas of the IAP, and allow some gaps to be filled in when the next IAP is drafted.

Specifically, Viet Nam has undertaken to implement the agreements on Trade Related Aspects of Intellectual Property Rights (TRIPS), Trade Related Investment Measures (TRIMS), Technical Barriers to Trade (TBT) and Sanitary and Phytosanitary Measures (SPS) and Customs Valuation upon accession. Further, in meeting its obligations under the USVNBTA, Viet Nam has already committed to implement substantial elements of other WTO agreements, such as the WTO Import Licensing Agreement, WTO Transparency Principles, GATT obligations on state trading, and much of the agreement on Trade in Services.

Specific elements of the IAP

Tariffs

Viet Nam has made good progress on tariff reform: but the tariff still has high levels of complexity, dispersion and escalation. Viet Nam recognises the need for further rationalisation, but is wary of the implications for revenue of rapid change.

Non-tariff measures

Viet Nam has also made good progress in removing the pervasive system of administrative controls and restrictions on trade, but restrictions remain on trading rights of foreign enterprises (an issue which the authorities see as linked to the issue of liberalisation of distribution services). The Government has undertaken to remove some remaining measures (for example import surcharges and export subsidies) upon accession to the WTO.

Services

Viet Nam's willingness to commit to further liberalisation of market access in services is strongly influenced by the factors shaping the reform process described above. Some key commitments have been made in the context of the USVNBTA, and these can be expected to be made multilateral as a consequence of WTO accession. It is to be expected that the future IAPs will be able to reflect commitments currently being negotiated as part of WTO accession.

Investment

Viet Nam has confirmed that it will eliminate all trade related investment measures that are prohibited by the TRIMS agreement upon accession to the WTO.

It is to be expected that many current differences in treatment of foreign and domestic investors will be eliminated when the proposed unified investment law is finalised and brought into effect. However, the Viet Nam still reserves the right not to offer national treatment of foreign investors in a number of strategic sectors.

Standards and conformance

Viet Nam has indicated its commitment to comply with the TBT and SPS agreements upon accession to the WTO, and has already established national inquiry points called for by these agreements. Viet Nam has been very active in developing and harmonising standards and signing on to Mutual Recognition Agreements, but faces capacity and infrastructure limitations in implementation.

Customs procedures

Viet Nam's customs system has come a long way in a relatively short period of time and in the face of some difficult geographical, infrastructural and capacity constraints. A Customs Modernisation Strategy that is receiving donor support should provide the basis for significant improvements in customs procedures and processing. Viet Nam is now implementing the GATT Customs Valuation Agreement, although it is recognised that this involves addressing some difficult challenges.

Intellectual Property Rights

Viet Nam has already committed to implement most of the obligations covered by the WTO TRIPS agreement, and has put in place the legal framework to provide protection to all aspects of intellectual property rights covered by the agreement. However, effective implementation and enforcement is seen as posing considerable challenges, and the Government is working on a program to create an enforcement system that conforms with international standards by 2009.

Competition policy

The Competition Law passed by the National Assembly in November 2004 represents a major step towards achieving APEC objectives in this area. Some important elements of this law are that it treats state enterprises equally with other enterprises, and prohibits state management agencies from a range of activities that restrict competition.

Government procurement

There have been some important initiatives with respect to transparency of government procurement, and the Ministry of Planning and Investment is drafting a new ordinance to consolidate the legal framework for procurement.

Deregulation/regulatory review

Although Viet Nam has no special purpose agency charged with regulatory review and the pursuit of a deregulation agenda, this is an area of intense activity because it lies at the heart of the transition process. There have been wide ranging reviews of the legal amendment and development requirements of the transition, and also of compliance with membership of the WTO. Further, nearly all laws and regulations are subject to a process of review and refinement as they need to be updated in the light of changes driven by the transition agenda.

Implementation of WTO obligations

Since Viet Nam is not yet a member of the WTO, this part of the IAP is not relevant. However, as indicated earlier, Viet Nam has already put in place the basis for implementing key WTO agreements, and has developed an action plan for change needed to meet the requirements of accession.

Dispute mediation

Viet Nam is a party to some key international agreements regarding dispute settlement. Some recent legislative changes that have occurred since the IAP was prepared have dealt with important aspects of commercial arbitration.

Mobility of business people

Viet Nam has taken a number of steps to enhance the mobility of business people, and is participating in some APEC initiatives in this area.

Information

There have been significant improvements in the quality and availability of information on laws, economic and social statistics and the operations of government in recent years. This reflects some important policy changes and also increasing use of information and communications technology.

Paperless trading

For Viet Nam, the pace of introduction of paperless trading is determined as much by the speed with which information and communications technology (ICT) can be introduced into key government agencies as it is a function of legislative and procedural reform.

The Ministry of Trade has recently established a department that is working on the key requirements to introduce e-commerce, including drafting the necessary legislative instruments.

1 Introduction

The Bogor goals and Viet Nam's transition to a market economy

The progress that Viet Nam has made towards achieving the Bogor goals, and the challenges that are being confronted need to be assessed in the context of the complex and demanding transition that is being made to a market economy. It is also important to take account of the implications – for government priorities and for institutional and human capacity – of Viet Nam's level of economic development.

The key step in initiating the transition was the decision in 1986 by the Communist Party of Viet Nam (CPV) to undertake a comprehensive restructuring and renovation process (*doi moi*). The initial focus of reforms was on transforming economic institutions, allowing a role for the private sector and relaxing controls on prices and on domestic trade – especially in agriculture. In particular, reversal of the process of collectivisation of agriculture by granting to individuals and families long-term rights to use land was a pivotal reform.

The reform process gained momentum, culminating in a comprehensive break with the old system in 1989. Major institutional and structural reforms were implemented at that time, incorporating among other things the adoption of 'open door' trade and investment policies. The economy responded well to these changes, with Viet Nam quickly becoming a rice exporter rather than importer, and experiencing significant inflows of foreign investment. This helped Viet Nam to weather shocks such as the withdrawal of Soviet support, while also achieving significant reductions in the incidence of poverty.

Characteristics of the renovation process

The following observations can be made about the reform process:

- it has been extraordinarily wide ranging, reflecting the challenge of a transition from central planning to a market economy;
- there has been a strong element of learning by doing, as policy makers have implemented reforms and refined and reformulated policy on the basis of both lessons from the past and particular pressures of the day;

- the pace of reform has not been steady, and there have been periods of consolidation and relative inaction as the case for and future direction of reform has been debated;
- the most radical changes have occurred in times of crisis, and some of the most difficult economic reform measures and adjustments were undertaken with limited external financial and technical support, and independent of international agreements;
- it has not been a top-down, blueprint driven process – rather it has been characterised by search, experimentation and learning processes;
- the process has not simply been one of policy change – it has been as much if not more about developing institutions and changing the basis for the interaction between the state and economic activity, so that public administration reform has been an essential element of the transition; and
- while there has been a rapid process of legislative development, implementation has proved to be difficult, especially when it has required development of new institutional capacities.

Current status of reforms

The Government and the political leadership have made it clear that maintaining growth and poverty reduction depends on the implementation of further reforms. The Comprehensive Growth and Poverty Reduction Strategy developed to facilitate the partnership with donors, along with other key statements of development strategy, has identified the need for faster changes with respect to, among other things, addressing weaknesses in the banking system and associated regulation and supervision, state enterprise reform, private sector development, and trade and investment liberalisation.

The momentum for further change is affected, however, by the nature of reforms now being called for. Many of the important reforms in the early stage of *doi moi* were politically difficult, but relatively easy to implement, since they involved dismantling of controls that were in some cases already being circumvented. But the current stage of reform involves much more complex processes of developing institutions, reorienting public administration, and creating a legislative framework where there are many alternative models, or, as in the case of banking reforms, where parallel movements on many fronts are involved. These changes present a great challenge to the political and administrative system.

However the Ninth Party Congress of May 2001 articulated a new set of key directions for economic development and reform, reinforcing Viet Nam's commitment to meeting the terms of agreements signed with the World Bank and IMF earlier that year. This included:

- comprehensively recasting the role of the State;
- adoption of the goal of creating a state ruled by law;
- a strong commitment to economic integration (evidenced when the United States-Viet Nam Bilateral Trade Agreement (USVNFTA) was ratified that year);
- clear recognition of the role of the private sector (now enshrined in the Constitution); and
- giving high priority to public administration reform (PAR) – leading later that year to dissemination of the PAR Master Plan.

Elements of *doi moi*

Fiscal and monetary policy

Viet Nam's stabilisation efforts during the last decade and a half have been very successful in combating inflation and placing government finance on a more sustainable basis. Inflation has been brought under control by a combination of monetary, fiscal and exchange rate management policies. Tight credit policies, reduction of subsidies to SOEs and enhanced revenue collection addressed fundamental fiscal and monetary sources of inflationary pressure. The economy also managed to weather the Asian financial crisis with only a small reduction in the rate of growth.

The success of stabilisation efforts has not, however, reduced the urgency of further fiscal and monetary reform. The revenue system needs to be put on a basis that will free government at all levels from dependence on non-tax revenues from state enterprises. And the Government is working to develop instruments of monetary policy that are better suited to a commercially driven financial system.

In 1999, the Government for the first time published information on the state budget. Major efforts are now under way to improve the basis for public expenditure management.

Private sector development

The 1992 constitution explicitly recognised a role for the private sector. However, official policies and the ingrained attitudes of many officials and agencies created little space for the development of private enterprises other than household enterprises, including farms. The passage of the Enterprise law in 2000 was an important step in changing this situation.

Development of the private sector – and efficient functioning of state-owned enterprises – has also had to wait for the establishment of a legal framework covering the basic elements required for the operation of a market economy. This has involved new laws on companies, foreign direct investment, domestic investment, bankruptcy, land tenure, banks and financial institutions, mortgages and insurance and the clauses of the 1992 constitution concerning individual property rights over income-producing assets and personal property. Introduction of institutions for effective implementation and enforcement of these laws has been much slower than formulation of the laws themselves, and is still posing considerable challenges.

Access to capital from formal institutions is a key constraint to the establishment or expansion of businesses. This reflects both a current bias in lending in the banking sector toward state enterprises, and the limited depth of the financial system in Viet Nam. The transferability of land use rights for collateral is another critical factor in access to capital by private enterprises. SOEs have better access to land both for production and for use as collateral than do private enterprises. Even where collateral exists, there are limited mechanisms for recovering debt, increasing lending risk.

Passage of the new Land Law in 2003 has, however, given concrete evidence of the Government's intention to address these constraints and to work on a key issue affecting the private sector. Land use rights and buildings are the major assets of most small enterprises, but the existing land administration system makes it difficult to fully utilise these assets to mobilise additional funds for investment. The new Law has moved land policy a step closer to supporting a fully-fledged real estate market, by among other things improving access to Land Use Rights, and their quality and usability as security, and linking land valuation to market prices. However, many aspects of land management, especially land planning systems, continue to constrain private sector use of land. Moreover, reforms to land policy have to be carefully crafted to avoid destructive interactions with the informal land market that has developed over the years.

Private sector development depends heavily on continuing development of the legal and institutional underpinnings of a market economy. A legislative framework that includes a Civil Code, and Commercial Law and the Enterprise Law now governs most business activities. Progress is being made with the Legal System Development Strategy, and in response to the changes required under implementation of international agreements, including USVNFTA. The Commercial Law is now being redrafted, and emphasis is being placed on improving formal systems for enforcing contracts.

However, despite the significant improvement ushered in by the Enterprise Law of 2000 and the development of this legal framework, enterprises still face a number of challenges in meeting regulatory and administrative requirements and in managing relationships with a range of government agencies. These challenges have prompted work on a common Investment Law and a unified Enterprise Law – see chapter 2.

SOE reforms

The Government commenced reforms of state enterprises in the mid-1980s. Early state enterprise reforms under *doi moi* included the introduction of a number of measures to increase autonomy and efficiency within the state enterprise sector, including introduction of profit-based accounting, reduced budgetary support, retention of depreciation charges and termination of state supply of inputs.

A second ‘wave’ of reforms commenced in 1991. Prompted by the continuing financial difficulties facing a majority of state enterprises, these reforms focused on reorganising and consolidating the state enterprise sector. This led to the number of SOEs more than halving from over 12 000 in 1991 to under 6000 by end of 1995.

Despite the reduction in the number of state enterprises, the sector continues to pose a serious threat to macroeconomic stability and prospects for sustainable growth. Given that they account for about 50 per cent of outstanding bank credit, their financial performance has important implications for the soundness of the banking system.

Significantly, the resolutions of the 2001 Party Congress continued to envisage a ‘leading role’ for the State-owned sector in the Vietnamese economy, albeit stressing that SOEs should operate on a commercial basis and with improved efficiency.

According to the SOE reform master plans of 2002, some 2400 enterprises were to be equitized (that is, have equity contributions from non-state sources), sold or liquidated over a three year period. Equitisation was typically targeted at the smaller enterprises, but a Prime Ministerial Directive issued in March 2004 signalled a change in policy toward larger enterprises, and paved the way for equitisation of larger enterprises. State shareholdings of 100 per cent are now to be maintained in a smaller set of strategic sectors than was earlier envisaged. These sectors are: explosives, poisonous chemicals, radioactive substances, the national electricity transmission system, national and international communications, cable networks, cigarettes, air traffic management, maritime navigation, control of wireless frequencies, weapons and other defence matters, printing of banknotes, lotteries, publishing, scientific and newsreel films, mapping, rail networks, large ports, important airports, primary irrigation, certain forests, sewage works in large cities, public lighting, crude oil production, large wholesaling of pharmaceuticals, food, petrol and oil. The list of sectors where state ownership will be greater than 50 per cent has also been shortened.

Further legal instruments and decisions issued during 2004 provided for conversion of SOEs into joint stock companies, and for the conversion of large General Corporations into holding companies. (These General Corporations had previously been formed to exercise state management over collections of smaller enterprises in particular sectors, but were not structured to exercise commercial ownership functions, and as such had not been successful in improving competitiveness of member enterprises.)

Economic integration

Changes in trade and foreign exchange policy, along with liberalisation of controls on foreign investment, have been key features of the opening up of the Vietnamese economy since the introduction of *doi moi*. These changes have involved actions on six main fronts:

- phasing out of foreign exchange controls and adoption of a more market oriented exchange rate policy, accompanying large scale restructuring of the financial system;
- relaxation of controls on entry into foreign trading activities, and of those used to manage imports and exports;
- creation and amendment of a system of taxation of imports and exports, as part of a comprehensive change in the revenue raising system;

- joining regional and multilateral trading arrangements and establishing bilateral trade agreements; and
- development of a legal and regulatory framework to permit and encourage foreign investment.

As a result of these changes, the trade and investment regime – and Viet Nam’s trade and overall economic performance – have undergone a significant transformation. According to some measures (such as the ratio of trade to GDP), Viet Nam now appears to be a fairly open economy. The integration agenda has also been a key driver of legal and judicial reform in Viet Nam across the board.

Despite these changes and the impressive growth in trade and investment that they have prompted, important features of the regime that preceded *doi moi* lingered on, and at times the direction of change was sometimes to restrict rather than liberalise trade. But in the last two or three years, significant progress has been made in dismantling the remains of the intricate framework of administrative and legislative instruments used to manage trade and to provide protection to local firms.

The import tariff system, which is emerging as the main instrument of protection provides high levels of protection to a range of local production, and has been subject to frequent changes.

The *Law on Foreign Investment* introduced in 1987 ushered in the era of the ‘open-door’ policy. The law has been revised on a number of occasions, largely in response to suggestions from foreign investors. The changes have prompted substantial inward flows of foreign capital. Foreign investment has brought in its train a rapid expansion of imports of capital goods – and, more recently, producer goods – prompting requests for streamlining the trade regime and its administration.

There are a number of remaining regulations that have had a negative effect on the environment for foreign investments. These include:

- restrictions on the transfer of ownership, including a requirement for central government approval;
- constraints on issuing stock;
- requirements on the management structure of joint ventures;
- limitations on ability to use land rights as collateral; and

- limitations on the period of investment licenses – authorisation for a joint venture is normally limited to 20–30 years, with renewal requiring government approval.

Implementation of policies and regulation toward foreign investment is also an issue that is frequently reported to be obtrusive and at variance with stated principles.

The privileged position of SOEs with respect to access to land and influences on administrative processes has meant that they are much more attractive as joint venture partners than private enterprises. As well as a source of bias, this is associated with the granting of high protection and other preferences to foreign investment projects. Equally importantly, it has meant that the large FDI flows have served to bolster and entrench the position of SOEs when absence of these resources might have prompted more radical reforms. It should be noted that recent and prospective legislative initiatives, including the new Land Law and the proposed new laws on investment and enterprises, should set the basis for redressing these distortions – see chapter 2.

In sum:

- there has been considerable liberalisation of trade and investment;
- this liberalisation has been effective and most Vietnamese people are better off as a result; and
- while extended commitments, such as those made under AFTA, accession to WTO and APEC, and bilateral trade agreements still need to be met, they indicate a commitment to continued liberalisation.

The current situation of trade and investment policies is discussed in more detail in chapter 2.

The financial sector

The transition to a market economy required a fundamental change in approach to the role of money and credit, and in 1988, major reforms were implemented, including:

- creation of a separate State Bank of Viet Nam with full central banking responsibilities;
- formation of two new state-owned commercial banks (SOCBs);
- establishment of commercial joint stock banks (after 1990); and

- from 1991, allowing the establishment of foreign bank branches and representative offices, as well as joint venture banks.

The creation of a fully fledged central bank, the State Bank of Viet Nam, and the development of a commercial banking system have made important contributions to macroeconomic management and facilitating the transition to a market economy. The emergence of a commercially oriented banking system as the major source of domestic business financing has introduced an element of financial discipline and performance monitoring into the operations of domestic enterprises. And the evolution of a more modern banking system has helped the mobilisation of domestic savings for investment.

Despite these positive developments, Viet Nam's financial sector remains quite shallow. In particular, perceptions of fragility associated with high exposure to poorly performing SOEs have served to erode public confidence in the financial system. Thus, despite recent increases in household deposits in the banking system, gold, foreign exchange, and precious stones remain the preferred savings medium for many Vietnamese households.

While there has been some progress in areas of financial sector reform in recent years, serious problems persist and impact on the soundness of the banking system and the ability of domestic financial institutions to cope with the increased competition that integration will bring. Recent achievements include:

- removal of interest rate ceilings;
- formal elimination of the system of channeling directed credit through the commercial banks;
- enhancing the soundness and credibility of private joint stock banks;
- improved access to financial services , including through the launch of the Social Policy Bank to increase access by the poor to credit and financial services;
- upgraded banking technology;
- operation of the stock exchange; and
- the decision to sell equity in two state-owned commercial banks (SOCBs).

However, more problematic areas remain to be dealt with:

- resolution of bad loans is making little progress;

- structural reforms of SOCBs have been limited, and capital injections have been made without addressing some of the deep-seated problems of governance and lending behaviour in these banks;
- implicit pressures, and divided loyalties of bank staff continue to hinder the break with non-commercial directed lending; and
- the introduction of a deposit insurance scheme in advance of dealing with governance problems has probably increased the potential for moral hazard.

It appears that it is proving quite hard to implement the change in approach to state management of the financial sector that a shift to a market-driven system would involve. The nexus between the SOCBs and SOEs, linked as they are through non-commercial lending decisions and the non-performing loan problem that results continues to stand in the way of improved financial sector performance.

2 General issues

Recent economic performance

Growth and poverty reduction

The Vietnamese economy has grown strongly since the introduction of *doi moi*, averaging 7.2 per cent per annum GDP in the eighteen years since 1986. Growth slowed somewhat in 1998 and 1999 in the wake of the Asian financial crisis, but has reverted to previous levels, despite the impacts of the SARS epidemic and outbreaks of avian flu (table 2.1).

Table 2.1 **Growth rates of GDP 1986 to 2004**

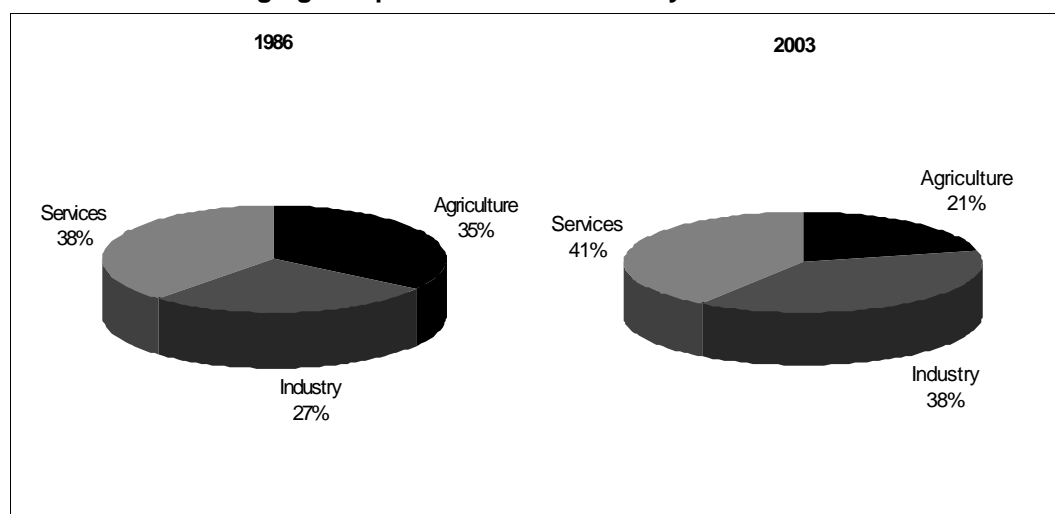
	1986-1997 ^a	1998	1999	2000	2001	2002	2003	2004
	%	%	%	%	%	%	%	%
Total GDP	7.2	5.8	4.8	6.8	6.9	7.0	7.2	7.7
Agriculture, forestry and fishing	3.8	3.5	5.2	4.6	3.0	4.1	3.2	3.5
Industry and construction	8.9	11.0	7.7	10.1	10.4	9.4	10.3	10.2
Services	8.5	5.1	2.3	5.3	6.1	6.5	6.6	7.5

^a Trend rate of growth between 1986 and 1997.

Source: GSO 2004 and information provided by the Ministry of Trade.

While the industry and construction sector has been expanding very fast, services have also been growing rapidly. As a result, although agriculture has continued to expand, and continues to be the source of livelihood for two thirds of the workforce, the sector's share in GDP has fallen from 35 per cent to 21 per cent over the period (chart 2.1).

Chart 2.1 The changing composition of the economy — sectoral shares of GDP



Data source: GSO 2004.

Despite the strong growth in GDP, per capita income, at around \$US480, remains the lowest in APEC. Viet Nam has, however, had impressive success in reducing poverty. The proportion of the population living below the poverty line, which was around 75 per cent in 1990, has fallen to 28.9 per cent in 2002 (table 2.2). Analysis indicates that most of this reduction was a result of the strong growth performance, rather than income redistribution (World Bank 2000). As may be expected with such a strong growth performance, there has been some increase in income and expenditure disparities as measured by the Gini coefficient, and some regions of Viet Nam have not participated as fully as others in the growth and development process (World Bank et al. 2004).

Table 2.2 Poverty reduction ^a

	Unit	1993	1998	2002
Headcount ratio	%	58.1	37.4	28.9
Gini coefficient	No	0.34	0.36	0.37

^a Headcount ratio based on national poverty line.

Source: World Bank et al. 2004.

Foreign trade and investment

Viet Nam's international trade has expanded rapidly as traders and producers have taken advantage of the opportunities created by liberalisation and normalisation of relations with western economies. The US dollar value of exports grew at a trend rate of 15.1 per cent in the period 1996 to 2003, and exports of goods and services now account for over 55 per cent of GDP (55.5 per cent in 2002).

Imports have also grown rapidly (at a trend rate of 12.1 per cent over the period), the ratio of the value of imports to GDP is over 60 per cent (59.5 per cent in 2002). As table 2.3 shows, APEC economies now account for around 73 per cent of Viet Nam's exports, and over 81 per cent of the economy's imports.

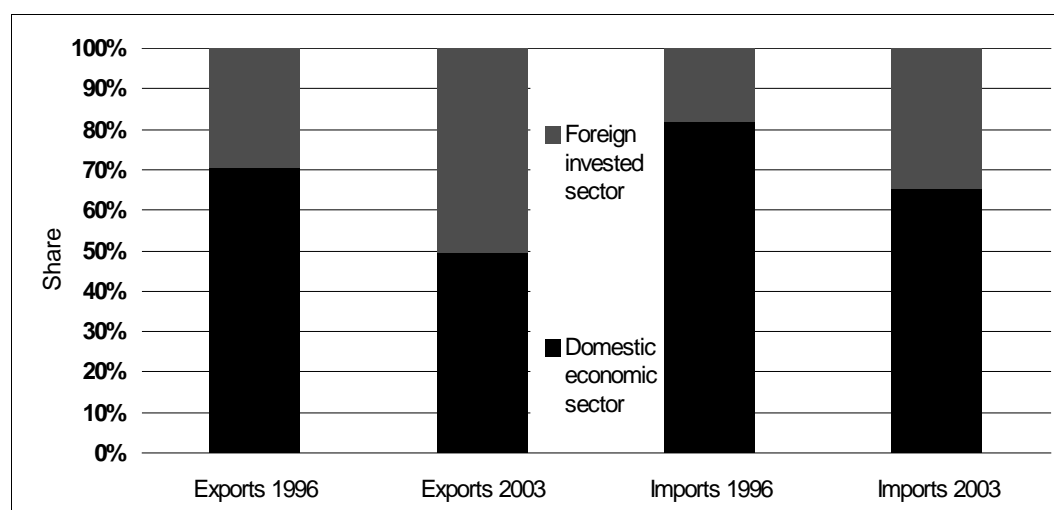
Table 2.3 **International trade 1996 to 2003**

	Unit	1996	1997	1998	1999	2000	2001	2002	2003 ^a
		US\$m	US\$m	US\$m	US\$m	US\$m	US\$m	US\$m	US\$m
Exports									
Total	US\$m	7255.9	9185.0	9360.3	11541.4	14482.7	15029.2	16706.1	20176.0
APEC	US\$m	5262.2	6322.6	6129.1	7486.2	10097.6	10084.0	11778.3	14691.8
APEC share	%	72.5	68.8	65.5	64.9	69.7	67.1%	70.5%	72.8%
Imports									
Total	US\$m	11143.6	11592.3	11499.6	11742.1	15636.5	16218.0	19745.6	25226.9
APEC	US\$m	8959.1	9391.5	9444.5	9578.8	12998.0	13185.9	15792.7	20526.1
APEC share	%	80.4	81.0	82.1	81.6	83.1	81.3	80.0	81.4

^a Preliminary.

Source: GSO 2004.

Chart 2.2 **International trade by foreign invested and domestic enterprises, 1996 and 2003^a**



^a Preliminary

Data source: GSO 2004.

The expansion of trade has been closely linked to the growing role of foreign investment in the economy. As chart 2.2 shows, foreign invested enterprises now

account for 50 per cent of exports, up from 30 per cent in 1996, and for 35 per cent of imports, up from 18 per cent in 1996.

While the early stages of Viet Nam's transition saw agricultural products and oil dominate the growth of exports, in recent years exports of manufactures have been growing rapidly, and now account for 50 per cent of total exports (table 2.4). The broad commodity composition of imports has been more stable, dominated by transport equipment and other capital goods and industrial raw materials and intermediates (table 2.5). (It should be noted that there is a strong tradition of smuggling in Viet Nam, and much of the demand for imported consumer goods is met from illegal imports.)

Table 2.4 **Commodity composition of exports 1996–2002**

	1996	1997	1998	1999	2000	2001	2002
	%	%	%	%	%	%	%
A. Primary products	62.5	52.1	53.5	51.9	55.8	53.3	49.6
Food and live animals	33.4	29.3	33.7	28.5	26.1	27.0	24.6
Beverages and tobacco	0.1	0.4	0.1	0.1	0.1	0.3	0.5
Crude materials, inedible, except fuels	6.9	4.1	3.0	2.6	2.7	2.7	3.1
Mineral fuels, lubricants and related materials	21.7	18.0	16.5	20.6	26.4	23.1	21.4
Animal and vegetable oils, fats and waxes	0.5	0.3	0.2	0.2	0.5	0.2	0.1
B. Manufactured products	37.4	47.9	46.5	48	44.2	46.7	50.4
Chemical and related products, nes ^a	0.9	1.2	1.0	1.3	1.1	1.5	1.6
Manufactured goods classified chiefly by materials	5.3	6.1	4.7	7.5	6.3	6.6	6.7
Machinery and transport equipment	5.7	8.2	8.6	8.5	8.8	9.3	8.0
Miscellaneous manufactured articles	25.5	32.4	32.1	30.8	28	29.3	34.1
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0

^a Not elsewhere specified.

Source: GSO 2004.

Table 2.5 Commodity composition of imports 1996-2002

	1996	1997	1998	1999	2000	2001	2002
	%	%	%	%	%	%	%
A. Primary products	19.3	18.4	17.3	19.3	22.6	22.7	21.3
Food and live animal	3.7	3.7	4.0	4.3	4.0	5.1	4.8
Beverages and tobacco	0.4	0.7	1.1	0.7	0.7	0.7	0.8
Crude materials, inedible, except fuels	3.7	3.2	3.3	3.9	3.8	4.3	4.1
Mineral fuels, lubricants and related materials	11.1	10.3	8.4	9.5	13.6	12.1	11.0
Animal and vegetable oils, fats and waxes	0.4	0.5	0.5	0.8	0.6	0.5	0.7
B. Manufactured products	80.5	81.3	82.7	80.6	77.0	77.3	78.7
Chemical and related products, nes ^a	16.3	16.8	18.7	17.4	15.4	15.4	14.9
Manufactured goods classified chiefly by materials	21.4	23.1	20.7	23.3	21.8	23.0	27.4
Machinery and transport equipment	30.5	29.6	30.3	29.4	30.1	30.0	29.2
Miscellaneous manufactured articles	12.3	11.8	13	10.6	10.1	8.9	7.2
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0

^a Not elsewhere specified.

Source: GSO 2004.

As indicated in chapter 1, introduction of an 'open door' policy to foreign investment was one of the earliest elements of the *doi moi* program. The registered capital of newly licensed investment projects grew steadily until 1996. Approvals fell in the aftermath of the Asian financial crisis, and while there has been some recovery, investment levels have failed to regain the levels achieved in the mid-1990s (table 2.6).

Viet Nam's trade and investment policies

As indicated in chapter 1, changes in trade and foreign exchange policy, along with liberalisation of controls on foreign investment, have been key features of the opening up of the Vietnamese economy since the introduction of *doi moi*.

Table 2.6 Foreign direct investment projects licensed 1988 to 2003 ^a

	Number of projects	Total registered capital	Legal capital
	No	US\$ million	US\$ million
1988-1990	214	1582.0	1007.4
1988	37	321.8	288.4
1989	69	525.2	311.5
1990	108	735.0	407.5
1991-1995	1397	16485.0	8606.1
1991	151	1275.0	663.6
1992	197	2027.0	1418.0
1993	274	2589.0	1468.5
1994	367	3746.0	1899.0
1995	408	6848.0	3157.0
1996-2000	1730	21597.2	9978.7
1996	387	8979.0	3280.0
1997	358	4894.2	2404.4
1998	285	4138.0	1976.0
1999	311	1568.0	693.3
2000	389	2018.0	1625.0
2001-2003	2100	6112.6	2698.8
2001	550	2592.0	1044.1
2002	802	1621.0	721.4
2003	748	1899.6	933.3
Total	5441	45776.8	22291.0

^a Excludes supplementary capital added to projects licensed in earlier years, and the projects of VIETSOPETRO

Source: GSO 2004

There was significant progress on trade and investment reform in the early stages of *doi moi*, but this slowed in the middle of the 1990s, as the pressures to increase foreign exchange inflows lessened. This slow down was exacerbated by the nature of the Government's response to the Asian financial crisis in the late 1990s.

At the turn of the decade, there was, however, a significant shift in thinking that cemented international economic integration as a basic element of the national development agenda. The uncertainties that surrounded Viet Nam's approach to economic integration at the beginning of the decade have been replaced by a clearly articulated commitment to engagement with the international economy and further liberalisation. By signing and ratifying the bilateral trade agreement with the United States (USVNBTA) – the most comprehensive agreement ever

entered into by the United States – Viet Nam committed itself to wide ranging legal and institutional change.

The Communist Party of Viet Nam (CPV), the Government and the National Assembly (NA) have made international integration a key socioeconomic objective. This is evidenced in the Socio-economic Development Strategy for 2001-2010 endorsed by the Ninth Party Congress held in 2001, and in Resolution 7 of the Politburo. More concretely, the USVNBTA is now under implementation, as are preferential tariff reductions under the Common Effective Preferential Tariff (CEPT) system of the ASEAN Free Trade Agreement. In addition, Viet Nam has recently agreed mutual tariff cuts with China on selected agricultural and aquatic products to start on 1 January 2004.

The Government has also been pressing ahead with accession to the World Trade Organization (WTO), and has a declared objective of joining the body as early as possible, with end-2005 the current target. Viet Nam recently submitted a new offer to the Working Party, and the ninth meeting of the Party was held in December 2004. Viet Nam has now concluded bilateral market access negotiations with six economies, including the European Union (EU).

The WTO accession process, along with implementation of the USVNBTA is becoming a driving force in economic and structural reform. Much of the agenda for this reform is being shaped by a perceived need to develop appropriate institutional mechanisms, a more competitive enterprise sector and a more efficient and responsive system of state management to take advantage of integration and to address its challenges.

The USVNBTA has been associated with reform of a wide range of legal instruments and administrative and judicial practices. Much of the legislative change called for by the agreement is to make commercial and other laws compatible with the agreements that Viet Nam will become a signatory to upon joining the WTO.

Preparations for WTO accession, and the negotiations surrounding it, are also requiring GOV to reconsider many sectoral development strategies and to explore the use of alternative instruments to achieve regulatory and other policy goals.

An important feature of the integration process at this time is that it is increasingly focused on the domestic legal and institutional environment. There is less emphasis than before on liberalisation, and more on adopting international systems of managing trade and investment. Another important feature of the

emerging agenda is the shift of emphasis from goods to services with attendant implications for domestic regulation.

Table 2.7 summarises the main actions taken with respect to trade, exchange and foreign investment since the introduction of *doi moi*.

Table 2.7 Viet Nam: changes in trade and investment policy since *doi moi*

Date	Trade policy changes
1986	The Sixth National Congress of the Communist party in December decided to move from central planning to a 'market economy with socialist orientation' (the beginning of <i>Doi Moi</i> (renovation) reforms).
1987	A new Law on Foreign Investment introduced a remarkably liberal regime for foreign direct investment (FDI) in Viet Nam. The 'contract system' in agriculture was abolished, confirming the household as the basic production unit and limiting the role of cooperatives. Households were given land tenure for at least 15 years and land was made transferable under certain conditions.
1988	The Law on Export and Import Duties on Commercial Goods introducing import duties, with rates initially ranging from 5 to 50 per became operational. The non-agricultural private sector was accorded a legitimate place outside the state sector (through a resolution in 1988). Devaluation of the exchange rate for foreign exchange transactions relating to trade and services. Central government's monopoly of foreign trade was relaxed, allowing licensed Foreign Trading Corporations (FTCs) and some other firms to engage in foreign trade.
1989	Nearly all forms of direct production subsidies and price controls were removed. Domestic prices were liberalised and the system of state procurement (dual pricing) in agriculture was abolished. A unified exchange rate was introduced for all foreign exchange transactions).
1990	A major domestic tax reform was introduced: a special sales tax, a turnover tax and a profit tax. The on Foreign Investment was revised.
1991	A regulation on setting up of export processing zones (EPZs) was promulgated. Decree 388 issued by the Council of Ministers issued on 20 November provided for closing down and merger of SOEs. Private companies were allowed to directly engage in foreign trade. An import duty rebate scheme for export producers was introduced.

Continued on next page

Table 2.7 **Viet Nam: changes in trade and investment policy since *doi moi***
Continued

Date	Trade policy changes
1992	<p>The Foreign Investment Law was amended</p> <ul style="list-style-type: none"> ▪ to reduce discrimination in favour of joint ventures against 100 per cent foreign owned enterprises ▪ to permit 'build, operate, transfer' (BOT) mode of foreign participation in construction projects, ▪ to provide guarantee against nationalisation of foreign invested enterprises (FIEs) ▪ and to introduce more attractive tax incentives for FIEs. <p>A trade agreement was signed with the EU — Viet Nam was granted most favoured nation (MFN) treatment in EU markets, established quotas for exports of textiles and clothing to EU and granted tariff preferences on selected imports to Viet Nam from the EU.</p>
1993	<p>The Harmonized System (HS) of tariff nomenclature was introduced.</p> <p>An amendment to the duty rebate scheme allowed exporters to suspend duty payments on imported inputs by 90 days.</p> <p>Export shipment licensing was relaxed, with six month licenses (in place of shipment-by-shipment licenses) introduced for 22 export commodities.</p> <p>United Nations (UN) procedures for customs declaration were adopted.</p>
1994	<p>Import permits were abolished for all but 15 products.</p> <p>Export shipment licensing was abolished for all products except rice, timber and petroleum.</p> <p>The US Government announced lifting of the 19 year old trade embargo.</p>
1995	<p>Export quotas were eliminated on all products except rice.</p> <p>Export taxes were raised marginally on 11 products.</p> <p>The number of turnover tax rates were reduced from 18 to 11.</p> <p>Shipment-by-shipment licensing requirement was lifted from a wide range of consumer and producer goods.</p> <p>The number of products subject to import quotas was reduced to seven.</p> <p>A Civil Code was enacted to provide legal protection of industrial property rights.</p> <p>Viet Nam became a member of ASEAN and acceded to protocols of membership of the ASEAN Free Trade Area (AFTA).</p> <p>Viet Nam applied for WTO membership.</p>
1996	<p>A New Law on Foreign Investment reduced the coverage of import duty exemptions for foreign investment projects.</p> <p>The tax on inward foreign exchange remittances was abolished.</p> <p>The number of goods under import quotas was reduced to six.</p> <p>The list of goods under the CEPT of AFTA was promulgated.</p>

Continued on next page

Table 2.7 Viet Nam: changes in trade and investment policy since *doi moi*
Continued

Date	Trade policy changes
1997	<p>The number of goods subject to import quotas was increased for balance of payments reasons.</p> <p>Imports of sugar were restricted by licence.</p> <p>A new law confirmed continued government support for cooperatives.</p> <p>Temporary prohibitions were imposed on a wide range of consumer goods and then lifted.</p>
1998	<p>A new tariff structure was announced in May with three different rates: MFN tariff, non-MFN tariff and preferential tariff. The MFN tariff is applied to imports that originate from economies that have an MFN trade agreement with Viet Nam. The preferential rate applies to goods that originate from countries that have a preferential tariff agreement with Viet Nam. The non-MFN tariff rate applies to imports from all other sources, and is defined to be no more than 70 per cent higher than the respective MFN rate.</p> <p>Licensed exporters were allowed to export any non-regulated product, regardless of whether the products are specified in their licenses.</p> <p>Producers of all non-regulated export products were allowed to export directly, without going through trading companies.</p> <p>Restrictions imposed on imports of alcohol.</p> <p>Use of the minimum price list for valuation of imports by FIEs was eliminated.</p> <p>A partial (80 per cent) foreign exchange surrender requirement was imposed on enterprises holding foreign exchange accounts.</p> <p>Decision 1853 by the Ministry of Finance issued on 11 December 1998 eliminated export duties on all goods except those on crude oil and scrap metal (with effect from the beginning of 1999).</p> <p>An informal road map for CEPT tariff reductions to 2006 was announced.</p> <p>Viet Nam was granted (by the US Government) a waiver of the Jackson–Vanik amendments, enabling Viet Nam to access US Government-supported export credits and investment guarantees.</p>
1999	<p>A value added tax (VAT) was introduced in January 1999 (in place of the cascading turnover tax), along with a special sales tax (levied on cars, gasoline, cigarettes, beer and other alcoholic beverages, and few other items).</p> <p>The number of commodities under quantitative restrictions was increased (from nine to 17) as a temporary measure to avert balance of payments pressure in the wake of the East Asian crisis.</p> <p>The suspension periods for duty payments on imported inputs under the duty rebate scheme was extended to 275 days.</p> <p>Foreign exchange surrender requirement was reduced from 80 per cent to 50 per cent.</p>

Continued on next page

Table 2.7 **Viet Nam: changes in trade and investment policy since *doi moi***
Continued

Date	Trade policy changes
2000	<p>The bilateral trade agreement with the US was signed in July, paving the way for MFN accession of Vietnamese exports to the US market and gradual opening up of the Vietnamese economy trade in goods and services, and investment from the US.</p>
2001	<p>The USBTA came into effect on 10 December, granting Viet Nam MFN status in the US market, resulting in an immediate reduction in US tariff on imports from Viet Nam from around 40 per cent to 4 per cent.</p> <p>A Five Year Import–Export Regime that significantly advanced the removal of quantitative restrictions (QR) was announced (April) with a view to providing a more stable export–import regime and provided a road map for elimination of QRs and other trade measures.</p> <p>All legal entities (companies and individuals) were permitted to export most goods without having to acquire special licenses.</p> <p>QRs on liquor, clinker, paper, floor tiles, construction glass, some types of steel and vegetable oils were removed.</p> <p>Some tariff commitments under AFTA were implemented in January: 713 items transferred from the Temporary Exclusion List (TEL) to the Inclusion List (IL), leaving 1200 items still in the TEL (these are expected to be moved to IL by 2003).</p> <p>The foreign exchange surrender requirement for exporters was reduced from 50 per cent to 40 per cent of realised export proceeds effective May 2001.</p> <p>On 3 October 2001 the US Senate passed legislation implementing the landmark bilateral trade agreement between the US and Viet Nam (the Agreement was signed on 13 July 2000). The National Assembly ratified the agreement in November.</p> <p>A resolution adopted by the Central Committee of the Party in August 2001, called for accelerate phasing out of the dual pricing system (much of which was originally authorised to take place in 1999) as well as further streamlining of licensing and administrative procedures for FIEs. The dual pricing system for foreign investors will be phased out by 2003 for almost all charges and fees, except those for power, which will be removed by 2004.</p> <p>A new Customs Law was announced in October with the aim of improving customs operation and customs clearance.</p> <p>QRS on construction glass, remaining steel products and vegetable oil were replaced by tariff in December (with effect from 1 January).</p> <p>A revised tariff schedule was announced (in November) to reflect tariffs for goods on which QRs were removed.</p> <p>All legal entities (individuals and companies) were permitted to export most goods without license (under the Decree 44/2001/ND-CP, August 2001).</p>

Continued on next page

Table 2.7 Viet Nam: changes in trade and investment policy since *doi moi*
Continued

Date	Trade policy changes
2002	<p>FIEs were granted the right to export commodities other than those they produce (January).</p> <p>Under the AFTA commitments, an additional 498 items were transferred from the TEL to the Inclusion List, leaving 719 items still in the TEL. Of the 5568 items now in the IL, 65 per cent are subject to a tariff rate of 0 to 5 per cent and the remainder to an average tariff rate of 16.4 per cent (November).</p> <p>Quotas on motorcycles and certain parts thereof, and passenger vehicles with up to nine seats were abolished (December).</p>
2003	<p>The last tranche of tariff lines in the Temporary Exclusion List under CEPT was transferred to the Inclusion List.</p> <p>A list of seven agricultural commodities subject to tariff rate quotas (TRQs) was announced on 9 August by Decision No. 91/2003/QD: raw milk (HS 0401), condensed milk (0402), poultry eggs (0407), maize (1005), raw tobacco (2401), salt (2501) and cotton (5201, 5202, 5203). The last three items were to come under TRQs with effect from 1 July 2003 and the Ministry of Trade was assigned the responsibility for introducing TRQs on the remaining four commodities depending on conditions of domestic production and foreign trade.</p> <p>Within quota and beyond quota tariff for tobacco, salt and cotton imports were announced on 7 August (Decision 126/2003/QD-TTg).</p> <p>Issued the tariff schedule under the ASEAN CEPT program for the period 2003 to 2006 (Ministry of Finance Decision No. 78/2003/ND-CP).</p> <p>Issued the MFN tariff schedule based on 8-digit ASEAN Harmonised Tariff Nomenclature (AHTN) (Ministry of Finance Decision No. 110/2003/QD/BTC).</p>

Source: Athukorala, 2004, CIE 1998 and 1999, and information supplied by the Ministry of Trade.

3 Viet Nam's Individual Action Plan

Tariffs

APEC objectives

APEC Economies will achieve free and open trade in the Asia-Pacific Region by:

- progressively reducing tariff measures
- ensuring the transparency of APEC economies' respective tariff measures.

Current situation and recent developments

Viet Nam first introduced a Customs Tariff in 1989 – prior to that trade was managed through state trading enterprises, and the trade revenue base was tapped in the form of levies and taxes on these enterprises. The tariff evolved rapidly in the context of adoption of internationally accepted nomenclature, and the phasing out of the comprehensive administrative system of trade management. As table 3.1 shows, there has been a marked increase in the number of tariff lines, but a reduction in the number of tariff rates. The evolution of the tariff has been influenced by a strategy of tailoring protection to the needs of producers and investors, and also the use of import taxes as a means of influencing domestic prices and demand.

Table 3.1 **Characteristics of preferential (MFN) tariff schedule 1995 to 2004**

		May 1995	Mar 1997	Dec 2001	March 2004
Number of tariff lines	No	3135	3126	5113	10689
Number of tariff rate bands	No	36	35	29	16
Range of tariff rates	%	0-200	0-200	0-120	0-150
Mean tariff rate	%	12.8	13.4	16.5	18.5
Coefficient of variation ^a	%	131	128	113	121
Percentage of lines at zero	%	31.1	31.3	36.1	28.8

^a Standard deviation of rates as percentage of the mean rate.

Source: Athukorala, 2003, IAP 2004.

While these elements are still detectable, there has been a big shift towards creating a more stable and simpler tariff, informed by an appreciation of the costs of high levels of protection.

Viet Nam's tariff schedule allows for three schedules: MFN tariff, non-MFN tariff and preferential tariff. The MFN tariff is applied to imports that originate from economies that have an MFN trade agreement with Viet Nam. The preferential rate applies to goods that originate from countries that have a preferential tariff agreement with Viet Nam. The non-MFN tariff rate applies to imports from all other sources, and is defined to be no more than 70 per cent higher than the respective MFN rate.

The main preferential rate, the Common Effective Preferential Tariff (CEPT) rate, which reflects Viet Nam's commitments as a member of the ASEAN Free Trade Agreement, has been changing over time as more goods have been brought into the coverage of the preferential a system, and as rates have fallen to meet the target of 0-5 per cent in 2006 (table 3.2). (In addition to the CEPT, Viet Nam has also provided concessional rates of duty on selected imports from Lao PDR.)

Table 3.2 **Summary of Viet Nam's CEPT tariff schedule**

Tariff bracket	2004		2005		2006	
	Tariff lines	%	Tariff lines	%	Tariff lines	%
0	3258	32.1	3280	32.3	6483	55.2
>0-5	4236	41.8	5216	51.4	5250	44.7
>5-10	134	1.3	1352	13.3	1	0.0
>10-15	2131	21.0	32	0.	0	0.0
>15-20	403	4.0	381	3.8	0	0.0
Total	10162	100.0	10261	100.0	11734	100.0
Range	0-20		0-20		0-20	
Mean	5.6		4.2		2.2	
CV ^a	6.0		4.3		2.5	

^a Coefficient of Variation (Standard Deviation as a Percentage of the Mean).

Source: CIE 2004 and information supplied by the Ministry of Finance.

Future changes

The future direction for Viet Nam's tariff will be strongly influenced in the short to medium term by the tariff binding commitments entered into as part of the economy's accession to the WTO. The revised offer made by the Vietnamese negotiating team that was discussed in Geneva in June 2004 involved an average bound rate of around 18 per cent, with industrial tariffs bound at an average rate

of around 17 per cent, and agricultural tariffs bound at around 25 per cent (World Bank 2004).

Other important influences will be implementation of commitments regarding the CEPT, and in the longer term, any tariff preferences resulting from the AFTA-China Framework Agreement.

Non-tariff measures

APEC objectives

APEC Economies will achieve free and open trade in the Asia-Pacific Region by:

- progressively reducing non-tariff measures
- ensuring the transparency of APEC economies' respective non-tariff measures.

In the early stage of *doi moi* Viet Nam closely managed imports through a system that involved, among other things, limiting trading rights to particular state enterprises, setting quantitative targets for trade in key products, and selective, shipment-by-shipment licensing.

These broad instruments have been eliminated, and the scope of non-tariff barriers has been substantially wound down. The remaining non-tariff barriers include: regulation of entry into importing of particular commodities, prohibitions and quantitative restrictions on imports, regulation of transactions, import surcharges, minimum import prices, discriminatory treatment of imports under the special consumption tax and export subsidies.

Trading rights

The trading rights of enterprises were substantially liberalised in 1998, and now there is no discrimination between SOEs and private enterprises in terms of trading rights. All legally established enterprises can directly export and import in accordance with the scope of their registered business lines, and business registration is now very simple. Trade in some commodities – for example, petroleum products – remains restricted to designated state enterprises.

However, while foreign invested enterprises can now export goods other than those they produce, they are only allowed to import goods for the purpose of adding to fixed assets and raw materials for production and business, subject to

approval of an annual import plan. At the moment, foreign firms are not able to engage in generalised trading activities (although under the provision of the US Vietnam Bilateral trade Agreement, minority US owned firms should be allowed to do so from December 2004).

The Ministry of Trade has indicated that its approach to further liberalisation of trading rights by foreign invested enterprises is bound up with the issue of liberalisation of distribution services currently under negotiation in the WTO accession process. Viet Nam interprets importing for resale as an issue of distribution rights, but is contemplating the concept of 'importer of record', in which a foreign enterprise may import goods, but is not allowed to distribute the goods. Viet Nam intends to permit this upon accession to the WTO: FIEs will be able to import all goods not subject to specific controls, but this will not entail an automatic right to distribute. The enterprise may be able to purchase advertising services for the goods, and engage in trade promotion.

Import prohibitions.

Most prohibitions appear to be driven by concerns of health, security and safety. However, the prohibition of imports of cigarettes and a wide range of second hand goods on health and environmental grounds could provide considerable protection to local producers.

Discretionary import licensing by the Ministry of Trade.

This licensing has typically been used to manage volumes of imports, to protect local producers, but also to 'manage' demand and supply of key commodities. The only commodity now covered by this form of control is sugar. Imports of sugar are effectively banned, but there has traditionally been a fair volume of smuggled sugar on the market. The Government has signaled in its recent offer to the WTO that it will introduce a tariff rate quota on sugar with an out of quota tariff rate of 100 per cent. This is rate may prove to be prohibitive.

Specialised management by line agencies

A significant range of goods is subject to management by line agencies. This management, which is largely aimed at quality and safety issues can take the form of inspection of shipments, appointment of authorised importers, import licensing, registration, or certification as to compliance with standards. This form of management has in the past been used to protect state enterprises belonging to

the managing agency from competition, either from imports or from other traders.

Tariff rate quotas.

In May 2003, the Government introduced quotas for raw milk, condensed milk, eggs, maize, raw tobacco, salt and cotton. It has signalled its intention to impose a tariff quota on imports of sugar.

Import surcharges

Until October 2004, the remaining surcharges were on PVC and welded steel pipe, but now the PVC surcharge has been lifted. It is planned that the steel surcharge will be lifted upon accession to the WTO.

Minimum import prices

The IAP indicates that Viet Nam maintains a set of minimum prices to be applied to imports of seven classes of commodity. However, as part of Viet Nam's implementation of the principles of the GATT Customs Valuation Agreement, use of minimum prices was abolished in August 2004.

Special consumption tax

Discriminatory treatment under the Special Consumption Tax (SCT) will be eliminated. As of now, only tobacco and automobiles are affected by discriminatory treatment. Tobacco will be normalised in 2005, and a recent National Assembly Law has determined that discriminatory treatment of autos will terminate in January 2007. The phasing for automobiles is justified on the grounds that the discrimination acted as support for a sensitive and strategic local industry.

Export subsidies

The Government is reported to have agreed to eliminate all agriculture export subsidies as part of its WTO accession negotiations, with the subsidy on coffee exports terminating upon accession (World Bank 2004).

Services

APEC objectives

APEC Economies will achieve free and open trade in the Asia-Pacific Region by:

- progressively reducing market access restrictions
- providing for, inter alia, most favoured nation (MFN) treatment and national treatment.

There are a number of factors that are shaping Viet Nam's approach to the services component of the IAP.

First, the Government is currently engaged in bilateral negotiations on services access as part of its accession to the WTO. Much of the detail of Viet Nam's short and medium term commitments on services will be determined as an outcome of these negotiations, and it is not possible at this stage to foreshadow the nature of these commitments. (The Government is reported to have offered access commitments in 10 service sectors or 92 sub-sectors (World Bank 2004).)

Second, there are some important aspects of Viet Nam's strategy for development of the services market that influence both the commitments it may make as part of WTO accession and the intentions it is prepared to expose for future liberalisation in its IAP. These include:

- the fact that many of the services areas covered by the IAP are relatively new in Viet Nam: for example, many business service activities were not being delivered until quite recently; and
- in other cases, services were provided directly by state enterprises or agencies, and outcomes and prudential objectives were met through the direct mechanisms of control of the behaviour of these state entities.

What this has meant is that the immediate priority for the authorities is to develop appropriate mechanisms and institutional arrangements for regulating market based delivery of services. In addition, it is often the case that the authorities are concerned with how to convert state enterprises into commercially viable operations before they are subject to competition from foreign service providers.

A third factor is the way in which Viet Nam frequently approaches policy change and institutional reform. There is a strong tradition of experimentation, through closely overseen pilot activities, whereby new ideas, or new modes of service

delivery, are tested before a full legislative and regulatory regime is developed. Experience with these pilots is used to shape approaches to regulation and formal legislative facilitation. This may mean that some kinds of market access may be granted to a particular service provider, without necessarily binding the authorities to extend this access on a more general basis, pending development of a more generalised regime for management and regulation of activities.

Besides the tradition of experimentation, and its use to defuse potential opposition to further reforms, this approach is also motivated by the incomplete nature of the legislative, judicial and institutional underpinnings of a market economy. Piloting new approaches, without prejudice to future regulatory stances, is a way of gaining experience without having to wait for the development of the full panoply of market based instruments for management and for facilitating all forms of business transactions.

In a number of sectors, regulation of market access by foreign suppliers focuses not so much on right of entry, but on the form of entry: for example, through limitations on the extent of foreign ownership, or specification of legal forms for participation in the market.

Business services

Legal services

The legal sector has been expanding rapidly in Viet Nam, matching the pace of legislative development that has been driven by the demands of *doi moi* and, in particular to meet the needs of foreign investors for a legally based framework for business activities. (A key element of initiatives in the early stages of *doi moi*, and in particular of the Public Administration Reform program that is implementing the changes in the role of the state, is the adoption of the rule of law to bind the agencies of the state and initiatives to guide the behaviour of private individuals and entities. This has warranted an extraordinary effort of legislative and judicial development, encapsulated in the Legal Sector Development Strategy developed by the Ministry of Justice.)

Foreign law firms have long had a presence in Viet Nam, but have been constrained in the extent of services they can offer. Recent changes introduced with Decree 87-2003-ND-CP of the Government dated 22 July 2003 on Practice by Foreign Lawyer Organisations and Foreign Lawyers in Viet Nam have substantially reformed the regulatory framework for the operations of foreign

law firms. Among other things, the decree permits foreign firms to provide, under certain conditions, advice on Vietnamese law.

Accounting and auditing services

A significant thrust of activity in this sector has been the promulgation and harmonisation of accounting and auditing standards. The first set of accounting standards were issued in 2001. Some 22 standards have now been completed, and a further six standards are expected to be harmonised with international standards in 2005.

Currently, foreign auditing firms are required to establish FIEs in order to fully participate in auditing activities in Viet Nam. However, a Government decree issued in March 2004 allowed for other ways for foreign firms to participate in auditing activities, such as in cooperation with a Vietnamese firm, or to undertake specific audits with approval of the Ministry of Finance

Communication services

Postal and telecommunications services are regulated by the Ordinance on Posts and Telecommunications that became effective in 2002, and subsequent subordinate legislation, which, among other things, established the Ministry of Posts and Telecommunications as the regulator for the sector. Foreign investment is regulated by the Law on Foreign Investment, and, where allowed, has typically been constrained to Business Cooperation Contracts (BCCs). Under these contracts Vietnamese and foreign partners agree to carry on an investment activity without creating a new legal entity.

This form of investment served a useful purpose in the early days of foreign investment when security and sovereignty concerns were paramount, and had a very positive impact on development of the communications sector. However, a recent study of competition in the telecommunications sector has pointed out that the BCC is a very limited form of investment that may discourage some potential investors and limit the benefits that the recipient economy may receive. (VMCI, 2004).

Postal and courier services

Under Decree 157-2004-ND-CP of the Government dated 18 August 2004, a state entity, Viet Nam Post retains its monopoly over the public post network, while

other enterprises are allowed to engage in domestic and international post delivery (USVNTC, 2004b). Foreign investment in postal services is constrained to BCCs with Vietnamese parties that are permitted to undertake postal business. However, joint ventures are allowed in the provision of courier services.

Telecommunication services

Cross-border supply of basic telecommunications is currently restricted to BCCs with appropriately qualified Vietnamese operators, as is supply through commercial presence. Under the terms of the USVNBTA, however, US companies will be able to establish joint ventures with up to 49 per cent US equity from 2005 and 2007, depending on the type of service.

Foreign investment in value added services is also limited to BCCs with Vietnamese partners, but under the USVNBTA, 50 per cent US equity joint ventures have been permitted.

Construction and related engineering services

Under the Law on Construction of 2003 and related regulations, foreign construction contractors must have a partnership with a Vietnamese contractor, and have a permit that is project specific.

Distribution services

Foreign participation in the distribution sector is currently restricted, although permission to establish wholesale operations has been granted on a case by case basis. Under Decree 24-2000-ND-CP on foreign investment, foreign investment in the distribution sector is subject to separate regulations to be issued by the Prime Minister – but these regulations have yet to be issued (USVNTC 2004b). The Ministry of Trade is reported to be working on specific regulations to cover the importing and distribution rights of foreign investors, and has proposed that the Commercial Law (currently under revision) be amended to provide for establishment of foreign invested enterprises and branch offices to engage in commercial activities (which includes international trade and distribution). However, as discussed in the section on trading rights, it appears that the rights to engage in international trade will be treated separately from the rights to engage in distribution services.

Education services

Under current regulations, for-profit foreign investment in education may be licensed in a range of secondary and tertiary training activities, and may take the form of joint ventures, Business Cooperation Contracts and 100 per cent foreign owned enterprises. Such investments must meet criteria related to infrastructure, curricula and conformity with national education plans. Not for profit foreign investment may be licensed in pre-school, primary and secondary, tertiary and post-graduate education.

Financial services

Insurance

The Insurance Law allows foreign insurers and brokerage companies to invest in Viet Nam, as 100 per cent foreign owned enterprises, joint ventures or representative offices. There is, however, provision for some discretion in the law regarding 100 per cent foreign owned operations, since they are permitted subject to the development needs of the insurance market and to considerations such as the number of existing suppliers and the potential impact of new operators on the market and the overall economy. The law provides for identical regulatory treatment of local and foreign invested insurers and brokers. In October 2004, the Ministry of Finance issued comprehensive revised guidelines for the establishment and operation of insurance enterprises, insurance brokers, insurance marketing activities, reinsurance, insurance agents and representative offices of insurance enterprises and foreign insurance brokers in Viet Nam.

Banking Services

Under the Law on Credit institutions, licensing of foreign investment in the banking sector is subject to considerations of the development needs of the sector, taking account of the number and scope of credit institutions already in the market, and their impact on the economy. As indicated in chapter 1, the domestic banking sector, dominated by SOCBs, is quite weak, and the State Bank of Viet Nam is working on restructuring and other reforms to the sector. Progress in these reforms plays an important role in shaping strategies for further international integration of the sector.

Amendments to this Law on Credit Institutions, which came into effect in late 2004, have addressed some of these issues, and among other things (World Bank 2004):

- clarify the separation of policy and commercial lending
- enhance the autonomy of deposit taking institutions
- put responsibility for credit decisions with the banks themselves
- allow banks to offer loans without collateral
- strengthen the internal control function
- require the use of independent auditors to perform external audits.

In particular, the amendments expand the range of forms in which foreign institutions may establish a presence in the market from joint ventures (with up to 50 per cent foreign capital) to foreign bank branches and 100 per cent foreign owned banks. Implementing guidelines have yet to be developed for these amendments, but it is of interest that they bring forward and multilateralise commitments made under the USVNBTA.

Foreign banks operating in Viet Nam may now also buy up to 30 per cent of the shares of local joint stock banks, and these banks can now list on the stock exchange. The Government has also indicated that it will consider foreign bank participation in the proposed equitisation of two state owned banks.

Restrictions on foreign bank branches acceptance of local currency deposits are being eased, although this appears to be limited to European and US banks. Joint venture banks have for some time been allowed to accept such deposits.

Non-banking financial services

The relevant regulations (introduced in 2002) make no distinction between the scope of operations allowed by local and foreign invested finance companies, and subject them to identical regulatory requirements.

Health related and social services

Currently, there are limits on the duration of foreign investment projects in the health sector.

Tourism and travel related services

There are limits on the scope of activities in tourism that foreign investors can engage in: joint ventures are permitted to deal only with inbound tourism, and foreign ownership is capped at 49 per cent. The IAP envisages that the Government plans to draft a Law on Tourism.

Transport services

Maritime transport

Viet Nam has recently opened up all of its ports to foreign shipping lines and has eliminated licensing requirements for foreign shipping lines to operate to and from Viet Nam. They are, however, required to use Vietnamese shipping agents, and are not allowed to undertake cabotage transport. Some maritime service sectors remain reserved for 100 per cent domestically owned enterprises. However joint ventures with up to 49 per cent foreign ownership are permitted in other fields.

Energy services

The Individual Action Plan is not very clear about the conditions under which foreign entities are allowed to provide energy services in Viet Nam. Projects have been established with foreign partners in the oil sector. Further, the new Electricity Law, passed by the National Assembly in November 2004 may facilitate further investment in the construction of power facilities.

Investment

APEC objectives

APEC Economies will achieve free and open investment in the Asia-Pacific Region by:

- liberalising their respective investment regimes and the overall APEC investment environment by, inter alia, progressively providing for MFN treatment and national treatment and ensuring transparency; and
- facilitating investment activities through, inter alia, technical assistance and cooperation.

Trade related investment measures

Viet Nam has confirmed that it will eliminate all trade related investment measures that are prohibited by the TRIMs agreement upon accession to the WTO, including all existing export performance and local content requirements.

National treatment and unified legislation for foreign and domestic investors and enterprises

National treatment is defined in Ordinance 41-2002-PL-UBTVQH10 on MFN and national treatment. The ordinance identifies some general exceptions from national treatment including: government procurement, government subsidies and supports provided to domestic manufacturers, time allotment restrictions on broadcasting and television production, and domestic transportation costs calculated on the basis of commercial activities of transportation. In addition, in the USVN BTA the Government has identified several sectors where it reserves the right not to offer national treatment. These are: broadcasting; production, publishing and distribution of cultural products; investment in insurance, banking, monetary and securities brokering, and related services; mine survey and exploitation; constructing, installing, operating and maintaining telecommunication media; constructing and operating river ports, seaports and airports; goods and passenger transportation by railways, airlines, road, river; fishing and real estate.

Viet Nam is also working on two key legislative initiatives that should help in reducing differentiation in treatment of foreign and domestic investors.

The first of these is a unified investment law that should allow for equality of treatment of domestic and foreign investors. It should also help to simplify and

rationalise the system of investment incentives, which has been characterised as being highly complex and non-transparent. Viet Nam has committed to the progressive elimination of investment licensing and is shifting towards an investment registration system, except for a limited group of sectors reserved in international agreements to which Viet Nam is a party. It is to be expected that the unified law will give effect to and clarify this commitment.

The second initiative is a common enterprise law. Early indications suggested that the law would provide for common regulation of establishment forms and procedures, organisation and management and dissolution of enterprises, regardless of whether the enterprise is owned by domestic private investors, foreign investors and the State. However, it now appears that the new law will not replace the current state enterprise law, and that only SOEs that have been corporatised will be dealt with by the new law.

Dual pricing

Viet Nam has been phasing out the system of different service charges for foreign and domestic entities, and the Ministry of Finance has issued an Official Letter calling for unification of all two tier pricing systems. In January 2005, a common price was applied to domestic and foreign consumers.

Standards and conformance

APEC objectives

APEC Economies will, in accordance with the Declaration on APEC Standards and Conformance Framework and with the Agreement on Technical Barriers to Trade and the Agreement on Sanitary and Phytosanitary Measures attached to the WTO agreement:

- align their mandatory and voluntary standards with international standards;
- achieve mutual recognition on conformity assessment in regulated and voluntary sectors;
- promote cooperation for technical infrastructure development to facilitate broad participation in mutual recognition arrangements in both regulated and voluntary sectors; and
- ensure the transparency of the standards and conformity assessment of APEC economies.

Viet Nam has indicated its intention to comply with the Agreements on TBT and SPS upon accession to the WTO. Viet Nam has already established a national inquiry point for TBT, which will be fully operational in 2005, and will soon establish the national inquiry point for SPS matters.

While Viet Nam and its relevant agencies are involved in many international forums on standards, and are actively pursuing harmonisation of standards, there are quite important constraints on moving to international best practice. One constraint lies in the fact that the use of standards is a relatively new aspect of business behaviour. Harmonisation and effective implementation of Mutual Recognition Agreements is also constrained by limitations in technological infrastructure, and participation in forums is affected by financial limitations.

Customs procedures

APEC objectives

APEC economies will facilitate trade in the Asia-Pacific region by simplifying and harmonising customs procedures.

Customs legislation

The key instruments of legislation shaping customs procedures and functions have been substantially revised in recent years. A new Customs Law was passed by the National Assembly in June 2001, and new customs procedures were promulgated in April 2003 (Decision 56/2003QD-BTC of the Minister of Finance). An important feature of the new Customs Law was that it provided for valuation based on transaction prices (prior to this all imports were subject to reference pricing if the declared value was less than 70 per cent of the reference price. The law also provided for the introduction of post-clearance audit.

Customs modernisation

The General Department of Customs (GDC), which was recently brought under the Ministry of Finance (it previously reported directly to the Prime Minister) is working on a Customs Modernisation Strategy for the period to 2010 and a vision for 2020. The draft of the strategy focuses on four specific objectives: facilitating trans-border trade and transport; revenue collection; protection of social safety and order, national security and security of import-export trade; and providing domestic producers the protection allowed by the customs tariff. The strategy envisages that Viet Nam Customs will pursue the key principles embodied in international agreements under WTO, WCO and ASEAN, including transparency and predicability, responsibility, client orientation, simplicity, integrity, endeavouring to balance the need to enhance trade with the need to control trade, and partnership and cooperation.

The key tasks envisaged by the strategy include:

- redrafting the Customs Law;
- simplifying and harmonising customs procedures in conformity with international standards, including the Revised Kyoto Convention (Viet Nam became a signatory to the Kyoto Convention in 1997, and aims to become a signatory to the Revised Convention in 2005);

- developing a more effective organisational structure,
- human resource development;
- ensuring compliance with the law;
- safeguarding budget revenues;
- mobilising adequate resources to finance customs operations;
- preventing corruption and ensuring customs integrity;
- establishing full reliance on modern communications and information technology, and
- building partnerships with the trading community and other border agencies.

Clearance procedures

Customs clearance procedures still involve manual submission of entry declarations, and extensive manual checking associated documents, as well as manual verification of tax assessments.

Some local departments are piloting direct entry of declarations by importers: either at terminals located in customs houses, or in enterprise premises linked to the customs system. However, all documentation must still be checked manually by customs officers, and there is no procedure for pre-arrival clearance.

Customs no longer examines all shipments, and suggests that around 30 per cent of shipments are not examined, 40 per cent are subject to examination of 5 per cent of the contents, 15 per cent are subject to 10 per cent examination and 15 per cent are fully examined.

A significant proportion of tax payments are deferred under Viet Nam's payment terms. This is a very favourable arrangement for traders, and contributes to the lack of serious problems commonly faced by exporters with respect to duty drawback. However, this arrangement may jeopardise the integrity of the revenue system, a problem that is exacerbated by the fact that the computer systems of Customs and the Treasury are not yet linked.

Valuation

Currently, six methods are employed for valuation of imports for duty calculation (as specified in Decree 60-2002-ND-CP Regulating the Determination

of the Dutiable Price for Imported Goods Subject to Import Tax and its implementing guidelines and letters.

- CVA principles are applied to imports from members of ASEAN and from the United States of America, and GoV has extended the application of CVA principles to countries that offer reciprocal treatment of Vietnamese imports. Such treatment has now been extended to imports from 52 countries.
- For imports from other sources, duties are based either on transaction values or reference prices: a reference price is applied if the declared value is less than 70 per cent of the reference price.

On 31 August 2004, Viet Nam terminated the use of the system of minimum prices that previously applied to imports of eight classes of commodity.

Post clearance audit

The Department of Post Clearance Audit was set up in May 2003, following issuance at end 2001 of a Decree (Decree 102-2001-ND-CP) making detailed provisions for inspection with respect to imports and exports after customs clearance. Guidelines for implementing this decree were issued in October 2003. These guidelines permit customs officers to inspect documentation up to five years after clearance if there is evidence of a breach of customs, tax or import-export laws. In principle, the operation of the post-clearance audit department should permit a reduction in effort and time taken to examine documentation at the time of importation.

Information technology

Customs piloted implementation of the ASYCUDA system in Ho Chi Minh City and Hai Phong Ports in 1995, but only used the system for collection of trade statistics. Now Customs has developed a set of applications that are in use in all 33 Provincial, Inter-Province and City Customs Departments.

The system is linked to most sub-departments check points, and to the General Department in Hanoi, by leased line or dial up transfer. It does not appear that all declaration and tax notice records are transferred to Hanoi.

Customs IT system now has links with the system of the General Department of Taxation, as of October 2004.

Inter-agency coordination

At Hai Phong Port, a recent initiative has reduced the red tape associated with formalities of ship arrival. The Port Authority has introduced a single window process, in which all formalities are handled at the Port Authority office, where representatives of Customs, Immigration, Quarantine and Health services receive documents from the shipping agent. This contrasts with previous arrangements where officials from all agencies boarded ships on arrival.

Cargo release time

Analyses of cargo release times indicate that customs clearance procedures account for a relatively small proportion of the time taken from the arrival of cargo to its clearance. A performance study conducted for the World Bank indicated that the baseline processing time at the ports covered in the study was 8.41 days, of which 2.3 days was taken by Customs clearance procedures. The rest of the time was taken before clearance procedures were started. Customs and other stakeholders suggested that this long pre-clearance time was a result of the effort required in gathering necessary documentation. The World Bank study also suggested that the unusually long period (seven days) that importers are allowed to leave goods at ports of destination without paying storage charges also plays a role.

Customs automation

Customs is not currently taking full advantage of the opportunities created by use of modern information and communications technology. More steps in declaration processing, including consistency checks and tax verification could be automated. The absence of a legal framework for e-commerce limits the scope for lack of more comprehensive electronic declaration processes.

Some stakeholders point out that lack of connectivity between customs houses also creates difficulties with transit cargo – that is shipments arriving at one port for clearance at another location.

Service conditions

Customs performance is affected by the low levels of public service remuneration in Viet Nam. While Customs appears to have no difficulty in attracting well qualified people to enter the service, salary levels below reasonable costs of living

impact heavily on motivation to maintain high standards of integrity and performance. This can lead to unnecessary delays in cargo processing and resistance to reforms that could improve efficiency.

Policy environment

Some aspects of desirable cargo processing reform are being held back because of the absence of supporting legislation (eg e-commerce or a regulations on customs brokerage). Further, Custom's job is made more difficult because of the complexity of policies they are tasked with enforcing. The import tariff and VAT schedules are complex, with much finer differentiation of similar products. The system of exemptions and concessions from import taxation is one of the most complex in the region. The regulatory requirements of other line agencies may also add to the administrative burden without much gain in policy outcomes.

Intellectual Property Rights

APEC objectives

APEC economies will ensure adequate and effective protection, including legislation, administration and enforcement, of intellectual property rights based on the principles of MFN, national treatment and transparency as set out in the TRIPS Agreement and other related agreements.

Viet Nam has been very active in developing the legal framework for protection of intellectual property rights (IPRs), a process which began in earnest when Viet Nam submitted its application to join the WTO, and which received a strong stimulus from the requirements of the USVNBTA.

Viet Nam is now a party to a range of international conventions and organisations dealing with IPRs, including:

- the Paris Convention for the Protection of Industrial Property
- the Madrid Agreement on International Registration of Marks
- the Convention Establishing the World Intellectual Property Organisation
- the Patent Cooperation Treaty
- the Berne Convention on Copyright Protection for Literary and Artistic works.

The Government is preparing for accession to the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorised Duplication of their Phonograms, the Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite and the International Convention for the Protection of Plant Varieties.

TRIPS

As a result of the legislative initiatives prompted by the USVNBTA, Viet Nam has already committed to most of the obligations covered the WTO Agreement on Trade Aspects of Intellectual Property Rights (TRIPS), and will be able to comply with this agreement upon accession, since there is now legislative protection to all aspects of IPRs covered by the agreement.

However, there remain challenges with respect to enforcement of this protection, and the Government is working on a program to strengthen enforcement, aimed at creating a system that conforms with international standards by 2009. This program involves the development of further legislation, including a separate Law in Intellectual Property, amendments to legal instruments dealing with administrative measures against IPR and copyright infringement, and promulgation of joint circulars on border measures dealing with IPR and on judicial procedures in civil and criminal cases involving IPR infringements. (In this regard, the new Civil Procedures Code that came into effect on 1 January 2005 is expected to improve procedures for handling IPR cases in civil courts (USVNTC 2004b).)

The program will also address the structure and capacity of agencies involved in IPR enforcement, which crosses the boundaries of the mandates of a number of agencies. The plan is also to establish a one-window system for receiving requests for administrative actions on IPR infringements.

Competition policy

APEC objectives

APEC economies will enhance the competitive environment in the Asia-Pacific region by introducing or maintaining effective and adequate competition policy and/or laws and associated enforcement policies, ensuring the transparency of the above and promoting cooperation among APEC economies, thereby maximising, inter alia, the efficient operation of markets, cooperation among producers and traders and consumer benefits.

New Competition Law

Viet Nam achieved a major step forward with respect to competition policy with the passage by the National Assembly of the Competition Law in November 2004. This law, which went through a testing drafting process deals with restraints on trade and unfair trade practices, and provides for procedures to deal with disputes and competition cases.

Elements of the law deal with: restraints on competition, abuse of market power, concentration, unfair competition, exemptions for some activities and measures to address cases.

The law treats SOEs equally with other enterprises, but there are exemptions for state monopoly enterprises. Article VI prohibits certain activities by state management agencies, such as:

- compelling an enterprise, agency, organization or individual to purchase from and/or sell to an enterprise designated by the authority goods and/or services, except for those goods and services that fall under the scope of State monopoly under the provisions of law;
- discriminating against enterprises;
- compelling enterprises or trade associations to align among themselves for the purposes of precluding, restricting or hindering other enterprises from participating in competition in a the market; and
- other hindering acts against lawful business activities of enterprises.

The law also provides for exemptions for some agreements to restrict competition or occasions of concentration. They reflect the Government's interest in facilitating the development of stronger domestic enterprises. For example,

exemptions from prohibition of actions that restrict competition or increase concentration may be granted if linked to objectives such as:

- aspects of enterprise rationalisation;
- promotion of technical and technological enhancement to improve product or service quality, or of adoption of quality standards;
- increasing competitiveness of small and medium scale enterprises;
- increasing competitiveness of Vietnamese enterprises in the international market;
- extending exports; and
- dealing with risks of bankruptcy.

The basis for extending such exemptions is determination of the balance of benefits.

The law only gives general guidance: forthcoming implementation guidelines will spell out the details. Three decrees are planned for promulgation in 2005:

- A general guiding decree – for adoption in June 2005
- A decree on settlement of violations – for adoption in September 2005
- A decree to regulate the functions of the competition administration authority.

There will also be other legal documents on multi-level selling.

Competition Administration Agency

Another important initiative has been the establishment of the Competition Administration Authority under the Ministry of Trade.

Structure

The Agency comprises:

- an Anti-monopoly Division;
- a Competition Policy Division;
- a division dealing with anti-dumping, countervailing subsidies and safeguards;

- an investigation division that will also have responsibilities for consumer protection; and
- an office dealing with administrative and international relations functions, a data base centre and representative offices in Ho Chi Minh City and Da Nang.

The Agency can investigate behaviour as well as hear complaints.

State monopolies

The law states that CAA can deal with any anti-competitive behaviour, but issues of state monopoly regulation are to be dealt with by the relevant line agency. (An example is the regulation of telecommunications by the Ministry of Posts and Telecommunications.)

Regulatory review function

The Agency has the right to investigate and request that entities amend their laws if the conflict with the Competition Law. However, it does not appear that the Agency has a more general mandate to review legislative and regulatory constraints on competition.

Government procurement

APEC objectives

APEC economies will:

- develop a common understanding on government procurement policies and systems, as well as on each APEC economy's government procurement practices; and
- achieve liberalisation of government procurement markets throughout the Asia-Pacific region in accordance with the principles and objectives of the Bogor Declaration, contributing to the evolution of work on government procurement in other multilateral fora.

Legal framework

There are currently three decrees covering procurement, and the construction law also addresses procurement issues. The Ministry of Planning and Investment is drafting a single ordinance on procurement, which will go to the National Assembly in 2005. These laws apply to all procurement using state resources:

such as state credit, state budget funds, including ODA, funds from the Development Assistance Fund, funds and joint ventures with 30 per cent of their investment provided by the state.

Preferences and SME participation

Local suppliers are given price preferences of 15 per cent in procurement of goods, 7 per cent for services.

There are no specific provisions facilitating SME participation in procurement, although the law allows for small scale tendering, and the use of locality specific preferences in such tenders. Decree 90 (the SME decree) makes provision to improve SME access to government procurement, and MPI will spell out how this may be achieved in 2005.

Transparency

The Ministry of Planning and Investment produces a procurement bulletin. In 2005, all procurement by large projects will be required to be publicised in this bulletin, otherwise there are requirements for publication in the press.

Deregulation/regulatory review

APEC objectives

APEC economies will free and open trade and investment in the Asia-Pacific region by, inter alia:

- Improving the transparency of regulatory regimes;
- Eliminating those distortions arising from domestic regulations that restrict trade of investment and are not necessary to achieve a legitimate objective.

Regulatory review processes

In many ways, regulatory review and deregulation lie at the heart of the transition process that Viet Nam has been implementing since 1986, and this is reflected in the comprehensive treatment of this issue in the IAP. Viet Nam is implementing a comprehensive process of legislative development and refinement, much of it stimulated by the demands of international integration. The Legal Sector Development Strategy was preceded by a comprehensive review of

legislative needs to give effect to the policy and administrative changes required by *doi moi* and the adoption of rule by law. Further, preparation for accession to the WTO, and implementation of the USVNBTA have prompted a wide ranging review and revision process of laws dealing with many aspects of market transactions, state management of economic activity and administrative and judicial procedures.

In the past decade and a half, nearly all major laws have been reviewed and revised with gaps of not much more than 5 years, and this process is likely to continue for some time as the incremental processes of reform continue.

It is also worth noting that substantial ad hoc reviews of regulations and the state of competition in key sectors are being undertaken with the support of international donors. The recent review of competition in the telecommunications sector is a case in point (VNCI 2004).

Transparency

Amendments to the Law on Promulgation of Legal Instruments passed by the National Assembly in December 2002 brought about some important reforms in the legislative processes within Viet Nam. Among other things, the revised law requires that agencies drafting laws must facilitate other agencies, organisations and individuals to provide their opinions. Drafts of Resolutions and Decrees of the Government and Decisions and Instructions of the Prime Minister must be published in the mass media and the internet for comment by interested parties.

Further, legal instruments do not now become effective until 15 days after they have been published in the official gazette. Many ministries and agencies have established web sites for notification of regulations and other matters related to their jurisdictions.

Implementation of WTO obligations

APEC objectives

APEC economies will ensure full and effective implementation of Uruguay Round outcomes within the agreed time frame in a manner fully consistent with the WTO Agreement.

APEC economies will:

- ensure full compliance with internationally harmonised rules of origin to be adopted in relevant international fora.
- ensure that their respective rules of origin are prepared and implemented in an impartial, transparent and neutral manner.

Viet Nam is not yet a member of the WTO. However, as part of its preparation for membership, and as part of implementation of the USVNBTA, Viet Nam has already put in place the basis for implementation of key WTO agreements. For example, some USVNBTA obligations incorporate WTO agreements in full, such as (Marantis, 2003):

- the Customs Valuation Agreement
- substantive provisions of the TRIMS Agreement
- the WTO Import Licensing Agreement.

Other obligations incorporate parts of WTO Agreements, such as (Marantis, op cit):

- fundamental principles of the SPS and TBT agreements;
- most of the TRIPS agreement;
- most of the agreement on Trade in Services (covering the annexes on Financial Services, Movement of Natural Persons and Telecoms) and the USVNBTA incorporates the Telecom Reference Paper);
- WTO transparency principles; and
- GATT obligations on State Trading.

In a number of cases, Viet Nam will be required to multilateralise elements of the USVNBTA.

In addition, the Ministry of Justice has identified the items of legislation that will need to be formulated or amended for WTO accession, and in July 2004 issued a

revised action plan for remaining legislative action required for accession (USVTC, 2005). It is expected that Viet Nam will need to revise at least 30 Laws and Ordinances to meet the requirements of accession.

Dispute mediation

APEC objectives

APEC economies will:

- encourage members to address disputes cooperatively at an early stage with a view to resolving differences in a manner to help avoid confrontation and escalation, without prejudicing WTO rights and obligations or duplicating or detracting from WTO dispute settlement procedures;
- facilitate and encourage the use of procedures for timely and effective resolution of disputes between private entities and governments and disputes between private parties in the Asia-Pacific region; and
- ensure increased transparency of government laws, regulations and administrative procedures with a view to reducing and avoiding disputes regarding trade and investment matters in order to promote a secure and predictable business environment.

The IAP spells out the mechanisms for settling disputes with other economies and foreign investors, but provides no indications of plans for further improvements in these mechanisms. Much of the legislative and procedural framework for dealing with investment disputes was developed in the course of signing bilateral investment agreements with other economies. (Viet Nam has signed such treaties with 10 APEC economies.)

Viet Nam is also a signatory to regional and multilateral treaties such as the New York Convention on recognition and enforcement of foreign arbitrators' decisions, the MIGA conventions and the ASEAN Protocol on dispute mediation.

Recent legislative initiatives, such as the new Civil Procedure Code that came into effect on 1 January 2005 brings together and codify aspects of earlier instruments dealing with the recognition and execution of awards and decisions of foreign courts and of decisions of foreign arbitrators. Ordinance 08-2003-PL-UBTVHQ11 on Commercial Arbitration that came into effect in July 2003 brought about significant improvements in the legal framework for arbitration, even though it falls short of the UNCITRAL model law (USVNTC 2004).

Mobility of business people

APEC objectives

APEC economies will enhance the mobility of people engaged in the conduct of trade and investment in the Asia-Pacific region.

Viet Nam's initiatives to enhance the mobility of business people have involved:

- participation in the second phase of the Advance Passenger Information system and planning for participation in the APEC Business Travel Card (ABTC);
- uploading information and procedures on Vietnamese visa application and issuance on the Ministry of Foreign Affairs' website and other locations as well as in the APEC Business Travel Handbook;
- adopted a regulation on visa exemption for Japanese and Korean passport holders whose expected duration in Viet Nam does not exceed 15 days; and
- signed Agreements on visa exemption with Chile (applied to diplomatic and official passport holders) as well as with Indonesia (applied to ordinary passport holders).

Information

APEC objectives

APEC economies will secure a solid platform for the expansion and improvement of Actions in Specific Areas and APEC economies' respective Action Plans by undertaking inter alia cross sectoral work.

There have been significant improvements in the quality and availability of information on laws, economic statistics and the operations of government in recent years. Many categories of statistics are now available from the website of the General Statistics Office, and Viet Nam has recently become a signatory to the IMF's General Data Dissemination System, which among other things means that the IMF now uses Viet Nam's economic statistics, rather than reporting its own estimates as well.

Paperless trading

APEC objectives

Taking into account diverse legal and regulatory frameworks in the region, APEC member economies should endeavour to reduce or eliminate the requirement for paper documents needed for customs and other cross-border trade administration and other documents and messages relevant to international sea, air and land transport, where possible, by 2005 for developed and 2010 for developing economies, or as soon as possible thereafter.

For Viet Nam, the pace of introduction of paperless trading is determined as much by the speed with which information and communications technology (ICT) can be introduced into key government agencies as it is a function of legislative and procedural reform.

There has been a rapid expansion in the use of ICT in government, as evidenced by the proliferation of websites that are being used by key government to provide information and access to legal and policy documents.

The Ministry of Trade (through its recently created E-commerce Department) has also been working on the key requirements to introduce e-commerce, such as creating a basis for inter-operability among systems used by governments and the business community and developing an Ordinance on e-commerce for submission to the National Assembly.

A Members of the review team

Moderator: Dr Gerardo Traslosheros Hernandez
Director General for Multilateral and Regional
Negotiations
Ministry of the Economy
Senior Official to APEC
Mexico

Discussant: Mr David Wong
Deputy Director
First Bilateral Trade Division
Bureau of Foreign Trade
Ministry of Economic Affairs
Chinese Taipei

Expert: Mr Bob Warner
Director
Centre for International Economics
Australia

B Organisations and officers consulted

Table B.1 Program of the in-country visit

Date and time	Session
Day 1 28 December 2004	
9.00 – 11.30	Session I: Introduction of the IAP Peer Review Team
Venue: Ministry of Trade	<ul style="list-style-type: none"> ▪ Welcome by officials of Ministry of Trade (MOT) ▪ Introduction of the expert ▪ Briefing by MOT on the business arrangement for the in country visit by the Review Team
Chair by: the Director General of the Multilateral Trade Policy Department	<p>Session II: Briefing by the expert on the study of the IAP report</p> <p>Session III: Questions and Answers on General policy questions and non-tariff measures</p>
14.00-16.30	Session IV: Questions and Answers on tariff, financial services, customs services
Venue: Ministry of Finance	
Chair by: High-ranking officials of the Ministry of Finance	
Day 2 29 December 2004	
9.00 – 11.00	Session V: Question and Answers on investment and government procurement
Venue: Ministry of Planning and Investment	
Chair by: High-ranking officials of the Ministry Planning and Investment	
14.00-16.30	Session VI: Questions and Answers on the remaining chapters of IAP (IPRs, standard and conformance, dispute settlement, trade in services, mobility of business people.)
Venue: Ministry of Trade	
Chair by the Director General of the Multilateral Trade Policy Department	
Day 3 30 December 2004	
9.00 – 11.00	Session VII: Wrap-up and conclusion
Venue: Ministry of Trade	Overall discussion
Chair by the Director General of the Multilateral Trade Policy Department	Discussion on the preparations of the Report and presentation in the IAP Peer Review Session

Table B.2 **Officials consulted**

Name	Position and institution
Mr. Tran Quoc Khanh	Director General, Multilateral Trade Policy Department, Ministry of Trade
Mrs. Tran Thi Thu Hang	Deputy Director General, Multilateral Trade Policy Department, Ministry of Trade
Mr. Ha Huy Tuan	Deputy Director General, International Cooperation Department, Ministry of Finance
Ms. Nguyen Quynh Phuong	Expert, State Bank
Ms. Nguyen Thi Phuong	Expert, State Bank
Mr. Nguyen Van Tuan	Expert, Ministry of Justice
Mr. Nguyen Minh Quân	Expert, Ministry of Justice
Mr. Bui Quy Long	Standard, Measurement and Quality Directorate, Ministry of Science and Technology
Mr. Mai Van Son	Intellectual Property Right Department, Ministry of Science and Technology
Mr. Nguyen Duc Dung	Intellectual Property Right Department, Ministry of Science and Technology
Mr. Huynh Trung Dung	Expert, Consulate Department, Ministry of Foreign Affairs
Ms. Nguyen Huong Giang	Expert, Foreign Cooperation Department, Ministry of Post and Telecommunication
Mr. Le Truong Son	Expert, Foreign Economic Cooperation Department, Ministry of Planning and Investment
Ms. Le Thuy Linh	Official, Foreign Cooperation Department, Ministry of Finance
Mr. Nguyen Hoang Hai	,Foreign Economic Cooperation Department, Ministry of Planning and Investment
Mr. Nguyen Viet Hung	Official, Legal Affairs Department, Ministry of Trade
Mr. Trinh Anh Tuan	Official, Competition Administration Authority, Ministry of Trade
Mr. Ho Quang Trung	Official, Export-Import Department, Ministry of Trade
Mr. Nguyen Son	Official, Tender Management, Ministry of Planning and Investment
Mrs. Tran Thao Hanh	Official, Foreign Investment Directorate, Ministry of Planning and Investment
Mr. Le Quang Manh	Official, SMEs Development Directorate, Ministry of Planning and Investment
Ms. Nguyen Thuy Hang	Official, Tender Management Department, Ministry of Planning and Investment

Continued on next page

Table B.2 **Officials consulted** (Continued)

Column heading	Column heading
Mr. Giang Thanh Tung	Official, Legal Department, Ministry of Planning and Investment
Mr. Duong Van Tam	Deputy Director General, Foreign Cooperation Department, General Department of Customs, Ministry of Finance
Mrs. Nguyen Thi Hoa	Official, Accounting Department, Ministry of Finance
Mr. Nguyen Quoc Trung	Official, Insurance Department, Ministry of Finance
Mr. Nguyen Dung	Official, Tax Policy Department, Ministry of Finance
Ms. Pham Quynh Mai	Official, Multilateral Trade Policy Department, Ministry of Trade
Ms. Vu Lien Huong	Official, Multilateral Trade Policy Department, Ministry of Trade
Ms. Bui Ngoc Le	Official, Multilateral Trade Policy Department, Ministry of Trade

C Comments and questions

General Comments/Overview

APEC Review Team

1. Please briefly describe recent economic developments and achievements in structural reforms under Viet Nam's *doi moi* program.

Answer:

Since the implementation of the reform program and 'open policy', Viet Nam has achieved relative high growth rates (7.3 per cent on average from the period 1990–2003). The high economic growth has significantly improved living standards of people. According to official statistics, Viet Nam's economic growth rates for 1990–2004 period are as follows:

Table C.1 **Economic growth rate**

Year	GDP	Agriculture	Industry	Services	Population	Inflation
	%	%	%	%	%	%
1990	5.10	1.57	2.87	10.81	2.25	67.1
1991	5.96	2.17	9.04	8.26	2.33	67.5
1992	8.65	7.08	14.03	6.98	2.41	17.5
1993	8.07	3.82	14.03	9.19	2.33	5.2
1994	8.84	3.92	14.02	10.20	2.33	14.4
1995	9.54	4.95	13.03	10.03	2.00	12.7
1996	9.34	4.04	14.85	9.29	1.90	4.5
1997	8.15	4.45	13.07	8.29	1.80	3.6
1998	5.76	2.50	11.00	8.29	1.80	9.2
1999	4.77	5.23	7.68	2.25	1.80	0.1
2000	6.79	4.63	10.07	5.32	-	-0.6
2001	6.89	2.98	10.39	6.10	1.34	0.8
2002	7.04	4.06	9.44	6.54	1.32	4.0
2003	7.24	3.17	10.34	6.57	1.47	3.0
2004	7.70	3.5	10.2	7.5	1.44	9.5

Source: Statistic Year Book (2004), Government Report.

Compared to the period before the reform, the GDP structure shows a significant shift from agriculture-based to industry-based economy. The share of agriculture reduces from 38.7 per cent (1990) to 21.8 per cent (2003),

while those of industry and construction have increased from 22.7 per cent to about 40 per cent in the same period. However, a large part of labour force is still in agriculture sector as shown in table 3.

Table C.2 GDP structure by economic sector (current price)

	1990	1995	2000	2001	2002	2003
	100.0	100.0	100.0	100.0	100.0	100.0
	%	%	%	%	%	%
Area I: Agriculture, Forestry, Fisheries	38.74	27.18	24.53	23.24	22.99	21.80
Area II: Industry and Construction	22.67	28.76	36.73	38.13	38.55	39.97
Area III: Services	38.59	44.06	38.73	38.63	38.46	38.23

Table C.3 Labour structure according to economic structure of Viet Nam

	Agriculture	Industry	Services
	%	%	%
Viet Nam	67.2	12.5	20.3

Source: Statistics Year book (2002), Statistics Publishing House (2003), pp.41.

In the economic structure of the country, the private and FDI sectors have taken a continuously increased proportion. Investment from FDI sector and from private sector respectively accounts for about 30 per cent and 20 per cent of social investment. Investment from the public sector reduces significantly, accounting for about 50 per cent of the total social investment.

In the process of economic development, Viet Nam has been maintaining a relative stable macro economy. The poverty level has also considerably declined. According to the international standard, Viet Nam's poverty rate reduced from 58.1 per cent in 1993 to 37.4 per cent in 1998 (on average reduction of 4.14 per cent/p.a), and 28.9 per cent in 2002 (on average reduction of 2.1 per cent/p.a). This is a great success of the national strategy on anti-poverty.

Table C.4 Poverty in Viet Nam (poverty rate is calculated in percentage of population)

	1993	1998	2002
	%	%	%
National level	58.1	37.4	28.9
Northern mountainous area	81.5	64.2	43.9
Red river delta	62.7	29.3	22.4
Northern Central Coast	74.5	48.1	43.9
Southern Central Coast	47.2	34.5	25.8
Tay Nguyen	70.0	52.4	51.8
South East Region	37.0	12.2	10.6
Mekong Delta	47.1	36.9	23.4

Source: Viet Nam Development Report (2004), Poverty. Joint Donor Report to the Viet Nam Consultative Group Meeting, Hanoi, December 2-3, 2003.

2. Please comment on Viet Nam's progress in meeting the Bogor goals to date, major successes and mistakes, areas of potential improvement and concrete future plans to achieve the Bogor goals by 2020.

Answer:

Since Viet Nam's accession to APEC in 1998, Viet Nam has actively carried out a lot of measures in accordance with the Osaka Action Agenda (OAA) to achieve the Bogor goals on trade and investment liberalization and facilitation, other regional economic integration programs as well as multilateral and bilateral cooperation programs. Viet Nam has made significant progress in a numbers of areas with the reduction of tariff and non-tariff measures, facilitation and promotion of investment, enhancement of intellectual property rights, improvement of standards management, simplification of custom procedures, improvement of competition policies and deregulation and facilitation of mobility of business people.

For tariff, Viet Nam has made major achievements towards the improvement of its tariff system such as issuing Export - Import Nomenclature and MFN Tariff in accordance with the ASEAN Harmonized Tariff Nomenclature (AHTN). In 2004, Viet Nam issued the Preferential Tariff CEPT/AFTA Scheme for the 2003-2006 period, in which all items in the Temporary Exclusion List (TEL) have been transferred to the Inclusion List (IL) with 74 per cent of the tariff lines ranged between 0-5 per cent. Viet Nam has also submitted its 4th Offer on tariff during its accession to the WTO, the average tariff accordingly will be reduced to about 18 per cent, which is lower than current applied rate.

With regard to non-tariff measures, Viet Nam has significantly reduced non-tariff measures. Viet Nam has removed regulations on export through designated enterprises for almost all products. Non-tariff measures which are inconsistent with WTO are being adjusted and will be minimized upon Viet Nam's accession to WTO.

With regard to other trade and investment policy related areas, Viet Nam has been implementing comprehensive reform programs towards more deregulated, transparent and efficient management system and procedures and creating equal and favourable business environment for foreign and

domestic enterprises. Management content has also been gradually adjusted to be in accordance with international practices, especially those of WTO and APEC.

In the coming time Viet Nam will continue to adjust its policies in accordance with international and regional standard and good practices, enhance policy implementation capacity of its public servants and reduce tariff and non-tariff measures in accordance with multilateral and regional integration programs. Viet Nam believes that the economy is on track toward the APEC's goals of trade and investment liberalization.

3. What have been the main changes in Viet Nam's trade and investment regime since the last IAP was prepared. What policy initiatives are currently being planned, pursued and implemented?

Answer:

Since the last update of IAP in June 2004, Viet Nam has made the following changes to its trade and investment regime:

Trade regime: The trade regime of Viet Nam has been adjusted according to its accession roadmap to the WTO. The National Assembly of Viet Nam has endorsed the legislative formulation program in 2005, which includes a number of laws concerning the implementation of international trade and investment commitments. Changes to be made upon Viet Nam's accession to the WTO include expanding trading rights, reducing inappropriate non-tariff measures, reducing tariff and opening its service market.

Investment regime:

Recent improvements made include:

- Diversifying foreign investment forms, introducing new channel to attract FDI through the issuance of the Government's Decree on experimenting the transfer of some foreign-invested enterprises into the form of joint-stock companies.
- Continuing to remove the dual price system by committing to removing price discrimination on electricity used in production since 2005.
- Improving and enhancing the transparency of the legal system on FDI, specifically the formulation of the common Law on Investment, which is

applied for both foreign and domestic investment and the Law on Enterprises applied for enterprises of all kind of economic components.

- Continuing to strengthen and expand the multilateral legal framework on investment with the signing of the Protocol on the Amendment of the Framework Agreement on ASEAN Investment Area; participating in the Framework Agreement on Comprehensive economic cooperation between ASEAN and China and similar agreements with Japan, India and actively implementing action plans on investment liberalization and facilitation within the APEC and ASEM framework.

Measures to improve investment policies in the coming time:

- Continuing to simplify investment procedures and enhance transparency of the legal system and to empowering local authorities and management boards of industrial zones with the rights to grant investment licences.
 - Issuing a Decree on the management and encouragement of investment funds' activities in Viet Nam.
 - Gradually reducing and removing trade related investment measures, which are inconsistent with WTO requirements.
 - Continuing to negotiate and sign Agreements on Investment Protection and Encouragement and the Agreements on Double Taxation Avoidance with other economies.
4. Please provide information on the regional trade agreements that Viet Nam has concluded or that are under negotiation.

Answer:

Up to now, Viet Nam has not engaged in any bilateral Free Trade Agreement (FTAs). However, Viet Nam has participated in ASEAN members FTAs or closer economic partnership (CEP) between ASEAN and China (AC-FTA), ASEAN-India, ASEAN-Korea, AFTA-CER (including Australia and New Zealand) and ASEAN-Japan.

With regard to the AC-FTA, the Leaders of two sides have signed a Framework Agreement on Comprehensive Economic Cooperation on ACFTA on 4th November 2002. The two sides just concluded the Agreement on Trade in Goods and are negotiating agreements in the remaining sectors.

ASEAN also concluded the Framework Agreements on Comprehensive Economic Partnership with Japan and India in October 2003. The two sides

are now accelerating negotiations on specific sectors under these Agreements.

The study group on FTA between ASEAN and the Republic of Korea has also completed its feasibility study and will soon submit it to the Leaders of the two sides for consideration and approval.

Concerning the AFTA-CER between ASEAN and Australia and New Zealand, Leaders of the two sides also agreed to speed up the negotiation process for conclusion of the agreement at the soonest.

5. The Bilateral Trade Agreement between Viet Nam and the United States has triggered a major process of legislative and institutional change. Please comment on progress towards implementing the changes called for in the agreement, and on how they contribute towards meeting the Bogor goals.

Answer:

Right after the BTA came into force, the Prime Minister of Viet Nam has promulgated an “*Action Plan to Implement the VN-US BTA*”. The Action Plan assigns tasks to line Ministries and relevant authorities to disseminate the content of the agreement to business community and public at large and to review legal documents to ensure they are in line with the implementation requirements of the agreements as well as to speed up the progress of market opening.

During the last 3 years of BTA’s implementation, many legal documents have been revised, supplemented as well as promulgated such as Ordinance on Customs, Law on Assurance, Ordinance on MFN and NT, Ordinance on Safeguard Measures and Ordinance on Anti-Dumping and Countervailing Measures accompanied with guiding documents.

The process of revising the updating the current legislative system to implement the BTA’s commitments has been certainly creating favourable conditions for the improvement of Vietnamese business and investment environment as well as considerably contributing to the implementation of the APEC’s Bogor goals.

6. Viet Nam is now at a key stage in its process of accession to the World Trade Organization. What are the main legislative, institutional and procedural changes that compliance with WTO agreements will require? How does Viet

Nam plan to address the sequencing and scheduling of these changes, and to fit them in with other reform priorities?

Answer:

Viet Nam has decided to apply for WTO membership with a view to expanding its economic, trade and investment ties with other WTO members, reflecting a firm resolve to continue the process of integration of Viet Nam's economy into the world trading system. Viet Nam has considered WTO's principles as the basis for its trade policies and has been revising its legislation to adapt gradually to the rules and principles of the WTO.

Viet Nam concluded the 9th Working Party on WTO accession negotiation, as well as bilateral negotiations with the E.U, Singapore, Cuba, Chile, Argentina and Brazil. Negotiations with other partners are also accelerated. Internal conditions to implement the WTO agreements have also been prepared. Particularly, Viet Nam has accomplished the Legislative Action Plan to implement WTO agreements. Accordingly, the Government of Viet Nam is going to submit to the National Assembly/Standing Committee of the National Assembly approximately 30 new legal documents for the year 2005. These legal documents range from general laws and policies to specific rules and regulations such as monetary and fiscal policies, trade in goods, trade in services, CVA, TRIPs, TBT, foreign exchange and payment and investment policies etc.

The process of building these legal documents should comply with the requirements and regulations of the Law on the Promulgation of Legal Documents promulgated on 12 November 1996 and the Law on the amendment to and supplementation of several articles of this Law approved by the National Assembly on 16 December 2002, which ensure the transparency and fairness in issuing legislative documents. From 2002 until September 2004, Viet Nam has promulgated 38 legal documents in various fields relating to WTO requirements.

7. In recent years Viet Nam has taken important steps to recognise and promote the role of the private sector. Please comment on progress in improving the environment for development of the private sector. What challenges remain to be addressed? What steps are being taken to further remove disparities in treatment of private enterprises relative to state-owned enterprises? How

might these impact on the scope for the private sector to engage with foreign partners?

Answer:

Along with economic reform process and the implementation of the policy to develop a multi-sector economy, the private sector of Viet Nam has increasingly enhanced their position and role in the new economic environment. During the last five years, thanks to the implementation of the Law on enterprises and the Law on Domestic Investment Promotion as well as other supporting policies, the private sector has developed very fast in terms of quantity, investment capital as well as scope of activities.

Till March 2004, the number of newly registered enterprises has increased very fast nationwide, bringing the total number of enterprises currently operating under the Law on Enterprises up to 147, 311 and nearly 2.6 million business households. The total number of employers in this sector mount up to more than 7 million.

Though the private sector has developed quite fast, much left to be done in order to address typical difficulties of a new sector, which contains mostly small and medium-sized enterprises. Major difficulties and challenges include: investment capital shortage, small production scale, backward technology, weak management capacity, difficulties in accessing export market as they are new comers, lack of information on foreign market and international rules, etc.

Along with supporting policies to help the private sector address their internal difficulties, Viet Nam is promoting a number of measures to further improve business environment for the private sector, specifically:

- To review and abolish unnecessary business licenses;
- To link business registration authorities via electronic means (intranet) so as to well manage business registration nation-wide;
- To further reform business registration procedures, especially to reduce the period of registration for stamp, tax code and customs code;
- To draft a common law on enterprise applied for all economic sectors; and
- To issue a Law on Audit which are obliged to all economic sectors and promote the use of audit results.

8. Viet Nam's program of state enterprise reform has not progressed as quickly as the Government expected. What steps are being taken to accelerate the program? Are there plans to allow greater participation of foreign investors in the processes of equitisation and privatisation of state enterprises?

Answer:

Taking into account the difficult and complicated nature of reforming SOEs, the Government of Viet Nam has taken a lot of measures to facilitate and accelerate the implementation of the reform program. One of important activities recently is to improve legal basis for the reform. Specifically, the Government, among other things, promulgated the following key documents:

- Decree No 153/2004/ND-CP dated 9 October 2004 on the management of State corporations;
- Decision of the Prime Minister No 155/2004/QD-TTg dated 24 August 2004 on criteria of classifying SOEs and associated companies;
- Decree No 180/2004/ND-CP dated 28 October 2004 on the establishment, restructuring and dissolution of SOEs; and
- Decree No 187/2004/ND-CP dated 16 November 2004 on the transfer of SOEs into joint-stock companies, which replace the Decree No 64/2002/ND-CP.

Other documents such as the Decree on the implementation rights and obligations of owners of SOEs are being drafted in order to specify the rights of State agencies which exercise the ownership of SOEs

At present, the Government is considering the completion of the legal framework to allow wider participation of foreign investors in the equitization process. Specifically, the Decision of the Prime Minister No 155/2004/QD-TTg dated 24 August 2004 on criteria of classifying SOEs and associated companies has narrowed down types of SOEs, where capital shall be owned fully by the State and expanded the scope of state companies subject to equitization, creating first steps for foreign and domestic investors to buy shares of different types companies. The Degree No 187/2004/ND-CP on transferring state companies into joint-stock companies has also renewed the share-selling formality of equitized enterprises to include 2 forms: bidding through stock exchange center and bidding through intermediary financial organizations.

Apart from issuing legal documents on SOEs, the Government has carried out a number of measures to improve the efficiency of the implementation of the master plan on SOEs reform. Government agencies have also exercised close coordination among each other in order to ensure the smooth implementation of the reform and at the same time settle any difficulties which may arise from the reform process.

9. Much of the agenda of change that Viet Nam will undertake to achieve the Bogor goals matches and reinforces the ongoing transition to a market economy under socialist management. Viet Nam has emphasized that public administration reform (PAR) is a central element of reconfiguring the role of government. Please provide an update on the PAR process, and comment on how it interacts with the process of achieving the Bogor goals.

Answer:

In 2004 the Government of Viet Nam has widely implemented the “Comprehensive public administration reform in period 2001-2010”. However, compared to the requirements of the reform as well as the socio-economic development, public administration is slow, less effective, inconsistent. The relation between administrative agencies - public and business needs to be further improved to overcome current weaknesses and ensure efficiency.

Reform has been conducted comprehensively and has gained positive outcomes in the 4 following areas:

Institutional reform: Viet Nam has seen many good and clear results in this area. Many important legislation documents have been published. In general, the newly adopted legislation shows the Government’s willingness to complete its institutional framework and policies to push forward decentralization. This is clearly reflected through the Law on State Budget, Law on Land, Law on the Organization of People’s council and People’s committee, decree on decentralizing the management of state agencies; administration costs and financial mechanism for profitable administrative agencies. The separation of public governance with the public services supply is clearly shown in the amended Ordinance on Public servant.

Administrative reform: Viet Nam has adjusted the functions of the Government, Ministries, Agencies and local authorities based on market

consideration. The structures of Government and local authorities have been simplified, specifically there remain only 38 contacts at the government level, 20-24 contacts at provincial level, 10-12 contacts at district level; 56 contacts in the inter-ministerial agencies at the central level, 15-20 contacts from the original 80-100 contacts at provincial level. Deeper decentralization has been realized.

Capacity building and develop public servants: Viet Nam has issued guiding circulars for 5 Decrees relating to the amended Ordinance on Public Servant approved the salary reform project as well as training projection capacity building for government officials in the period of 2001-2005.

Public Administration Reform: Viet Nam has implemented new budget process and, increased decentralization. Central and provincial organizations continue to implement the Decision No 192 of the Prime Minister on expanding experimental staff recruitment and administrative management fee. Decree 10/2002/ND-CP on self-financing of profitable administrative agencies is being carried out showing positive results. 520/797 entities at central level and 6745/13641 entities at provincial level have been implementing this mechanism.

Seven administrative reform programs have been implemented and monitored by the steering committees and its secretariats with financial support from state budget. The steering committees have reported monthly to the Government on implementation process of reform programs.

In general, administration reform programme in Viet Nam has been thoroughly and actively carried out at all levels in order to reduce the management fee, thus helping the legal system of Viet Nam become more complete, understandable and easy to implement. It can be said that the public administration reform program of Viet Nam directly contributes to improve business environment, facilitating trade and investment and by that contributing to the implementation of Osaka Action Plan and the APEC's Bogor Goal.

Chapter 1: Tariffs

APEC Review Team

1.1 What progress has Viet Nam made in reducing the level and dispersion of tariff rates?

Answer:

In 1998, Viet Nam's Preferential Import Tariff Nomenclature comprised of 97 chapters and 3280 tariff lines with 25 tariff rates. It was built upon the classification of imported and exported goods stipulated in HS 1996. Viet Nam has reduced the number of tariff rates to 17.

Viet Nam acknowledges that a neutral import tariff nomenclature should only possess a minimum dispersion. However, as Viet Nam is still a developing country, at the transitional period and characterized by a changing economic structure, it is not possible for Viet Nam to narrow down tariff dispersion in the short and medium term.

1.2 A large proportion of Viet Nam's tariff lines are zero-rated, but over 30 per cent have rates of over 20 per cent? What plans does Viet Nam have to phase down these high rates?

Answer:

Thirty per cent of the number of tariff lines with tariff rate of above 20 per cent are mainly levied on items whose domestic production Viet Nam is now focusing on. This is aimed at establishing the domestic production which is compatible with the nation's comparative advantages. It is therefore necessary to maintain the tariff rates of those tariff lines.

Viet Nam is now mapping plans to enhance domestic production of certain products in specific sectors while taking into account international experiences and endeavouring to be in line with the process of international economic integration. This will facilitate the reduction of both the number of tariff rates and the number of tariff lines with high tariff rates.

1.3 Does Viet Nam plan to make the tariff schedule available in electronic format to traders?

Answer:

Viet Nam has entered into 01 regional preferential tariff arrangement, namely AFTA and signed border trade facilitation arrangements with China and Laos. Moreover, Viet Nam has signed MFN agreements with more than 70 countries and territories.

- 1.4 Please list all the agreements under which Viet Nam provides tariff preferences to imports.

Answer:

With a view to establishing the ASEAN Economic Community (AEC), Heads of State of ASEAN, in November 2004, agreed to adopt the roadmap to fast track the integration applicable to 11 prioritized sectors: (1) woods and wood products; (2) automobile; (3) rubber products; (4) garment; (5) agriculture products; (6) seafood; (7) electronics; (8) information technology; (9) health care; (10) air transportation and (11) tourism. Viet Nam, accordingly, will accelerate the reduction of tariff rate by 0% by 2012 (3 years earlier than previously scheduled) for most products in the above mentioned sectors. This acceleration of integration process will help ASEAN economies have closer ties and linkages. For its part, Viet Nam's involvement in the above-mentioned action will help promote exportation of products that Viet Nam has comparative advantage such as agriculture and wood products etc. Meanwhile, this also forces local enterprises to elevate their competitiveness in order to compete with foreign exporters.

- 1.5 Please comment on the implication for Viet Nam's tariff of the recent ASEAN commitment to fast track the integration towards the ASEAN Economic Community (AEC).

Answer:

Viet Nam has uploaded its Tariff Nomenclature by virtue of the Decision No. 110/2004/QĐ-BTC dated 25/7/2003 and other decisions providing amendments and supplements for the said Decision at the www.mof.gov.vn. Import tariff related information is provided not only for Vietnamese enterprises but also for foreign ones who are and will have investment and trade ties with Viet Nam.

With regard to APEC, Viet Nam announced at SOM II/2004 in Chile to provide its Tariff Nomenclature for APEC Secretariat to upload in the tariff database and actually uploaded its tariff database in September 2004.

ABAC Japan

- 1.6 ABAC recommends that Viet Nam make a concerted effort to reduce tariff rates progressively and to establish an appropriate tariff classification regime, in accordance with the other ASEAN member countries.
- 1.7 Viet Nam is strongly encouraged to eliminate or lower the import tariff rate, which is contingent upon products' local content rates in order to give preferential support for local manufacturers.

Chapter 2: Non-Tariff Measures

APEC Review Team

- 2.1 Viet Nam has made significant progress in reducing some forms of Non-Tariff Measures (NTMs), particularly quantitative restrictions on imports. What new NTMs have been introduced, and how significant are the remaining measures with respect to meeting the Bogor goals?

Answer:

Viet Nam has not introduced any new non-tariff measures (NTMs).

The current NTMs have been adjusted and reduced. The application of NTMs is adjusted so as to ensure product's quality, standards and security and to protect the public's health and environment. So irrelevant NTMs such as import surcharges, minimum tariff valuation etc. have been under review to be eliminated upon Viet Nam's accession to the WTO.

- 2.2 What is the rationale for Viet Nam's prohibition of imports of tobacco products and of used consumer goods and used materials and equipment? Is there a plan to replace these prohibitions with alternative forms of regulation?

Answer:

At present, Viet Nam prohibits only the importation of cigarettes and cigars. Viet Nam advocates to limit the consumption of tobacco products in order to protect public's health. Viet Nam has recently become one of signatories to the Framework on Control of Tobacco Consumption (FCTC), adopted by the World Health Organization on May 25th 2003 with a view to reducing the swelling death toll by tobacco-related diseases. Local tobacco manufacturers are subject to regulations on the limitation of tobacco production and distribution.

Viet Nam's prohibition and limitation of imports of used consumer goods are also to protect environment, the public's health and safety. Viet Nam has not yet planned to replace these measures since with its current development level, Viet Nam is not able to replace prohibition measures with technical ones.

- 2.3 What plans does Viet Nam have to further reduce the coverage of its system of discretionary import licensing?

Answer:

The discretionary import licensing is only applied to sugar. However, Viet Nam will shift to apply tariff quota for sugar upon its accession to WTO.

- 2.4 While entry into international trading activities has been significantly liberalised, many enterprises, including foreign invested enterprises, remain constrained as to the nature of goods that they may import, which is tied to the specification of the activities in which the enterprise is engage. Does Viet Nam have plans to lift these constraints to increase competition in importing?

Answer:

Within the framework of WTO accession negotiation, Viet Nam has already announced its plan on the expansion of the trading rights to foreign-invested enterprises. It is expected that upon the accession, individuals and firms from WTO members are allowed to joint Vietnamese partners to import or export items which do not fall into the category of trading right restriction.

- 2.5 What are Viet Nam's plans to eliminate import surcharges?

Answer:

During the last few year, import surcharges on imported goods have been step by step eliminated. In October 2004, Viet Nam decided to eliminate import surcharge on PVC and maintain it only for tube welded steel.

- 2.6 Some of Viet Nam's non-tariff measures serve the pursuit of regulatory objectives which are not specific to the origin (domestic or international) of the goods and services. Does Viet Nam have a plan to introduce regulatory instruments that treat imported and locally produced goods and services the same?

Answer:

In 2002, the Ordinance on Most-Favoured Nations and National Treatment was adopted by the Standing Committee of National Assembly on the basis of equality and mutual benefit in international trade. Viet Nam will abide by its rules on MFN and NT as provided in the Ordinance and in international treaties that Viet Nam has signed or entered into.

ABAC Japan

- 2.7 ABAC recommends that Viet Nam reduce its non-tariff measures, such as import restrictions on used machinery, which have been increasing the initial cost of investment in plants and equipment, by ensuring more flexible implementation depending on the type of the machinery.

Chapter 3: Services

APEC Review Team

- 3.1 In which sectors has Viet Nam undergone liberalization which may affect market access, national treatment or most-favoured nation (MFN) status for foreign service providers? How significant are these changes in the context of achieving the Bogor goals of free and open trade and investment? List those sectors that had total or partial restrictions in 1998 and compare that to the information for 2004.

ABAC Japan

3.2 ABAC strongly encourages Viet Nam to end its discrimination between domestic and foreign economic entities, regarding both private and public charges and fees, including air fare, rail fare, harbour fees, and hotel charges, as well as public fees such as those for electricity and water supply.

3 (a:1): Business Services: Legal

APEC Review Team

3.3 Please clarify the conditions under which foreign law firms may offer advice on Vietnamese law.

Answer:

Viet Nam has adopted the Decree No. 87/2003/ND-CP, dated July 22nd 2003 regulating the operation of foreign law firms. This Decree allows a broader scope of operation of foreign law firms in Viet Nam, specifically expands the scope of market access to legal service for foreign law firms and foreign lawyers operating in Viet Nam. Foreign law organizations, accordingly, are allowed to provide legal consultancy on Vietnamese laws under the following conditions:

- a) Hiring Vietnamese lawyers to work in their organizations; and
- b) Foreign lawyers working in those organizations should obtain law degrees issued by a Vietnamese Law University and shall meet all requirements as those applied to Vietnamese lawyers.

3 (b: 3): Communications Services – Telecommunications

APEC Review Team

3.3 Please comment on Viet Nam's plans to allow foreign investors to participate in telecommunication services other than through Business Cooperation Contracts.

Australia

3.4 Australia welcomes Viet Nam's progress in telecommunications, especially reducing differences in fees for foreign and domestic investors, as well as

progress in e-commerce and making information available online. Australia also requests more information on Viet Nam's plans for liberalisation and its preparations for WTO accession.

Answer:

Foreign Direct Investment Policy in terms of Telecommunications

Viet Nam's Law on Foreign Direct Investment allows the establishment of public telecom networks, the provision of telecom services in form of BCC – Business Cooperation Contracts (item IV. on the List of investment areas with conditionality stipulated in the Decree 27/2003/NĐ-CP dated 19/3/2003 amends and supplements some provisions of the Decree 24/2000/NĐ-CP dated 31/7/2000 which provides guidelines for the implementation of Viet Nam's Law on Foreign Direct Investment).

Viet Nam allows not only BCC but also joint ventures with the 49%-50% foreign capital in telecom services to operate in line with the schedule for each specific service agreed in bilateral agreements.

During the process of WTO accession negotiation, Viet Nam has been expanding its scope and level of the above-mentioned bilateral commitments for all WTO members. Viet Nam's commitments in market access to telecom services prove to be courageous versus the reality of liberalization of telecom services in the world. Viet Nam wishes to negotiate on market access of the telecom services on the basis of Article IV and XIX of the GATS which encourage the participation of developing countries and gradual liberalization.

To create a more favorable legal environment for competition and facilitate the implementation of commitments on market access, the Ministry of Post and Communication has developed and submitted for approval the following legal documents: Ordinance on Posts and Communications (2002), Decree providing guidelines on the implementation of the Ordinance of Radio Frequency (2004), Decree providing guidelines on the implementation of the Ordinance of Telecommunications (2004) and other related legal documents regulating activities in the telecom services. These documents cover key issues in telecom business and administration such as internet connection, pricing, numbering, inspection and punishment of violators, dispute settlement etc. Moreover, the Ministry of Posts and Communications

has already submitted for approval and made public its strategy and comprehensive plan of long-term development of the sector. This shows that the operation/performance and management of telecom sector in recent years have been increasingly transparent, predictable and competition inductive.

3 (e): Educational Services

APEC Review Team

3.5 Please comment on the conditions under which foreign investment is allowed in education services in Viet Nam, and the progress made in establishing educational institutions with foreign investment.

Answer:

- a) Foreign invested projects in the field of education must fulfill the following requirements:
- Basic information on investors
 - Training level, planned field of training
 - Planned invested location
 - Certificate of Land allocation, land rental of the provincial authority (or contract of infrastructure rental)
 - Scope of the project to be invested (capital, quantity of pupils, students)
 - Information on the infrastructure to be invested (equipment, schools, classes, etc)
 - Quantity and standard of teachers
 - Planned syllabus/training programmes
 - Eligibility and enrollment mechanism
 - Degrees, certificates to be issued to trainees
 - Operation time of the educational institution with foreign investment
 - Operation mechanism of the institute
 - Business Cooperation Contract (if available)
- b) In case of foreign invested project in the education services, the investment licensing process is based on the Law on Foreign Investment and relevant legislation. This procedure will be regulated in details by the MPI and education and training projects are all listed in Group A. The project

document will be submitted to MPI for consideration and assessment under the current regulations.

United States

3.6 The IAP states that, in the year 2004, it is planned that the Ministry of Education and Training will complete and submit to the Prime Minister the Decision on criteria and conditions to establish and open schools with foreign capital in Viet Nam. Please update us on the status of this initiative.

Answer:

Recently, the Ministry of Education and Training (MOET) together with the Ministry of Planning and Investment (MPI) has started drafting the inter-ministerial circular on a number of articles under the Government Decree 06/2000/ND-CP dated 06/03/2000 on investment cooperation with foreign partners in education and training in Viet Nam. This circular is expected to provide concrete guidelines on the implementation of Decree 06/2000/ND-CP as well as detailed conditions with foreign invested projects in the field of education and training at different levels.

MPI had submitted final recommendations on the 10th draft for MOET to submit to the two Ministries for approval and adoption. The mentioned circular is expected to be promulgated in the first quarter of 2005.

3 (d) Distribution Services

APEC Review Team

3.3 Please comment on the plans to revise the Commercial Law, and how this may impact on the extension of rights of foreign enterprises to engage in international trade and distribution.

Answer:

The amendment of Commerce Law is aimed at providing a more favorable legal framework for enterprises participating in commercial activities in Viet Nam.

The current draft Law expands the scope of commercial presence of foreign enterprises in compliance with Viet Nam's international commitments. In its

offer on services submitted to the WTO, Viet Nam provided commitments on market access in distribution services for WTO members.

United States

3.4 US direct sellers have had some problems regarding certain definitions, such as that of a pharmaceutical and that of a nutritional supplement. Could Viet Nam please comment on its plans for making more transparent the factors for considering a retail distribution network?

2 (g): Financial Services

APEC Review Team

3.1 Please describe the changes introduced with the amendments to the Law on Credit Institutions that came into effect in October 2004. How do they affect the capacity of foreign banks to establish a presence in the Vietnamese market?

Answer:

The Law on amending Credit Organization Law No. 20/2004/ QH11 issued on 15 June 2004 and came into effect in October 1st 2004 provides foreign credit institutions with more choices to set up their commercial presence in line with their scope of operation in Viet Nam, except for previously set-up commercial presence.

3.2 What are the main exceptions to MFN and national treatment of foreign service providers in the financial sector? Does Viet Nam have a framework for reducing the scope of these exceptions?

Answer:

In terms of MFN and NT exemptions:

The application MFN and NT exemption is applied pursuant to the Ordinance on MFN and NT that Viet Nam has issued. If there exist different provisions stipulated in international treaties that Viet Nam has signed up and entered into, then those provisions are applied.

In terms of national treatment

With regard to banking services: There are some restrictions on the scope of activities and expansion of network of branches of foreign banks and joint-venture banks operating in Viet Nam.

With regard to insurance services: Viet Nam has been applying non-discriminatory policies towards both foreign-invested insurance companies and domestic ones. However, to ensure prudential requirement for a sound development of the insurance sector in particular and that of the financial system in general, Viet Nam still reserves its right to pursue appropriate policies which meet the market's development needs. This reservation still ensures the compliance and consistency with international treaties that Viet Nam has signed or entered into.

Viet Nam is now in the process of negotiation to join the WTO, exemption of MFN and restrictions of national treatment will be gradually removed in compliance with Viet Nam's commitments upon its accession.

- 3.3 Please comment on the content and intent of the regulations dealing with insurance related licensing that the 2004 IAP said were planned for promulgation in 2004. How do they affect the entry of foreign companies into the insurance market?

Answer:

Regulations on business licensing in insurance sector are stipulated in the Law on Insurance, the Decree No. 42/2001/NĐ-CP, dated 1/8/2001 which provides guidelines on the implementation of the said Law and the Circular No. 71/2001/TT-BTC dated 28/8/2001.

On October 19th 2004, the Ministry of Finance issued the Circular No. 98/2004/NĐ-CP providing guidelines on the implementation of Decree No. 42/2001/NĐ-CP. The latter was introduced to replace the Circular No. 71/2001/TT-BTC and provides more specific regulations on the establishment and operation of insurance companies, insurance brokers, representative office of foreign insurance companies and insurance brokers operating in Viet Nam. This circular also ensures transparency towards both Vietnamese companies and foreign ones who have aspiration to invest and operate in Viet Nam.

Foreign insurance companies who wish to operate in Viet Nam are subject to the Law on Insurance and bilateral/multilateral agreements that Viet Nam has signed up or entered into.

Chapter 4: Investment

APEC Review Team

- 4.1 Please comment on the extent to which Viet Nam has applied MFN and national treatment for investment. For which sectors are they not applied, and does Viet Nam have plans to extend provision to these sectors?

Answer:

Vietnamese laws do not provide any discriminatory treatment among foreign investors; all of foreign investors in Viet Nam are equally treated.

The sectors in which the government of Viet Nam reserves for the provision of the national treatment (NT) include: broadcasting; producing, publishing and distributing of cultural products; investment in insurance, banking, monetary and securities brokering, and related services; mine survey and exploitation; constructing, installing, operating and maintaining telecommunication media; constructing and operating river ports, seaports and airports; goods and passenger transportation by railways, airlines, road, river; fishing and real estate.

- 4.2 Please describe progress in developing a common law on foreign and domestic investment, and please comment on the implications for foreign investors of the proposed unified enterprise law.

Answer:

Currently, the drafting committee of this common law is actively working to speed up the research works and has finished the 1st draft for the distribution to and collection of useful suggestions from investors, businesses and association of businesses, experts, researchers as well as other related stakeholders. As planned, the common law will be submitted to the National Assembly in November 2005 for its approval in April 2006.

During the drafting process of this law, foreign investors in Viet Nam have provided positive and constructive comments to the draft law. The

formulation of this law gives a clear evidence for good efforts made by the Government of Viet Nam in implementing its commitment on granting NT treatment to foreign investors.

4.3 Please describe progress in eliminating dual pricing.

Answer:

Up to now, Viet Nam has basically abolished the dual price system applied to foreign and domestic investment. All service charges like telecommunication, water supply, airfare and petrol etc. have been supplied at one unified price.

4.4 Please describe progress in eliminating trade-related investment measures that are prohibited by the WTO TRIMS agreement, including export performance and local content requirements.

Answer:

Viet Nam undertakes to eliminate trade-related investment measures that are prohibited by the WTO TRIMS agreement, including export performance and local content requirements upon its accession to the WTO.

4.5 Are there sectors that are not open to foreign investment because they are reserved for state-owned enterprises? If so, are there any plans to deregulate such sectors?

Answer:

The Law on Foreign Investment of Viet Nam stipulates that foreign investors can be licensed to invest in most sectors of the economy, except in the following sectors:

1. Projects which are prejudicial to national security, defense and public interests;
2. Projects which are detrimental to historical and cultural relics, fine customs and traditions of Viet Nam;
3. Projects which may adversely affect the ecological environment; projects for treatment of toxic wastes brought into Viet Nam from abroad;
4. Projects for production of toxic chemical or utilizing toxic agents prohibited under international treaties.

These restrictions are applied to both foreign and domestic investors without discrimination.

4.6 Please comment on the implications for foreign investors of the new Land Law and its implementing regulations.

Answer:

Vietnamese laws stipulate that the drafting agency of this new law must collect views and take into account all suggestions from all related stakeholders of that law.

In fact, all related information is broadly announced in mass media, such as television, newspapers, internet etc. during the drafting process of this law. Furthermore, responsible state agencies also held many seminars and workshops to collect the recommendations from foreign and domestic businesses. Investors have contributed important recommendations and useful suggestions to the draft law. Accordingly, all suggestions and recommendations have also been broadly made public via mass media.

4.7 What avenues are available for resolution of investment disputes? Please comment on progress towards accession to the Convention of the International Center for the Settlement of Investment Disputes.

Answer:

The Vietnamese law provides as follows:

1. Disputes between parties to a joint venture enterprise, disputes between business co-operation parties, disputes between enterprises with foreign owned capital and foreign organizations or individuals, and disputes between foreign parties to a joint venture enterprise or foreign business co-operation parties with Vietnamese economic organizations shall be firstly resolved through negotiation and conciliation between the disputing parties.

Where conciliation fails, the disputing parties may select one of the following dispute resolution alternatives:

- a) Vietnamese courts;
- b) A Vietnamese arbitration body of a foreign arbitration body or an international arbitration body;

- c) An arbitration tribunal established pursuant to the agreement of all parties.
2. Disputes between enterprises with foreign owned capital or disputes between enterprises with foreign owned capital and Vietnamese economic organizations resolved by Vietnamese arbitration organizations or by Vietnamese courts will have to follow the law of Viet Nam.
3. Disputes between foreign investors and authorized State bodies arising from BOT, BTO and BT contracts; and disputes between BOT enterprises and Vietnamese economic organizations shall be resolved in accordance with the methods agreed by the parties in the contract in accordance with regulations of the Government on investment in the form of BOT, BTO and BT contracts applicable to foreign investment in Viet Nam.
4. In addition, the bilateral agreements for the promotion and protection of investment that Viet Nam has signed also provide for the dispute mechanism between the government of Viet Nam and foreign investors. Accordingly, foreign investors to Viet Nam have the right to appoint an arbitration established pursuant to United Nations Commission on International Trade Law (UNCITRAL) or The International Settlement Center of Investment Disputes (ISCID) rules or an ad hoc arbitration appointed by two parties.

Currently, the government of Viet Nam is considering the possibility to join the ISCID Convention in the earliest time possible.

ABAC Japan

- 4.8 Viet Nam is encouraged to avoid sudden and/or frequent alteration of laws and rules that would present potential risks to foreign investors and to eliminate the tax on remittance of interest by foreign companies. The legal system and policies on foreign investment should be improved with the goal of creating a more favourable business environment for foreign investors.

Australia

- 4.9 Australia would be interested in more information as to Viet Nam's reform of its foreign investment policy as it relates to financial sector companies. Will majority shareholding be allowed?

Answer:

Viet Nam applies policies to encourage foreign investment in the field of insurance with a view to taking advantages of foreign insurance companies in terms of capital and technology. Therefore, Viet Nam especially encourages foreign insurance companies to exploit insurance professions which require a large amount of capital and new insurance professions such as agricultural insurance.

Viet Nam does not inflexibly stipulate the capital percentage of foreign partners in insurance management. Under the Article 105 of the Law on Insurance, foreign insurance companies, insurance brokers are allowed to operate in Viet Nam in the forms of joint venture, 100 per cent foreign-invested company or representative office situated in Viet Nam.

Chapter 5: Standards & Conformance

APEC Review Team

5.1 What are the main challenges that Viet Nam faces in promoting alignment of its standards with international standards and participating in international standardisation activities and Mutual Recognition Arrangements?

Answer:

5. Challengers in promoting alignment of national standards with international standards:
 - Poor awareness among enterprises with regard to standardization activities;
 - Participation of enterprises in harmonization of standards is still limited; and
 - Implementation of the harmonized standards is facing difficulties due to technology shortage, low technical management capacity (consultancy, measurement, testing and calibration).
6. Challenges in participating in international standardization activities:
 - Limited financial resources, which do not allow the participation in international activities or technical boards.
7. Challenges in participating in MRAs:

- The English capacity of standards working in this area is limited, thus refraining them from participating in debating professional issues or in the work of constructing and commenting on draft standards;
- Legalization process has not supported the implementation of the signed MRA; and
- Benefits from joining MRAs are not clearly defined.

Chapter 6: Customs Procedures

APEC Review Team

6.1 The General Department of Customs is developing a Customs Modernisation Strategy for 2005 to 2010 and a vision to 2020. Please describe how this strategy may impact on customs procedures and implementation of the Revised Kyoto Convention.

Answer:

The Viet Nam's General Department of Customs is developing a Customs Modernization Strategy for 2005 to 2010 and a vision to 2020. It is targeted to turn Viet Nam's Customs into a modern, professional/qualified and high-quality customs services supplier for public community, to be a leading agency in facilitating trade and investment, thus contributing to the country's economic growth and the State's budget with the help of hard-working and qualified customs officers.

This strategy has specific impacts on customs procedures as follows:

- Simplify and harmonize customs procedures with international standards and practices as well as recommendations stated in the Revised Kyoto Convention by introducing customs-related regulations in compliance with international treaties on customs into which Viet Nam has entered.
- Reduce to the possible minimum customs procedures by decreasing the number of documents and other items required customs declaration.
- Customs procedures are required to be transparent, predictable and consistent
- Modernize the control of cargo information by improving the system of electronic data exchange among relevant agencies.

6.2 How far has Viet Nam gone in adopting APEC standards on custom procedures? What are the major problems Viet Nam has encountered in improving its customs procedures?

Answer:

The Viet Nam Customs has been actively participated in the APEC Sub Committee on Customs Procedures and is now applying the following programs:

- Simplify customs procedures, reduce the number of required documents;
- Put risk-management measures in practice to inspect cargo;
- Apply GATT valuation to calculate taxes;
- Implement pilot electronic customs declaration activities;
- Make public legal documents on customs with the help of mass media and websites; and
- Set up hot lines to address problems raised by enterprises.

Existing problems:

- Poor infrastructure;
- Poor qualification of customs officers; and
- Unsynchronized legal documents.

6.3 Please comment on progress with recent initiatives to expedite cargo processing.

Answer:

Viet Nam's Customs has made progress in reducing processing time, specifically:

- For exported goods: 1-2 hours to complete customs declaration; and
- For imported goods: 3 hours to 01 day to complete customs declaration.

6.4 Please comment on progress with implementation of the WTO Agreement on Customs Valuation, as called for by the Bilateral Trade Agreement with the United States.

Answer:

Viet Nam is now in the process of WTO negotiation and taking efforts to implement Customs Valuation Agreement of GATT/WTO. Specifically, the Decree No. 60/2002/NĐ-CP dated 6/6/2002 by the Government and the Circular 118/2003/TT/BTC dated 8/12/2003 by the Ministry of Finance were adopted to provide guiding principles on the implementation of the said Agreement.

Viet Nam has implemented Agreements on imported goods from 52 countries and territories which include the U.S.A., ASEAN, China and some EU member countries. Major partners of Viet Nam such as Japan, China, Korea, Taiwan, some EU member countries etc. are also included in the above mentioned agreements.

- 6.5 Please comment on the adoption of risk management in Customs operation, and progress in adoption of post-clearance audit procedures.

Answer:

With regard to risk management in customs operations: As first step, Viet Nam's Customs has applied the risk management technology to identify important batch of goods needed to be carefully checked. Article 29 of the Law on Customs provides the following criteria as a basis for deciding the checking the method for cargo checking: Cargo owner's history of obeying the law, the policy of import-export control of the government; the specification, type and origin of the import-export merchandises; customs documents as well as other necessary information related to the merchandise.

- 6.6 What plans does Viet Nam have to enable: the operation of Customs brokers; pre-arrival classification and clearance; and electronic payment of duties and charges?

Answer:

In terms of the operation of enterprises performing customs declaration services: Currently, the General Department of Customs of Viet Nam is drafting a Government Decree providing conditions for the registration and operation of enterprises performing customs declaration services.

ABAC Japan

- 6.7 ABAC strongly encourages Viet Nam to enhance the transparency and efficiency of its customs procedures, with the aim of simplifying complicated, unclear, and time-consuming customs clearance procedures, the implementation of which often varies from officer to officer.
- 6.8 Viet Nam is encouraged to simplify and specify details regarding requirements for certificates of origin. Officially issued certificates of origin should be accepted by the customs authority, and any queries concerning certificates should be addressed to the organisation issuing them. In addition, the content of certificates of origin should be arranged and/or determined via WCO or WTO process, rather than being decided arbitrarily by the national government.

Australia

- 6.9 Does Viet Nam Customs have time frames for completing appeals matters?
- 6.10 What processes are in place to enforce breaches of the Customs Service Code of Conduct?

Other economies' questions

- 6.11 The smuggling of consumer goods from neighboring countries is common and this has become an obstacle to trade and foreign investment. Can you please explain any policies you might have to control smuggling?

Answer:

At present, the anti-smuggling policies of Viet Nam are focusing on the following aspects:

- High import duty is one of main factors for the stimulation of smuggling, the Vietnamese government has, therefore revised the tax policy in parallel with the implementation of its commitments in AFTA (ASEAN) and WTO accession negotiations etc. This situation has contributed considerably to reduce smuggling;
- Due to low living standards of some groups of inhabitants in rural and border areas these people join hands with the smugglers. The Vietnamese government has issued many policies for hunger elimination and poverty

reduction in these areas as well as implemented some propaganda programs to improve local people's understanding about Vietnamese policies. These programs have made them well obey the law. The Vietnamese Customs have also actively participated in these programs.

- Due to particular geographical characteristics of Viet Nam, the control of smuggling encounters many difficulties while the competence of the Vietnamese Customs is still limited. Therefore, Vietnamese customs has to cooperate with other forces, such as border police, economic police, maritime police, and market control force in the struggle against smuggling.
- The General Department of Customs regularly supervises and instructs local customs authorities in the process of fighting smuggling with regard to important goods and monitors routes where smugglers usually use for the transportation of smuggled merchandises. In addition, Vietnamese customs has also applied professional measures to investigate and discover possible smuggling.
- Furthermore, the Vietnamese Customs has been actively cooperating with customs of other countries as well as international law enforcement agencies to prevent and fight against smuggling.

Chapter 7: Intellectual Property Rights

APEC Review Team

7.1 Viet Nam has been very active in building the legislative basis for protection of Intellectual Property Rights (IPRs). However, the IAP states that 'in reality, the IPR enforcement system is not of high effectiveness'. Please describe plans to improve the effectiveness of the system.

Answer:

In the framework of the legislation development program in 2004, the government of Viet Nam has developed and is going to ratify the "*Project on the Enhancement of Effectiveness of IPR enforcement*", including an "*Action Plan for 2005 – 2009*" with a view to creating a systematic, appropriate and effective IPR enforcement system conforming to international standards by the end of 2009. Accordingly, the implementation measures are as follows:

- Improving the legislation system on IPR enforcement, including (i) To draft, to approve and to promulgate the Law on Intellectual Property (2004-2005); (ii) To promulgate a Decree replacing Decree No.12/1999/ND-CP dated

March 6, 1999 of the Government on Administrative Measures Against Violations in the Field of Industrial Property and other documents guiding its implementation (2004); (iii) To promulgate a Decree replacing Decree No.31/2001/ND-CP dated June 26, 2001 of the Government on Administrative Measures against Violations in the field of Culture and Information and other Documents guiding its Implementation (2004); (iv) To promulgate new legal documents guiding IPR enforcement concerning judicial procedures in IP civil and criminal cases; the procedures for market investigation and control with regard to IPRs; procedures for investigation and handling of IPR infringement in import and export activities, activities against producing, trafficking importing and exporting IPRs infringement goods 2004).

- Re-organizing and enhancing the capacity of IPR enforcement agencies by the following measures: (i) Re-assigning the duties and competence of enforcement agencies towards the centralization, establishing “one door policy” for receiving the requests for administrative actions in the domestic market (2004 and 2005); establishing a Steering Committee on Combating against IPR infringement under the direction of the Prime Minister; establishing special units in charge of IP at enforcement agencies at provincial level; studying the development of IP court; (ii) Training and building the capacity for enforcement staff (2005-2009); (iii) Developing the enforcement information system (2005-2009) and; (iv) Developing the motivation mechanism for entities, individuals for their excellent achievements in enforcement activities (2005-2009).
- Raising public awareness of IP through research, education and dissemination programs designed for different segments of the society.
- Expanding and enhancing the quality of supporting activities for IPRs enforcement activities such as IPRs information service, IPRs representative service; implementing the project to support IPRs enforcement by enterprises and establishing IPRs protection associations in the period 2005-2009.
- Conducting control and inspection campaigns on the compliance of laws and regulations and solving the infringement.

ABAC Japan

7.2 Viet Nam should make every effort to eliminate IPR infringement, including counterfeit products, piracy, and illegal copies of software products, by establishing a legal framework on IPRs as soon as possible. ABAC also requests that Viet Nam intensify its efforts to overhaul legislative provisions

on IPRs, including trademarks and industrial property, and enhance the enforcement agency's implementation capability.

- 7.3 Viet Nam is encouraged to participate in the APEC IPR Service Center scheme and establish a Center or Centers at the earliest convenience.

Chapter 8: Competition Policy

APEC Review Team

- 8.1 Please describe the intentions and main content of the recently approved Law on Competition and the Law on Electricity. Are there any activities/sectors which are exempted from the coverage of the Competition Law? If so, please give details and explain the rationale.

Answer:

8. Regarding Competition Law:

- a) Objectives of Competition Law are as follows:
- To create and pursue fair opportunities and non-discrimination in competition among organizations and individuals;
 - To protect and encourage fair competition;
 - To prevent unfair competition and activities which limit competition in the market;
 - To protect national benefits, legitimate rights and benefits of State, enterprises and consumers; and
 - To contribute to social economic development

- b) Major contents of Competition Law:

The Competition Law was passed by the 11th National Assembly, 6th Meeting on 3rd December 2004 with 6 chapters, 123 articles. Major contents of this Law focus on defining unfair competition and activities that limit competition; procedures to deal with disputes and competition cases; establishing dispute settlement bodies in Viet Nam.

- c) Exemption: The Law does not exempt any industry. However, exemptions are allowed in some specific activities such as agreement on restricting competition and economic concentration. Those exemptions are regulated similarly to those in Competition Law of other countries. For example,

Article 10 of Competition Law regulates an exemption (from prohibition) for a limited period of time if one of the following criteria is met for the purposes of reducing the product's price and bringing benefits to consumers:

- Rationalization of organizational structure, business model, improvement of the business efficiency;
- Promotion of technical and technological advancement to improve the quality of goods and services;
- Promotion of a uniform adoption of quality standards and technical norms of types of products;
- Unification of business, delivery and payment terms without any connection to prices and price factors;
- Increase of the competitiveness of medium- and small-scale enterprises; and
- Increase of the competitiveness of Vietnamese enterprises in the international market.

Article 19 of Competition Law regulates exemption for economic concentration in following cases:

- One party or more which participates in economic concentration is in risk of dissolution or bankruptcy;
- Economic concentration helps to extend exports or contributes to social – economic developments and technological advances.

The basis to regulate exemptions is the balance of benefits. Some activities (that limit competition) have positive impacts and in some cases, the benefits outweigh the losses, thus, there should be legitimate basis to approve these activities.

9. Law on Electricity:

Objectives:

- To protect the State's interests, legitimate rights and interests of organizations and individuals engaging in electricity activities and usage;
- To ensure the national power development in a sustainable and efficient manner; and
- To create a legal environment for broader participants in electricity activities.

Main content:

Law on Electricity was approved on 12 November 2004. This Law consists of 13 chapters and 70 articles. Main content focuses on (i) planning and investment for power sector development, (ii) electricity for rural, mountainous and island areas, and (iii) establishment and development of a competitive power market. This Law also contains (i) rights and obligations of electric units, (ii) rights and obligations of end-users, (iii) regulations on power purchase and sale, (iv) license for electricity activities and (v) state management of electricity activities and usage.

8.2 One of the challenges of pursuing the objectives of competition policy in a transition economy is that many constraints on competition arise as a result – sometimes intentional, sometime unintentional – of government policies and practices. To what extent does the new Competition Law deal with regulatory constraints on competition? Is there a process for subjecting regulations to an assessment of their impact on competition?

Answer:

Article 6 of Competition Law stipulates prohibited acts of State administration authorities as follows:

- Compelling an enterprise, agency, organisation or individual to purchase from (and/or) sell to an enterprise designated by the authority goods [and/or] services, except for those goods and services that fall under the scope of State monopoly under the provisions of law;
- Discriminating against enterprises;
- Compelling enterprises or trade associations to align among themselves for the purposes of precluding, restricting or hindering other enterprises from participating in competition in a the market; and
- Other hindering acts against lawful business activities of enterprises.

Australia

General policy framework

8.3 What are the key competition provisions that will be included in the proposed Competition Law? Will the provisions be implemented nationally? When will the Law take effect from?

Reviews of competition policies and/or laws

8.4 Will the proposed Competition Law be reviewed regularly to ensure that the provisions are working effectively?

8.5 Has there been any review of the current competition environment in Viet Nam?

Competition institutions (including enforcement agencies)

8.6 What is the Competition Administration Agency? Is it an enforcement or policy setting agency? To whom does it report? Is it a national body? Under what legislation does it operate?

Answer:

The Competition Administration Agency is under the Ministry of Trade, which functions are assisting Trade Minister in implementing State administration on competition, anti-dumping, anti-monopoly, application of safeguards, anti-subsidy on imported goods to Viet Nam, coordinating with enterprises, associations in dealing with trading partners' measures that prevent Viet Nam's exports to those markets, protecting legitimate rights of enterprises and consumers.

10. Structure: The Competition Administration Agency consists of:

- Anti-monopoly Division;
- Competition Policy Division;
- Division on Anti-dumping, anti-subsidy and application of safeguards on imported goods to Viet Nam;
- Division on Investigation unfair competition and Customer protection;
- Office, including organizational and administrative functions, international relations, etc.;
- Database Centre; and
- Representative Office in Ho Chi Minh City and Da Nang.

11. Current staffs include Director General, 01 Deputy Director General and 11 officials (this figure will increase respectively to the structure of the Agency stated as above).

12. With regarding to the training plan, in the coming time, the Competition Administration Agency intends to organize some training courses to improve the knowledge and qualifications of staffs in legal, economic and financial aspects.

United States

8.7 We understand that the National Assembly passed a competition law, which will take effect in 2005. Please briefly summarize the key features of the law, specifically focusing on measures to deal with horizontal restraints, vertical restraints, abuse of dominance, and mergers and acquisitions.

8.8 Please briefly summarize any exemptions allowed under the law, and a brief explanation for their justification. In particular, why have price fixing and territorial allocation agreements among competitors having a combined market share of less than 30% been exempted from the prohibitions in the new competition law?

8.9 What steps have been taken to implement the APEC Transparency Standards for Competition Law and Policy?

8.10 We would also be interested in information about the proposed:

- structure;
- staffing and proposed staff training; and
- enforcement or other (e.g. advocacy) powers

of the proposed Competition Administration Agency. Will the Competition Administration Agency remain with the Ministry of Trade?

8.11 Finally, we would be interested in additional information with regard to your process of privatizing State-owned enterprises; including:

- the criteria used to identify entities for privatization;
- whether you expect to privatize additional entities in the future;
- whether entities undergoing privatization will be subject to a transition period of regulation; and
- whether you believe the newly privatized entities face sufficient competition to obviate the danger of having them transformed into private monopolies.

Chapter 9: Government Procurement

APEC Review Team

9.1 Please summarise the steps taken since the last IAP to improve the consistency of Viet Nam's government procurement regime with the APEC Non-Binding Principles on Government Procurement.

Answer:

Recently, the Government of Viet Nam has taken the following actions to improve government procurement activities in Viet Nam as follows:

- On May 19, 2004 Prime Minister has issued the Decision No. 87/2004/QD-TTg on Rules of Foreign Contractor's Operations in Construction Sector in Viet Nam;
- The 10th Draft of Ordinance on organization of tenders was submitted to the Prime Minister on December 7, 2004;
- Decentralizing the rights to approve tendering content in accordance with the regulations of the Decree No 07/2003/ND-CP on investment and construction management;
- Introducing new evaluation methods (technically qualified or disqualified criteria) applied for goods and construction/assembling;
- Increasing transparency in tendering with the issuance of the Bulletin "Information on Tenders" (in Vietnamese), which covers a lot of information such as bidding invitation, preliminary selection information, preliminary selection results, selected list of tenders, tenders' selection results and violation in tendering activities; requirement which prohibits the disclosure of goods and equipment's origins in tender dossiers; and
- Enhancing investigation activities as well as punishment measures for violation in tendering activities.

9.2 What are Viet Nam's current policies and future plans regarding the participation of foreign suppliers and goods specifically to the government procurement market?

Answer:

In order to maintain equality and transparency, public procurement regulations (stipulated in Article 12 Paragraph 1 of the Decree No.

66/2003/ND-CP issued on December 6, 2004) defined that no requirements on trademarks or origin could be placed in the bidding documents. Therefore, this is a favourable condition for foreign goods to be sold to the government through foreign and domestic suppliers.

9.3 What are Viet Nam's plans for the introduction of e-commerce into government procurement practices?

Answer:

Public procurement regulation does not stipulate the implementation of bidding via internet. However, the Government of Viet Nam is deploying an e-government project, therefore, e-procurement is being studied. Nevertheless, there need to have great equipment investment, finance and professional assistance of experienced economies. Viet Nam wishes to receive help from APEC economies in this field.

ABAC Japan

9.4 Licenses for construction businesses in Viet Nam should be issued on a contractor basis, not on a project basis. ABAC also strongly encourages Viet Nam to abolish unfair and unjustifiable interference by the Ministry of Construction regarding selection of subcontractors by foreign companies.

Australia

9.5 The Viet Nam Government proposes measures to encourage and support small businesses to participate in Government Procurement. However, we note the proposal does not outline any specific measures in the IAP that encourage SME participation in Government Procurement.

Answer:

The current public procurement system does not discriminate the participation of economic sector, including small enterprises. According to the public procurement regulation, if the requirements on eligibility, capacity and experience are met, bidders are allowed to participate in the process. However, with small-scale bidding package (bidding price below 2 billion VND for goods and construction), the Bidding procedure stipulates a

number of regulations to simplify procedure and support provincial enterprises (mainly small enterprises) to have more chances to bid.

The Vietnamese legal system does not have any regulations to prevent the participation of SMEs in the bidding process for goods and services, especially in terms of government procurement. The Government of Viet Nam encourages SMEs to participate in goods and services provision process in government procurement using state budget.

Chapter 10: Deregulation/Regulatory Review

APEC Review Team

- 10.1 What are the areas and specific sectors that still require regulatory reforms in order to meet the Bogor Goals?

Answer:

Viet Nam has been implementing regulatory reform under the guidelines of Osaka Action Agenda towards the Bogor Goals. Viet Nam's deregulation/regulatory reforms are implemented consistently under the framework of Public Administrative Reform Program (2001 - 2010). In the coming time, Viet Nam will continue its efforts to simplify domestic regulations and promote transparency or to reform administrative procedures to reduce management costs and duplication/ overlapping in functions and duties.

- 10.2 Please comment on efforts being made to ensure effective implementation of regulatory reform, particularly as they relate to implementation of the Public Administration Reform program and relative powers of central, provincial and local administration.

Answer:

Viet Nam has made efforts to ensure effective administrative reform in a number of fields such as improving the quality of State administration, simplifying administrative procedures, increasing the consistency of legal system and enforcement mechanism, etc. Viet Nam has promulgated important legislative documents, for example, Law on Organisation of the People's Council and the People's Committee, Law on State Enterprises, revised Ordinance on public servants and 5 Decrees implementing

ordinance, decree on functions, duties, rights and structures of ministries, central agencies, “one-door” regulation, etc.

The formulation of new policies has been conducted in accordance with the Law on the Promulgation of legal documents dated 12 November 1996 and the Law on the Amendment of and Supplementation to some Articles of this Law, which was endorsed on 16 December 2002. The Law requires that attention should be paid to consultation process with relevant entities in order to ensure the transparency of policies.

With regard to administrative reform, in 2003, the Government issued 26 Decrees on functions, duties, rights and structures of Ministries, relevant agencies and 12 Decrees on functions, mandates and organizational structures of Government agencies. Functions and duties of Ministries/ Agencies have been clearer, thus, the duplication and overlapping in functions/ duties among Ministries/ Agencies have been erased. Organisational structure of Ministries/ Agencies has been arranged more reasonably with distinguished characters in administrative structure and career structure.

The Public Administrative Reform Program was wholly approved and brought into regular working program of Ministries, Agencies, provinces and state enterprises. Up to date, the Prime Minister has signed 7 Action Programs to implement the Public Administrative Reform Program (2001-2010). Furthermore, Viet Nam has decentralized the issuance of many investment and business license and management activities to local authorities.

Viet Nam will continue its efforts in completing the legislative system, improving the effectiveness of public administrative and public services management.

ABAC Japan

- 10.3 Viet Nam is requested to ensure consistency with existing rules and regulations and to provide sufficient transitional relief when adopting new laws and decrees, so that companies are able to prepare for and adapt to such changes. The content and nature of rules and regulations should be clarified in order to enhance the understanding of immigration officers, so

as to avoid confusion over the interpretation and implementation of such rules.

- 10.4 Viet Nam is also strongly requested to deregulate its numerous and burdensome requirements for permission and approval, to enhance efficiency of complicated customs clearance procedures, and to abolish unofficial and unnecessary payments, which are often required as “tips.”
- 10.5 Viet Nam is requested to ensure the consistency and conformance of its overall tariff system, especially on the occasion of adopting new or amended tariff rules, as well as to ensure that relevant businesses are notified of such rules in advance of their implementation.

Chapter 11: Implementation of WTO Obligations and Rules of Origin (ROOs)

APEC Review Team

- 11.1 Some of the bilateral agreements that Viet Nam has entered into (especially the agreement with the United States) call for implementation of many of the principles and practices embodied in WTO agreements. How far has implementation of these agreements taken Viet Nam down the path of aligning legislation and regulations with the various WTO agreements?

Answer:

Viet Nam has signed up 86 bilateral trade agreements by June 2004. Except those signed with the former socialist countries, the bilateral trade agreements have been negotiated on the basis of WTO’s rules and regulations.

The negotiation and implementation of bilateral trade agreements constitute important experimental steps for different ministries to systematically implement and adjust their regulations in compliance with international practices, in particular with the WTO’s rules and principles.

- 11.2 Please comment on Viet Nam’s approach to trade remedies and its consistency with WTO agreements.

Answer:

Viet Nam is in the process of formulating regulations on trade remedies on the basis of international practices and related WTO's rules. Up to now, Viet Nam has approved the Ordinance on Safeguard on the importation of products (No. **42/2002/PL-UBTVQH10**), the Ordinance on Anti-subsidies and the Ordinance on Anti-dumping.

Viet Nam commits to fully comply with WTO's agreements on safeguards and anti-dumping upon its accession to the WTO.

Chapter 12: Dispute Mediation

APEC Review Team

12.1 Please provide an overview of the principle and mechanisms of how Viet Nam has settled disputes with other economies, as well as foreign investors, citing a few recent examples.

Answer:

a) Dispute settlement between governments:

The dispute settlement between the Vietnamese government and other foreign governments is based on multilateral and bilateral agreements that Viet Nam has signed up or acceded to. Common solution to dispute settlement is via negotiation, consultation or conciliation being made through diplomatic channel.

At present, Viet Nam is a member of the Protocol on Dispute settlement among ASEAN members, between ASEAN and China, of which the dispute settlement has some similarities with arbitration mechanism.

b) Dispute settlement between Government and foreign investors:

The agreements on investment protection and encouragement that Viet Nam has signed with other countries usually stipulate that first measures to solve dispute are negotiations and mediations through diplomatic channel. In case of failure to do so do the concerned parties have right to bring the case to an arbitration council agreed by all parties or to a competent courts. Up to now Viet Nam has signed 47 agreement on Investment Protection and Encouragement with other countries.

- 12.2 Please comment on the implications of the consolidated Civil Procedures Code passed by the National Assembly in June 2004 with respect to recognition of foreign court judgments and foreign arbitration awards.

Answer:

The Civil Procedure Code was passed by the National Assembly of Viet Nam on June 15, 2004 and will come into effect since 1 January 2005. Provisions of Civil Procedures Code on the recognition and execution of arbitration's awards have been build on the basis of inheriting the spirit and coding the regulations of the two ordinances namely the Ordinance on recognition and execution of awards and decision of foreign courts in 1993 and the Ordinance on the recognition and execution of foreign arbitrators' decisions in 1995.

United States

- 12.3 We welcome the information on the measures that Viet Nam has taken to adopt and implement a system for commercial arbitration. Decree 24/2000/ND-CP, which was issued in 2000, Decree on Commercial Arbitrators in 2003, and Decree No 25/2004/ND-CP dated 15/1/2004 provide guidance on the implementation of the Ordinance on Commercial Arbitrators.

- Has the system for commercial arbitration been used? If so, what is the experience?
- Have foreign investors or interests been involved?
- Do Viet Nam's enterprises use the system to resolve disputes not involving foreign interests?
- Transparency in the operation of the system and decisions are an important part of a useful and successful dispute resolution mechanism. How does Viet Nam intend to implement this aspect of its system?

Answer:

Viet Nam has issued the Ordinance on Commercial Arbitrators dated 25 February 2003 which came into effect on 1 July 2003 and the Decree 25/ND-CP dated 15 January 2004. These legal documents, which have facilitated arbitration activities in Viet Nam have been appreciated by foreign and domestic business circles.

The Ordinance on Commercial Arbitrators focuses on the transparency of the commercial arbitrators and commercial arrangements signed on 1 July 2003. The Ordinance provides clear and detailed provisions on procedures principles, which are in consistence with international practices, including the standard Law on Arbitration of UNICITRAL. The Ordinance on Commercial Arbitrators has been publicized in the official gazette and made public widely to enhance people's awareness on the newly applied arbitration mechanism. Foreign investors and enterprises have rights to use arbitration mechanism in accordance with the Ordinance on Commercial Arbitration in order to settle disputes in commercial activities. Viet Nam has not yet reviewed its experiences on the implementation of this Ordinance.

Chapter 13: Mobility of Business People

APEC Review Team

13.1 What actions has Viet Nam taken recently to enhance the mobility of business people?

Answer:

Main activities of Viet Nam recently aiming at facilitating mobility of business people include:

- Actively participated in annual meetings of business mobility experts since 1998.
- Reviewed and updated IAP 2000, 2002, 2002, 2003 and 2004 on mobility of business people;
- Increased exchange with other APEC economies and widely disseminated information relating to entry and exit of Viet Nam through:
 - APEC Mobility of Business people Expert Group
 - APEC's website: <http://www.apecsec.org.sg/travbook/contents.html>
 - BMG website: <http://www.businessmobility.org>
 - Website of the Ministry of Foreign Affairs: http://www.mofa.gov.vn/ct_lanhsu
 - Signed agreements on visa exemption with 41 countries, including 11 APEC members such as Brunei, Chile, China, South Korea, Indonesia, Malaysia, Mexico, the Philippines, Russia, Singapore and Thailand and

- exempted visa for citizens of 7 APEC members such as Indonesia, Malaysia, the Philippines, Thailand, Singapore, Japan and South Korea
- Improve regulations on visa granting and temporary stay of foreigners
 - Submitted to the Government the Action Plan to participate in the APEC Business Travel Card (ABTC)
 - Participated in the first phase of Advanced Passenger Information system on establishing information processing standards and in the process of considering to participate in the second phase of the initiative.

ABAC Japan

- 13.2 Viet Nam is strongly encouraged to repeal its restrictions on alien workers, to abolish limitations on the number of work permits, to enable longer stays for holders of temporary working visas, and to simplify visa-issuing procedures.
- 13.3 ABAC strongly encourages Russia to implement the APEC Business Travel Card (ABTC) scheme as soon as possible.
- 13.4 ABAC encourages Viet Nam to introduce e-lodgement arrangements for temporary residency applications.

Australia

- 13.5 Australia greatly appreciates Viet Nam's active participation in Business Mobility Group meetings and initiatives.
- 13.6 Australia would welcome Viet Nam's participation in the APEC Business Travel Card and will be happy to provide the necessary equipment and training to assist Viet Nam to commence a local operation.
- 13.7 Australia welcomes Viet Nam's input to the APEC Business Travel Handbook site.
- 13.8 Regarding Business temporary residency, Australia requests that Indonesia provide information in future IAPs on arrangements to facilitate processing of intra company transferees in accordance with the agreed Business Mobility Group 30 day visa application processing standard. Australia seeks information on consideration of extending work rights to spouses of intra company transfer temporary residents, as agreed by the BMG.

Answer:

Viet Nam will consider to provide information on mobility of intra-company temporary residents in our future IAPs.

13.9 Australia also requests information on progress made in implementing agreed BMG standards in respect of:

- travel document examination
- travel document security
- professional service
- transparency.

An expert team from Australia will visit Viet Nam in 2005 to conduct an Advance Passenger Information (API) system feasibility study.

Answer:

With regard to travel documents, travel security and professional activities: Authorized agencies of Viet Nam are reviewing and assessing these standards.

With regard to transparency:

- Authorized agencies of Viet Nam responsible for entry and exit management has made public information on procedures, documents, document handling time, fees in accordance with current regulations of Viet Nam.
- Viet Nam has enhanced information dissemination on entry-exit through disseminating information on newly issued regulations and newly signed agreements to people via mass media, updated information on APEC's website, website of the Ministry of Foreign Affairs and websites of Viet Nam representative offices abroad.
- Viet Nam has established the mechanism to deal with complaints of citizens and foreigners on consular issues.

Other economies

Business temporary entry

13.10 Do you have any plans on streamlining the process through the e-lodgement application? Please explain current status of and future plan for mutual recognition of professional qualifications to promote the temporary movement of experts.

Answer:

At present, professional standards of Viet Nam have some differences with that of other countries. Viet Nam will consider toward mutual recognition of these standards.

Short term business entry

13.11 Do you have any plans on streamlining the process through the e-lodgement application?

Answer:

In order to facilitate mobility of business people, Viet Nam has uploaded information on entry-exit to the APEC website, BMG's website and other national websites. Viet Nam still needs time to consider e-lodgement application since Viet Nam is having difficulties in facilities and technical equipment as well as legal basis for e-lodgement.

References

- Athukorala, P 2004, *Trade Policy Reforms and the Structure of Protection in Vietnam*, prepared for the Asian Development Bank and the Ministry of Finance, Viet Nam, Research School of Pacific and Asian Studies, Australian National University, Canberra
- Centre for International Economics (CIE), 1998, *Vietnam's trade policies 1998*, Canberra
- Centre for International Economics (CIE), 1999, *Non-tariff barriers in Vietnam; A framework for developing a phase-out strategy*, Canberra
- General Statistics Office (GSO), 2004
http://www.gso.gov.vn/default_en.aspx?tabid=472&idmid=3, accessed 21 December 2004
- Marantis, D J 2003, Comparison of Obligations in U.S. Vietnam Bilateral Trade Agreement with WTO Accession Requirements, presentation delivered to Seminar on Vietnam's Accession to the WTO, Hanoi, downloaded from
<http://www.usvtc.org/Documents/USVTC%20TA/Technical%20Assistance/WTO%20Accession/BTA-WTO%20Presentation%20at%20NYLife%20Seminar%20-%2001aug03.ppt> on 18 January 2005.
- U.S. Vietnam Trade Council 2004a, *The U.S. Vietnam Bilateral Trade Agreement: A Survey of U.S. Companies on Implementation Issues*, Hanoi.
- —, 2004b, *Catalog of Legal Updates: Vietnam Trade Policy Regime*, November, Hanoi
- —, 2005, *Catalog of Legal Updates: Vietnam Trade Policy Regime*, November, Hanoi
- Vietnam Competitiveness Initiative (VNCI) 2004, *Competition Review of the Vietnamese Telecom Sector*, draft report, Hanoi
- World Bank, 2004, *Taking Stock: An Update on Recent Economic Developments and Reforms*, prepared for the Consultative Group Meeting December 1-2, 2004, Hanoi
- World Bank et al, 2000, *Vietnam: Attacking Poverty*, prepared for the Consultative Group Meeting December 14-15, 1999, Hanoi
- —, 2004, *Governance: Viet Nam Development Report 2005*, prepared for the Consultative Group Meeting December 1-2, 2004, Hanoi

APEC IAP Peer Review — Viet Nam

Seoul
2 March 2005

Viet Nam's reform agenda

- Actions to meet the Bogor goals comprise just one part of Viet Nam's comprehensive restructuring and renovation (*doi moi*) process begun in the late 1980s
- Trade and investment liberalisation have been key elements of this process, but so have actions to:
 - build the legal and institutional underpinnings of a market economy
 - reshape the role of the state in economic management
 - recast the roles of the state and private enterprise sectors

Recent economic performance

- *Doi moi* has been successful - Viet Nam's recent economic performance has been exceptionally strong:
 - GDP growth has averaged over 7 per cent per annum for the last 18 years
 - this growth has produced a spectacular reduction in the number of people living in poverty: from over 70 per cent of the population in the early 1990s to 29 per cent in 2002
 - in the eight years to 2003, the US\$ value of exports has grown at an average of 15 per cent per year
 - inflation has been brought under control (although there was a troubling surge in the CPI in 2004)

Trade and investment liberalisation

- Early reforms were largely unilateral reductions in barriers to trade and actions to develop a legal framework to facilitate foreign investment
- Recently, regional and bilateral trade agreements, along with preparations for accession to the WTO have been playing a significant role:
 - WTO accession and implementation of the bilateral trade agreement with the United States are now important influences on economic and structural reform

Sectoral review

- Tariffs
- Non-tariff measures
- Services
- Investment
- Standards and conformance
- Customs procedures
- Intellectual Property Rights
- Competition Policy
- Government procurement
- Deregulation/regulatory review
- Implementation of WTO obligations
- Dispute mediation
- Information
- Mobility of business people
- Paperless trading

Tariffs

- Viet Nam has made good progress in developing a transparent tariff system that conforms with international standards
- However, the tariff still has high levels of complexity, dispersion and escalation
- Key influences in the short term will be the binding commitments entered into on accession to the WTO, and completion of the AFTA CEPT tariff regime

Non-tariff measures

- Viet Nam has made good progress in removing the pervasive system of administrations controls and restrictions on trade that prevailed at the onset of *doi moi*
- The Government has undertaken to remove some remaining measures (such as import surcharges, agricultural export subsidies and restrictive import licensing) upon accession to the WTO

Services

- Viet Nam's services chapter reflects:
 - the status of the transition to a market economy and the need to develop appropriate methods of regulation when service provision is no longer the exclusive preserve of SOEs
 - Viet Nam's practice of experimenting with reforms before developing a formal generalised regime for managing and regulating new services
 - the status of market access negotiations for WTO accession
- The USVNFTA has established a benchmark in key sectors

Investment

- Viet Nam has confirmed it will remove all measures prohibited by the TRIMS agreement upon accession to the WTO
- Key initiatives are narrowing differences in treatment between foreign and domestic investors:
 - the new Land Law
 - the proposed Unified Investment and Common Enterprise Laws
 - elimination of dual pricing
 - however, the range of sectors for which Viet Nam reserves the right not to offer national treatment is still quite large
- Viet Nam's current complex investment incentives are under review

Standards and conformance

- Viet Nam will comply with WTO agreements on TBT and SPS upon succession
- Viet Nam has been active in developing and harmonising standards and signing onto MRAs:
 - but faces capacity and infrastructure constraints in implementation

Customs procedures

- Viet Nam's Customs Modernisation Strategy will provide the basis for significant improvements in customs procedures, including conformity with the Revised Kyoto Convention
- Viet Nam has now effectively adopted the WTO Customs Valuation Agreement, although implementation is posing challenges
- Clearance procedures still involve largely manual processing, despite some piloting of electronic entry submission

Intellectual Property Rights

- Viet Nam has already committed to implement most of the obligations covered by the WTO TRIPS agreement, and has put in place the legal framework to provide protection to all aspects of IPRs covered by the agreement
- But enforcement is posing a considerable challenge:
 - the Government plans to create an enforcement system that conforms with international standards by 2009

Competition policy

- The new competition law is a major step forward:
 - importantly, the law treats state enterprises equally with other enterprises, and prohibits state management agencies from a range of competition-restricting activities
- Viet Nam's comprehensive legislative development and reform agenda is also helping in removing regulatory constraints on competition

Government procurement

- Important initiatives are improving the transparency of government procurement
- Work is underway on a new ordinance to consolidate the legal framework for procurement

Deregulation/regulatory review

- Viet Nam has no special purpose agency charged with regulatory review and the pursuit of a deregulation agenda, but this is an area of intense activity because it lies at the heart of the transition process:
 - there have been wide ranging reviews of the legislative requirements of the transition, and of compliance with membership of the WTO
 - nearly all laws and regulations are subject to regular review and refinement as they need to be updated in the light of changes driven by the transition agenda

Implementation of WTO obligations

- Viet Nam is not yet a member of the WTO, but in preparation for membership, and in implementing the USVN BTA, it has put in place the basis for implementing:
 - the Customs Valuation Agreement;
 - substantive provisions of the TRIMS Agreement;
 - the WTO Import Licensing Agreement;
 - the principles of the SPS and TBT Agreements;
 - most of the TRIPS Agreement;
 - most of the GATS Agreement;
 - the WTO transparency principle; and
 - GATT obligations on State Trading

Dispute mediation

- Viet Nam is a signatory to key international and regional agreements regarding dispute mediation (New York Convention, MIGA Convention, ASEAN Protocol on dispute mediation)
- The new Civil Procedure Code codifies and consolidates treatment of awards of foreign courts and decisions of foreign arbitrators
- The Ordinance on Commercial Arbitration significantly improved the legal framework for arbitration

Mobility of business people

- Viet Nam's initiatives include:
 - participation in the Advance Passenger Information System
 - signing visa exemption agreements with 41 countries
 - plans for participation in the APEC Business Travel Card

Information

- There have been significant improvements in the quality and availability of economic and social statistics and information on laws and the operations of government in recent years. This reflects some important policy changes and also increasing use of information and communications technology

Paperless trading

- For Viet Nam, the pace of introduction of paperless trading is determined as much by the speed with which information and communications technology can be introduced into key government agencies as it is a function of legislative and procedural reform
- The Ministry of Trade has recently established a department that is working on the key requirements to introduce e-commerce, including drafting the necessary legislative instruments

Conclusion

- Viet Nam's IAP reflects the progress made across a very large agenda of policy reform associated with the transition to a market economy
- WTO accession will mark a key staging point on the path to the Bogor goals: but reaping the benefits of freer trade and investment will depend heavily on continued progress on complementary reforms in the transition:
 - developing market based systems for regulation
 - resolving outstanding issues in state enterprise reform
 - developing a more efficient and responsive system of state management to allow the economy to respond to emerging opportunities

Discussant's Remarks

APEC IAP Peer Review for Viet Nam

General Comments

Mr. Chairman. Ladies and gentlemen. It is a great honor for me to serve as the discussant for this APEC IAP Peer Review for Viet Nam. Firstly, I would like to thank the review team for its excellent work. My appreciation also goes to the Secretariat for their valuable assistance for the drafting of my comments.

Followings are my general remarks on the report. First, as indicated in the “IAP Study Report”(2005), Viet Nam has been remarkably successful in achieving economic growth and improving the well-being of its people since it began its comprehensive program of restructuring and renovation (*doi moi*) in the late 1980s. GDP growth has averaged over 7 per cent per annum in the 18 years since the program started — one of the strongest performances in the region, and in the world. This distinguished performance will undoubtedly serve as a firm foundation for Viet Nam to proceed with reform and to implement the IAP procedure in APEC more easily.

Secondly, it is worth noting from the “IAP Study Report”(2005) that, despite the changes and impressive growth in trade and investment that were brought by *doi moi*, important features of the regime that have preceded still linger on, and at times the direction of change has sometimes been to restrict rather than liberalize trade. But in the past two or three years, significant progress has been made in dismantling the remains of the intricate framework of administrative and legislative instruments used to manage trade and to provide protection to local firms. The Report also mentions that the issue of Viet Nam's liberalization lies in the “trade-off” between the gains

from liberalization and the risks of openness incurred from the process of changes in system and institution.

Thirdly, the roots of Viet Nam's boom lie in surging exports combined with the liberalization of its trading regime, which has brought its transition economy into the market system. Judging by relevant indicators and regulations, particularly market access for goods and services, and changes in its intellectual property protection as well as investment regimes, it is fair to say that Viet Nam is opening up its economy further and faster than most of the developing economies.

The ten years of the WTO accession process since 1995 and the bilateral trade agreement between the United States and Viet Nam, ratified in 2001, could serve as "commitment mechanisms" for policy reform. This can also be said of Viet Nam's APEC membership since 1997, particularly with the IAPs, where they are in accordance with the principles and objectives of the Bogor Declaration.

Specific Comments

Let me now provide some specific comments regarding the various sections of the Report.

Tariffs:

Viet Nam has endeavored to simplify its tariff regime and to comply with the principle of transparency. We expect substantial reductions in its tariff after the completion of bilateral negotiations with WTO Members for its accession to the WTO.

Non-tariff measures:

While Viet Nam has made remarkable progress in improving the efficiency of its trade system since 2001, it still maintains non-tariff restrictions such as trading rights of foreign enterprises, import prohibitions and so on.

Services

Since Vietnam is negotiating to become a WTO member, it is understandable that its IAP will not contain anything beyond its potential services offers. Generally, Viet Nam has been very cautious in opening its services sector, but WTO accession would bring more liberalization and greatly help Viet Nam achieve the Bogor goals.

Investment

Viet Nam has several exceptions to national treatment, such as investment in insurance, banking, monetary and securities brokering; goods and passenger transportation by railways, airlines, road, river; and others.

The Expert's Study report mentions that Viet Nam is seeking to lower the difference in treatment between foreign and domestic investors through a unified investment law and a common enterprise law. We welcome this positive movement.

Customs procedures:

Viet Nam's customs authority is applying information techniques in automation, so as to improve customs procedures process. Viet Nam is without a doubt making good progress in this area.

Intellectual Property Right (IPR):

Viet Nam has already committed to most of the obligations covered by the WTO Agreement on TRIPS, and will implement them upon accession.

Competition policy:

The establishment of the Competition Administration Agency which is in charge of issues related to anti-monopoly described in the report, competition policy, anti-dumping, countervailing subsidies and safeguards, customer protection, and administrative and international relations functions should be considered as a promising commitment towards APEC objectives. It could also pave the way for a future and potential institution designed solely to handle competition policy-related issues.

Government Procurement:

Viet Nam is amending its legal framework, considering changing the rules of preferential treatment in favor of Vietnamese companies, as well as incorporating the transparency principle into the Government Procurement procedure. It is hoped that the new ordinance on procurement could be sent to and approved by the National Assembly in 2005.

Deregulation/regulatory review: It is evident that Viet Nam has tackled a comprehensive process of legislative development and refinement. International integration serves as the main driving force behind this. Some concerns have been raised over the slow pace of economic reform, particularly in the area of reforming state-owned-enterprises and commercial banks.

Conclusion

In a nutshell, Viet Nam has made great strides in terms of its economic reforms since late 1980s. Viet Nam's efforts have been rewarded by the excellent economic performance it has experienced since then. I would like to congratulate Viet Nam for its achievements. With this solid foundation, I firmly believe that Viet Nam has a very good chance to be successful in its economic development. However, allow me to remind Viet Nam, that before reaching this goal, more efforts on the liberalization of economic and trade regime are needed. Viet Nam's accession to the WTO could serve as a good opportunity for Viet Nam to review its regime and make necessary adjustments. I wish Viet Nam every success in pursuing its goals.

IAP PEER REVIEW

VIETNAM'S PRESENTATION

Seoul, Korea
2nd March 2005

VIETNAM AT A GLANCE

- ❑ **Double challenges:**
 - ✓ Low income: per capita income of only USD 480, approximately 30% of population living under poverty line; and
 - ✓ Transitional economy.
- ❑ **Multifaceted reform or “*Doi moi*”:**
 - ✓ Domestic side: structural , administrative and economic reform;
 - ✓ External side: International economic integration.
- ❑ **WTO accession.**

ECONOMIC PERFORMANCE

- ❑ **Macroeconomic and social stability:**
 - ✓ High growth rates (averaging more than 7% for the past 15 years);
 - ✓ Most macroeconomic indicators remained strong, inflation under control.
- ❑ **Robust development of trade and investment:**
 - ✓ Double-digit growth of both import and export;
 - ✓ External trade accounts for more than 100% of GDP;
 - ✓ FDI has peaked up since the financial crisis, annual committed investments now equals to more than 10% of GDP.
- ❑ **Results: poverty reduction.**

KEY FEATURES OF TRADE AND INVESTMENT POLICIES

1. Trade policy:

- ❑ Developing a market-oriented and competitive economy;
- ❑ Increasing the participation of players in the market;
- ❑ Eliminating hurdles to trade;
- ❑ Increasing transparency and predictability;
- ❑ Resorting to WTO-consistent measures.

KEY FEATURES OF TRADE AND INVESTMENT POLICIES

1. Investment policy:

- ❑ Facilitating investment to develop the economy;
- ❑ Unifying rules between domestic and foreign investment;
- ❑ Simplifying investment screening process;
- ❑ Increasing transparency and predictability;
- ❑ Eliminating WTO-inconsistent measures.

MULTIPLE PATHS TO TRADE AND INVESTMENT LIBERALIZATION

- ❑ Unilateral reform agenda;
- ❑ Bilateral economic cooperation: Bilateral trade and investment agreements, etc;
- ❑ Regional economic integration: ASEAN, APEC, ASEM;
- ❑ Multilateral economic integration: WTO accession;
- ❑ Other integration programs: IMF and WB agenda.

KEY ELEMENTS OF IAP

1. Market access

1.1. Tariffs:

- Adoption of regional nomenclature (AHTN);
- Tariff reform: simplification and rationalization of tariff schedule, more than 3,000 tariff lines subject to duty-free treatment and almost 50% subject to tariff rates of 5% or less;
- Reduction in the average effective rates of protection;
- Publication of tariff schedule and its changes.

KEY ELEMENTS OF IAP

1. Market access

1.2. NTMs:

- Adoption of longer term (i.e., 5 yrs) policies which increases transparency and predictability;
- Progressive elimination of NTMs;
- Consolidation and simplification of licensing procedures;
- Adoption of WTO-consistent measures.

KEY ELEMENTS OF IAP

1. Market access

1.3. Services:

- Acceleration of legislative activities to strengthen the regulatory framework and increase transparency;
- Progressive liberalization in many services sectors;
- WTO-track liberalization.

KEY ELEMENTS OF IAP

2. Trade facilitation by reducing transaction costs:

- 2.1. Simplification and modernization of customs procedures
- 2.2. Standardization and conformity assessment
- 2.3. Mobility of business people



KEY ELEMENTS OF IAP

3. Enhancing legal economic infrastructure

3.1. Competition policy

3.2. Deregulation



KEY ELEMENTS OF IAP

4. Towards a more favorable business environment

4.1. Investment policy

4.2. IPR enforcement



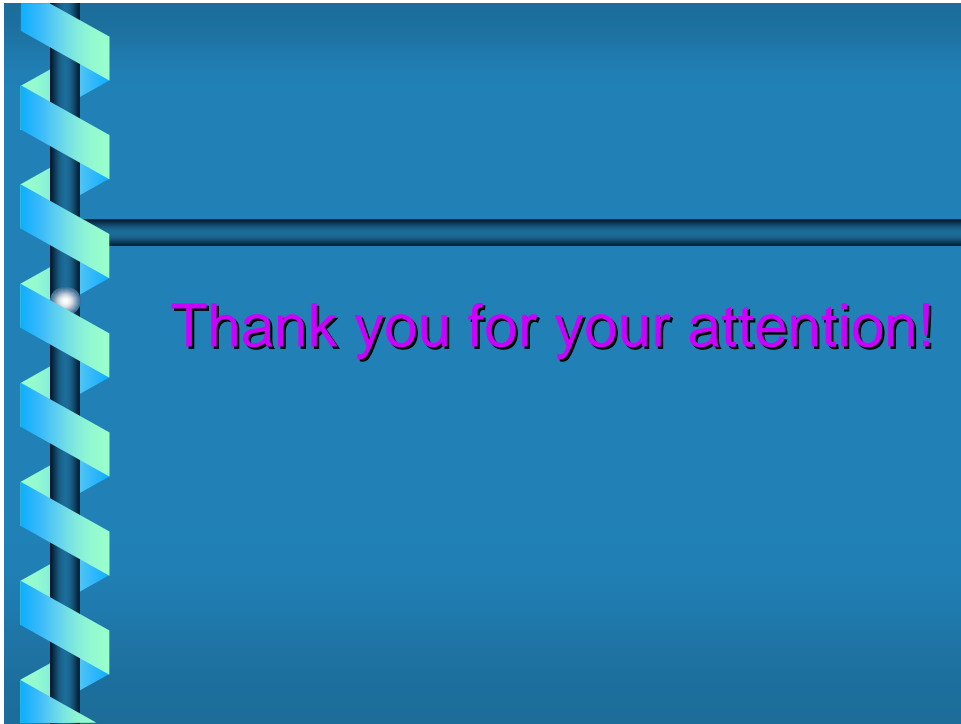
THE CHALLENGES

- ❑ A busy agenda: WTO accession, deepening and expansion of ASEAN cooperation etc.;
- ❑ Maintenance of equality and stability in the quick transition;
- ❑ Financial, human and institutional constraints.



THE ROAD TO BOGOR

- ❑ On track towards the Bogor goals in 2020;
- ❑ Committed to trade and investment liberalization;
- ❑ Continuing efforts to liberalize trade and investment in multilateral, regional and bilateral channels; and
- ❑ Engaging in different APEC programs to further liberalize and facilitate trade and investment.



**VIETNAM IAP PEER REVIEW
Moderator's Closing Remarks**

First of all, I would like to thank Viet Nam; the review team: our expert from Australia, Mr. Bob Warner; our discussant from Chinese Taipei, Mr. David Wang and all the participants for the hard work carried out in preparing this peer review.

In concluding the session, firstly, I want to emphasize the impressive performance Viet Nam has achieved so far in economic growth, which has produced a spectacular reduction in poverty. The economy has also proved to be solid enough to resist external crisis, such as the Asian financial crisis.

Secondly, I would like to draw your attention to Viet Nam's comprehensive restructuring and renovation process which has proved to be a useful tool towards the Bogor Goals. Liberalization of trade and investment, and the pursuit of integration with the regional and world economy have played a key role in the renovation process.

The bilateral trade agreement between Viet Nam and the United States has committed Vietnam to wide ranging legal and institutional change. Also, due to the WTO accession process, Viet Nam has made some key commitments regarding major WTO agreements. So, although Viet Nam is not yet a member of the WTO, the foundations to implement key WTO agreements already started being built.

Viet Nam is committed to further trade and investment liberalisation. However, progress in some areas will be determined as an outcome of Viet Nam's negotiations in the process of accession to the WTO.

Finally, I want to emphasize the compromise of APEC to support the accession of Viet Nam to the WTO which will underpin the free and open trade and investment in the Asia-Pacific region as well as contribute to the multilateral trading system.

Thank you.

Viet Nam IAP Peer Review

Additional Comments/Questions from Australia

Tariffs/Non-Tariff Measures

It is noted that the Special Consumption Tax on goods, including passenger motor vehicles, will terminate in 2007. This Tax acts as a support to the local industry and its removal will improve the price competitiveness of imported vehicles.

It is also noted that tariffs on vehicles from non-ASEAN economies still remain high (and range from 30 to 100% depending upon the number of seats in the vehicle).

Financial Services

Vietnam able to indicate proposed timeframes for implementation of proposed banking reforms?

Accounting Services

Australia notes that Viet Nam's accounting standards are being harmonised with international standards. Does Viet Nam intend to converge fully with International Financial Reporting Standards and, if so, has a timetable been set?

Investment

Viet Nam only partially answered Australia's question in relation to its investment policy for financial sector companies. Australia would be grateful for more information on this issue.

Rules of Origin

Does Viet Nam have rules of origin that apply to most-favoured nation trade? If so, are these consistent with the principles outlined in the WTO Agreements? If Viet Nam does have rules of origin of this kind, Australia would be interested in a brief outline of them.

IAP Peer Reviews Questions (Korea)

2005/2/16

■ Vietnam

1. Tariffs (Chapter 1)

- Vietnam currently has three schemes of tariffs, which are the basic tariff scheme, the normal tariff scheme and the preferential tariff scheme (ASEAN CEPT). Tariffs on consumer products are relatively high (40%~50%) and managed flexibly from Vietnam's point of view. How precisely is Vietnam planning to simplify its tariff system?

2. Investment (Chapter 4)

- There are basically three ways to invest in Vietnam; through a business cooperation contract (BCC) or Joint venture enterprise or 100% foreign owned enterprise with a few areas excluded. In those areas where a fully foreign owned business is prohibited, FDI enters Vietnam in the form of a BCC, where the profit is to be split 50:50 irrespective of the initial amount of investment, or a Joint Venture, which operates on a consensus-based management system, which limits the participation of foreign investors in the management. Does Vietnam have any plan to improve this system?

3. Standards and Conformance (Chapter 5)

- Korea would like to have detailed information on Vietnam's measures taken to conform its national standards in the area of food labeling.

4. Intellectual Property Rights (Chapter 7)

- Vietnam's IAP states that "...Vietnam's intellectual property legal framework has met the requirement of "adequacy" of the TRIPs Agreement". Korea would like to know what Vietnam's definition of "requirement of adequacy of the TRIPs agreement" specifically is.

2005 APEC IAP Peer Review: Vietnam

ABAC Comments

1. From the entry to APEC in 1998 to the ongoing preparation for acceding to the WTO, Vietnam has indicated a strong inspiration of integrating her economic system into regional and global architectures. Vietnam has also completed the Close Economic Partnership Agreements with China, India, Korea, and joined the bilateral negotiations of AFTA-CER and ASEAN-Japan. Has Vietnam perceived a need for harmonizing various FTAs in the long run, including the provisions on certificates of origin, and plan to integrate those FTA/EPA arrangements in the long run?
2. Whereas Vietnam's IAP Reports have made progress over time, it seems that the reported IAPs have not been keen on addressing the IAPs in light of APEC CAPs (Collective Action Plans) achieved from year to year. For instance, Vietnam has not reported on the APEC Non-binding Investment Code, APEC Menu of Options for the Services Industry, the APEC Principles on Deregulations and Competition Policy, and the APEC IPPR Service Center scheme. Will Vietnam be prepared soon to address those issues in compliance with the CAPs? What does Vietnam plan to do in order to phase out local content provisions, restrictions on importation of used machinery, and complicated customs clearance procedures in due course? When will Vietnam plan to sign up the APEC Business Travel Card and promote business mobility in the region?
3. Vietnam's SME development seem to encounter some bottlenecks due to capital shortage, limited production scale, backward technology, weak management capacity, difficulties in accessing export market, etc. Has Vietnam been active in participating in some of the APEC capacity building seminars such as APEC SME Incubators Forums? If yes, what benefits has Vietnam acquired from them and what would Vietnam propose for APEC programs to further enhance capacity building, including APEC's contribution to the WTO Development Round?
4. ABAC also noted that in the Services area, Vietnam is actively engaging in the WTO accession negotiation, and intends to further liberalize the services sector accordingly once the negotiations are completed. Some of the issues that ABAC members identified for lifting restrictions include the discrimination against foreign economic entities in the area of airfare, rail fare, harbor fee, hotel charge, as well as public utility charges such as electricity and water supply.