

Further Perspectives on the Challenges of Integration

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Foreword

In April 1999 the Government requested UNDP assistance in the preparation of strategic policy-based research for Viet Nam's new Ten Year Socio-Economic Development Strategy 2001-2010. A Technical Assistance project agreement with MPI was signed in September 1999.

The Project subsequently undertook and synthesized policy-based research aimed at offering international perspectives in four key areas central to the new ten year socio-economic development strategy:

- The Role of the State and the Market
- International Economic and Financial Integration
- Rural Economic and Social Development
- Science, Technology and Industrial Development

In addition, the Project offered advice on the long term socio-economic objectives to 2010 and provided practical principles and recommendations for the coherent implementation of the proposed strategies.

The Project also organized a series of technical workshops on the draft research papers as well as two high level Round Table Consultations between senior officials from the Government and the donor community. The first of these Round Tables was held in June 2000 and focused on the various draft research papers and related recommendations. The second high level Round Table was organized in November 2000 with a focus on the Government's draft of the new ten year socio-economic strategy.

MPI has been the national executing agency responsible to the Government and UNDP for the achievement of the Project's objectives, and DSI – the Development Strategy Institute - has carried implementation responsibility. Throughout, the research and consultation process was directed jointly by DSI and UNDP. In addition, the Governments of Australia and Sweden, as well as UNIDO contributed financing as well as technical support for the Project.

In the course of the project, twelve research reports and two Round Table Proceedings Reports were produced jointly by international and local experts.

The foreign experts who participated in the Project included Bob Warner, Keith Bezanson, James Riedel, Lars Holmstrom, Rebecca Dahele, Scott Fritzen, Garry Smith, Frank Flatters, Mia Huyn, David Dapice, Borje Lunggren, Suiwah Leung and Ari Kokko.

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A listing of the reports produced by this unique initiative is provided below:

- The Role of the State and the Market in the Economy of Viet Nam
- Non-State Business Sector Development and Job Creation
- Globalization and International Economic Integration
- International Financial Integration
- Further Perspectives on the Challenges of Integration
- Agriculture and Rural Development
- Rural Development and Off Farm Employment
- A Rural Social Development Strategy
- Science, Technology and Industry Strategy for Viet Nam
- Strategic New Generic Technologies
- Choices and Opportunities
- The Synthesized Report of the Research Project

The views expressed in this research report do not necessarily reflect the official views or policies of MPI or UNDP.



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The Challenges of Integration

The draft socio - economic development strategy confirms Viet Nam's commitment to push forward with integration into the world economy. Economic globalization is described as an 'inevitable trend that is increasing competitive pressures and interdependence among economies'. Along with the rapid pace of innovation in information and communication technology which is increasing the premium on economies' ability to master knowledge, the processes of globalization are seen as offering opportunities for developing countries to narrow development gaps, while increasing the dangers of being left behind. The strategy characterises international integration as a complex process of both cooperation and struggle, and argues that Viet Nam should develop areas and sectors in which it has comparative advantage, build an independent and efficient economy and effectively participate in the international labour distribution process.

The recent signing of the bilateral trade agreement with the United States (BTA) has sent a strong signal of the resolve of the government and the party to go down the path of economic integration. The draft strategy recognizes, however, that giving effect to this commitment requires addressing some difficult policy, institutional, political and social challenges. The concerns that created a climate of hesitation about the US trade agreement will not have gone away. Accession to the WTO, and implementing Viet Nam's commitments under the BTA, will require making — and implementing — further commitments on market access and on legal, institutional and regulatory reform. Reducing barriers to international competition under AFTA and other agreements will place uncompetitive industries and enterprises under pressure, even as it creates new opportunities and easier access to resources for others.

A key task over the next five to ten years will be to address the challenges of integration in a way that maximizes the benefits and effectively deals with the risks. Giving effect to the policy and institutional commitments associated with the various trade and investment agreements and WTO accession will be very demanding, since it is closely intertwined with the process of Viet Nam's transition to a market economy.

Achieving the maximum benefits from integration will require making further progress on the development of market institutions (such as, for example, the legal underpinnings of economic contracts, effective prudential regulation of the banking system, well functioning factor markets).

At the same time, Viet Nam will need to adopt measures to facilitate the structural adjustment from which the benefits of integration will arise, and to address the impact of economic downturns and policy change on the wellbeing of those who are poorly equipped to absorb shocks affecting their livelihoods.

Viet Nam's integration commitments

A significant contemporary channel for Viet Nam's pursuit of economic integration is through entering into and implementing bilateral, regional and multilateral agreements. Viet Nam has been a member of AFTA since 1995, and of APEC since 1998. A number of bilateral trade and investment agreements are being implemented — including with the European Union — and an agreement with the United States awaits ratification. Viet Nam has completed the 'transparency' phase of accession to the WTO, and is now entering into the market access negotiations with members of this organization.

Over the next decade, these agreements are likely to play a large role in shaping the nature and sequencing of Viet Nam's trade and liberalization policies.

These agreements can bring important benefits to Viet Nam. One set of studies (Fukase and Martin 1999a, 1999b) have estimated the gains to Viet Nam from implementation of liberalization commitments as part of AFTA, and of implementing the BTA with the United States (see Box 1).

Many commentators (for example Anderson 1998) have identified benefits which would accrue to Viet Nam from membership of WTO, beyond the gains to be achieved from unilateral liberalization. These include:

- greater and more secure market access for Viet Nam's exports because of the commitments to accord Viet Nam the same treatment with regard to market access and treatment of inward investment as all other members;
- availability of the WTO's dispute resolution mechanism;
- disciplines on domestic policy making to resist claims from special interest groups;
- assistance in strengthening and modernizing the regulation of trade and investment; and
- an opportunity to influence global approaches to multilateral trade and investment liberalization.

However, the largest benefits derive from any support that membership gives to Viet Nam's ongoing pursuit of free trade and deregulation of the domestic economy. And, as a recent study (UNDP, 2000) has pointed out, there is a risk that pursuit of bilateral, regional and multilateral agreements may foster an impression that the scope and pace of policy changes is being driven more by the interests of other countries than the domestic imperatives for economic development.

This impression is reinforced by the 'concessions' approach to trade and investment liberalization that is part of many negotiation processes linked with the agreements. Under the 'concessions' approach, other countries ask Viet Nam to make policy changes on the ground of what might seem good for their economies, and not necessarily on the grounds of what might be good for Viet Nam. This creates a situation where it may

Box 1.1 The benefits of regional and bilateral trade agreements

Recent studies have tried to quantify the implications of Viet Nam's accession to AFTA and of being granted MFN treatment as part of a trade agreement with the United States. They show that the static welfare effects of implementing AFTA are very small, and may even be negative. The analyses estimate that real per capita expenditures would change by between -0.04 per cent and $+0.4$ per cent, depending on whether goods in the Sensitive and General Exception list are included (Fukase and Martin 1999a). This is because trade with AFTA partners is relatively small, and the initial effects of liberalization of these imports is also limited. In addition, the gains from trade creation are offset by the costs of trade diversion. And because Singapore is the dominant destination for Viet Nam's exports to ASEAN, there is little in the way of gains from market access, because Singapore's protection is already very low. In addition, Viet Nam may suffer substantial terms of trade losses from the export expansion association with AFTA liberalization.

A later study (Fukase and Winters 1999) has examined the scope for dynamic gains from ASEAN membership, from direct and indirect stimuli to higher growth. Three channels are considered: the impact of access to foreign knowledge on productivity growth; the impact on returns to physical and human capital on domestic and foreign investment; and the benefits of international commitments in locking in economic reforms. These channels may provide more rapid growth — but the result is not clear-cut. Viet Nam imports most capital and producer goods — which could be expected to embody foreign knowledge — from OECD and newly industrialized economics in East Asian — AFTA preference may divert these imports to ASEAN countries which are less renowned as locations of R&D and knowledge generation. Much ASEAN — and other source — FDI in Viet Nam appears to be responding to protection for import substitution activities, but AFTA tariff reduction may promote more in the way of investment based on vertical integration of production by foreign multinationals in the region. AFTA may be a useful 'training ground' for broader liberalization and help in moving down the path to market oriented reforms. But extending AFTA on an MFN basis would eliminate the risk of perverse diversion effects.

In contrast with the relatively small state benefits from AFTA liberalization, the studies suggest that the gains from implementing the bilateral trade agreement with the United States are rather larger — amounting to a 1.5 per cent increase in real expenditure per capita (Ianchovichina, Martin and Fukase 2000). Around 40 per cent of this gain comes from access to the US market on MFN terms, largely driven by a significant increase in clothing and textiles exports. However, 60 per cent comes from the improvements in efficiency of resource allocation due to the reduction in barriers to international trade and investment.

appear logical for Viet Nam to defer doing things that are in the nation's best interest because doing them may seem to offer unnecessary concessions.

One further problem with trade agreements is their tendency to institutionalise mercantilism — the misleading idea that exports are the end objective of trade and imports are costs of trade. Regional and bilateral agreements also run the risk of promoting trade diversion rather than trade creation: when tariffs on imports from one country or region displace lower cost supplies from the rest of the world. Viet Nam will not benefit if consumers switch to imports with higher foreign exchange costs just because the import tax is lower than on the cheaper goods. The studies mentioned in Box 1.1 show that under some scenarios, AFTA liberalization could reduce Viet Nam's national welfare and that the benefits are always much less than unilateral, non-discriminating liberalization. In this respect, it should be noted that the main trade liberalization components of the US BTA are to be implemented on an MFN basis, and thus run no risk of trade diversion.

WTO

The government has decided that the principles and practices associated with membership of the WTO should provide the basic framework for pursuing economic integration. What does this mean, and how will it affect Viet Nam's ongoing economic development process?

Accession to the WTO will mean that Viet Nam will join some 135 countries, which embrace the following principles:

- non-discrimination — that is, according all members of WTO the same, MFN status (with some exceptions regarding WTO compliant regional trading agreements), and not discriminating between domestic and foreign products, services or nationals;
- reducing barriers to trade, through processes of negotiation;
- increasing predictability of trade policies by binding commitments to opening markets and reducing barriers; and
- limiting use of non-tariff trade instruments.

Viet Nam will be required to prepare and negotiate three schedules of commitments that will be attached to the Protocol of Accession, relating to:

- tariffs (to be reduced and bound or subject to ceiling bindings) and other measures affecting trade in goods;
- market access, domestic support and export subsidies affecting agricultural trade (with bindings); and
- commitments on trade in services, consistent with the General Agreement on Trade in Services.

These schedules may specify phase-in periods and temporary maintenance of current practices. It is possible (in fact likely) that Viet Nam will be required to undertake commitments that are not currently required of existing members of WTO. Anderson (1998) suggests that Viet Nam may be required to sign on to the Government Procurement Agreement and enter into stronger commitments regarding state enterprises.

More specifically, accession to WTO is likely to require Viet Nam to undertake or commit to undertake some or all of the following policy changes:

- tariffication of many NTBs, especially import bans and quotas which are solely protective in intent;
- adopting more transparent procedures regarding import licencing (including licencing managed by specialized agencies);
- freeing up trade and foreign investment in services, over time, including granting national treatment to foreign service providers;

- strengthening and enforcing IPR;
- amending Trade Related Investment Measures (TRIMS) inconsistent with the Agreement on Trade Related Investment Measures reached during the Uruguay Round — this is likely to require extension of national treatment, and phasing out elements of foreign investment regulations conditional on export performance, import patterns or local content;
- reducing state support to state trading enterprises and other SOEs — this may require corporatisation or even privatization of commercially oriented enterprises;
- notifying all trade and investment related policies to the WTO Secretariat, including measures adopted for balance of payments and quarantine purposes, and technical standards that differ from international standards;
- adopting a single door process for import licencing;
- identifying a single contact point to deal with queries about trade and investment policies;
- justifying quarantine restrictions on scientific, risk management grounds;
- adopting (or committing to adopt) the GATT Valuation Code; and
- agreeing to certain kinds of treatment by trading partners.

Ongoing membership of WTO will bring with it obligations to abide by the rules of the organization, especially regarding processes for increasing protection and use of non-tariff mechanisms. Despite the broad principles of the organization regarding reductions in barriers to trade and investment, the Articles of the organization provide for imposition of temporary protection in specified circumstances. They also lay down some procedures to follow in cases where governments wish to take anti-dumping action or impose countervailing duties in situations of export or other forms of subsidy.

Annex B lists the main agreements to which Viet Nam will become a party on accession to the WTO, and identifies some of the actions that will be required to prepare for and implement these agreements.

Viet Nam has completed the transparency stage of WTO accession, and is now entering into the process of market access negotiations with existing members. These negotiations may be troublesome, as the delay in completing the trade agreement with the US indicates. The best way to approach these negotiations is from the basis of a fully developed and broadly agreed and understood strategy for trade and investment liberalization. This would avoid the problems of negotiating in a reactive mode, where it may seem that negotiating partners are shaping the agenda and proposed pace and content of reform. This is particularly important for a transition economy, because ensuring good outcomes from market access agreements may be contingent on putting in place appropriate institutional and regulatory arrangements. If such a strategy is not in place, then it may be desirable to slow down the negotiation process until it has been developed. But slowing down negotiations should not imply slowing down liberalization,

because that would imply slowing down the benefits of more open trade and investment policies. Rather, Viet Nam should continue to implement on a unilateral basis those reforms that do not need to wait on complex institutional change.

AFTA

Another important vehicle for pursuit of integration is Viet Nam's participation in the regional cooperation initiatives of ASEAN. The key cooperation agreements are:

- AFTA
- ASEAN Investment Area (AIA)
- ASEAN Service Agreement
- ASEAN Customs 2020 Vision Statement

Membership of AFTA involves a commitment to reduce tariffs to a range of zero to 5 per cent on imports from ASEAN over a ten year period on a wide range of industrial and agricultural commodities under the Common Effective Preferential Tariff Scheme (CEPT) (see Box 1.2). It also involves commitments to eliminate NTBs on goods covered by the CEPT, and is linked to other areas of cooperation such as harmonization of technical standards, reciprocal recognition of tests and certification of products, removal of barriers to foreign investment, macroeconomic consultations, rules for fair competition and promotion of venture capital. The AIA involves agreements to move towards national treatment for ASEAN investors, liberalise flows of capital, skilled labour and professionals and technology, and removal of all sectoral restrictions on investment by ASEAN enterprises. The ASEAN Services Agreement involves commitments beyond those made under the WTO's GATS: essentially voluntary, binding limitations on market access and national treatment in seven priority areas.

The Customs 2020 Vision Statement lays out a basis for cooperation in strengthening customs services, promoting, among other things, adoption of a harmonised tariff nomenclature recommendations and the GATT valuation system, simplification of customs procedures and improvements in management.

Viet Nam's implementation to date

Preparing for, and implementing commitments under the various vehicles for ASEAN economic cooperation has had an important impact on domestic policy and thinking about integration. However, implementation has been on a sporadic and uncoordinated basis, reflecting a lack of a coherent and broadly accepted strategy for integration. A significant 'back loading' of commitments is occurring, and decisions which are inconsistent with both the letter and the principles of the agreements have been made.

Box 1.2 AFTA and the CEPT

Viet Nam became an official member of ASEAN on 28 July 1995. With that membership came the responsibility to participate in the AFTA, which member countries agreed to create in January 1992. The key element of AFTA is a commitment to reduce tariffs on intraregional trade under the Common Effective Preferential Tariff (CEPT).

Under the CEPT agreement (as modified by a Ministerial Declaration of December 1995), the members of AFTA entered into a commitment to reduce tariffs on intra-ASEAN trade to no more than 5 per cent by the year 2003 (later for new members such as Viet Nam (2006), Laos (2008) and Myanmar (2008)). The agreement lays out the broad mechanism for phasing tariffs down to the target, identifying four categories of products: fast track, normal track, unprocessed agricultural products and a temporary exclusion list. In addition, countries are allowed to identify a (supposedly limited) set of goods to be completely excluded from the tariff reduction exercise (the general exceptions list). This list is meant to only include products that comply with Article XX of the GATT, which allows measures to protect national security, public morals, human, animal or plant life and the protection of articles of historic, artistic or archaeological value.

For goods to be eligible for preferential treatment, they must have a minimum of 40 per cent ASEAN content, and be in the inclusion list — and same tariff category — in both exporting and importing countries.

The agreement requires that QRs on all products on the inclusion list be eliminated immediately following inclusion. All NTBs, including customs surcharges and technical restrictions (such as standards and regulations relating to product quality etc.) are to be phased out over a longer period, as AFTA work on harmonization of customs procedures and standards proceeds.

More specifically:

- Implementation of CEPT commitments has been less than whole-hearted. The inclusion list, submitted at the Bangkok ASEAN summit in 1995, has been implemented on an incremental basis. No schedule for elimination of NTBs on items in the inclusion list has been submitted to the AFTA Council, let alone has concerted action taken to remove restrictions on goods included in the list.
- There has been little substantial liberalization to date. As at March 2000, some 4,230 out of a total of some 6,500 tariff lines had been formally included in the inclusion list. Most goods notified under the CEPT have, however, been ones that are not produced in Viet Nam, or which have general tariffs already equal to or less than 5 per cent. The temporary exclusion list covers most goods currently produced in Viet Nam and the general exception list includes a range of goods where Viet Nam has strong revenue and protection concerns, thus breaking the spirit of the CEPT (CIE 1998).
- Many decisions have been made which have increased barriers to trade, including the extension of coverage of NTBs in 1998, and the introduction of foreign exchange surrender requirements. Line ministries have requested adjustments to the committed tariff reduction schedule, and some of these requests have been accepted, primarily as a measure to protect foreign investment projects (Nguyen 1998).
- Viet Nam's initial offer under the ASEAN Services agreement has been limited in scope and depth (Bureau of the National Committee for ASEAN 1998).

- n There are very profound changes required for Viet Nam to participate in the AIA, particularly with regard to national treatment, which would require, inter alia, not subjecting ASEAN investors to a separate Foreign Investment Law, offering them the same property rights as Vietnamese companies, creating a unified taxation regime and not requiring work permits to ASEAN nationals.

One very positive aspect of Viet Nam's implementation of AFTA commitments was the publication of an informal road map of CEPT reductions for items on the inclusion and temporary exclusion list, as part of a provision of public education and consultation. Table 1 summarises the path of tariff reduction for these classes of goods presented in the road map.

Table 1.1 CEPT road map average tariff rates 1996 to 2006

Category	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Inclusion list	7.0	6.8	5.8	5.6	4.7	3.9	3.8	2.8	2.6	2.5	2.3
Temporary exclusion list	19.9	19.9	19.9	19.9	19.8	19.6	19.4	17.5	13.4	8.9	3.9
Total	12.7	12.6	12.1	11.9	11.4	10.9	10.7	9.3	7.4	5.3	3.0

Source: CIE (1998).

The government has also been examining the competitiveness of local production, to identify sectors where AFTA tariff reductions may create pressures for adjustments (CIEM 1999). Products have been classified into three groups — those that are judged to be competitive, 'conditionally' competitive, and uncompetitive. This classification is being used as a guide to future investments, and also to determine the sequencing of inclusion of products in the CEPT tariff reduction process.

APEC

Viet Nam formally joined the APEC forum at the APEC Leaders meeting held in Kuala Lumpur on November 17-18, 1998. As a member of APEC, Viet Nam has undertaken to pursue the trade and investment liberalization objectives expressed in the Bogor Declaration, in which APEC leaders declared free and open trade and investment to be the objective by 2020 for developing economies and 2010 for industrial economies. In 1995 this commitment was restated in Osaka and in 1996 APEC leaders met in the Philippines to present action plans for achieving the free trade targets. While APEC commitments and obligations are not binding in the same way as CEPT or WTO commitments, membership is likely to provide another important set of pressures for reform.

APEC's founding principle is 'open regionalism' — regional cooperation that gives primacy to multilateralism and does not seek to form an exclusionist trade bloc. This means that APEC acts as a caucus or lobby group working in support of the multilateral trading system. It galvanises political support for progress at the multilateral level. Because

APEC is a diverse group of developed and developing economies, and represents a large part of the global economy, its collective view is very important.

APEC also works as an incubator of ideas and a place to develop ideas and approaches to issues for use in the WTO. One example is work done in APEC on trade barriers in information technology, which formed the basis of the WTO Information Technology Agreement. Another example is work done in APEC on trade facilitation, on regulatory reform and on competition policy now being used in the WTO as it begins its work on these issues.

Another contribution from APEC to the multilateral trading system is in the area of training and capacity building.

While pursuing open markets through the multilateral trading system, APEC has encouraged and facilitated continuing individual trade and investment liberalization beyond the WTO commitments.

At the second APEC Economic Leaders Meeting in Bogor, Indonesia, on 15 November 1994, the Leaders issued a Declaration of Common Resolve which included, among other things, a '*commitment to complete the achievement of our goal of free and open trade and investment in the Asia Pacific no later than the year 2020*'. Recognizing the different levels of economic development among APEC member economies, the Economic Leaders agreed that industrialized economies would achieve this goal no later than 2010, and developing economies no later than 2020. These 'Bogor goals' have been the bedrock of APEC's efforts to promote individual trade and investment liberalization by member economies.

In order to monitor progress towards these goals and to encourage a process of continuous liberalization, APEC economies agreed to report their progress on an annual basis across 15 policy issues set down by Leaders in 1995 in the Osaka Action Agenda. These reports, known as Individual Action Plans (IAPs), have become the primary vehicle for encouraging economies to individually adopt market-opening measures. The IAP system was further enhanced by a process of peer review, in which each economy receives comments on its IAP and suggestions on how to improve its trade and investment regime from other economies. This system has been an important contributing factor supporting the liberalization by APEC member economies beyond their Uruguay Round commitments referred to previously.

When Viet Nam joined APEC at the end of 1998, it submitted an Individual Action Plan, laying out actions to be taken to meet the Bogor Declaration objectives. The plan describes short, medium and long term actions dealing with tariffs, non-tariff measures, trade in services, investment, standards, customs procedures, IPR, competition policy, government procurement, deregulation, rules of origin, dispute settlement, mobility of business people, implementation of Uruguay Round outcomes, and information issues.

The US-Viet Nam bilateral trade agreement

On July 13 2000, Viet Nam and United States officials signed a comprehensive bilateral trade agreement (BTA). This agreement, which awaits ratification by the US Congress and the President of Viet Nam, commits the United States to extend temporary MFN status to Viet Nam, and commits Viet Nam to undertake a wide range of actions in areas of market opening, protection of intellectual property rights, trade in services and investment liberalization.

Access to US markets on MFN terms is seen as being particularly valuable to Viet Nam. Recent estimates suggest that Viet Nam's exports to the US could double compared to the levels that would otherwise prevail as a result of the granting of MFN status — based on 1998 export levels, this would mean an additional USD 750 million (Ianchovichina, Martin and Fukase, 2000). However, the big gains to Viet Nam will come from the domestic reforms and liberalization of trade and investment that form the core commitments of the Agreement (Box 3). These reforms are discussed in more detail in Annex A.

Box 1.3 The United States - Viet Nam bilateral trade agreement

Under the bilateral trade agreement with the United States of America that was signed on July 13 2000, Viet Nam made a comprehensive set of commitments with respect to market access for industrial and agricultural goods, intellectual property rights, market access for services, investment regulation and controls and transparency of laws, policies and processes with respect to trade and investment. The key features of these commitments include the following.

Market access for industrial and agricultural goods

All Vietnamese firms, and over time US persons and firms, will be allowed to import and export freely products not subject to explicit restrictions. Tariffs on approximately 250 products, most of which are agricultural, will be reduced by between 33 and 50 per cent. Nearly all non-tariff barriers on imports and export restrictions that are inconsistent with the GATT will be phased out. WTO standards will be adhered to with respect to customs, import licencing, state trading, technical standards and sanitary and phyto-sanitary measures (which effectively means that such measures cannot be used for protection purposes).

Intellectual property rights

Viet Nam will adopt the provisions of the WTO Trade related Intellectual Property rights (TRIPS) agreement, and also extend protection to satellite signals.

Market access for services

Viet Nam will uphold WTO rules such as MFN, national treatment and disciplines on domestic regulation, and will allow US companies and individuals to enter the domestic market in a wide range of service areas, including financial services (insurance and banking), telecommunications, audio visual, distribution, legal, accounting, engineering, computer and related services, market research, construction, education, health and related services and tourism.

Investment provisions

Viet Nam guarantees MFN and national treatment, transparency and protection against expropriation, and will phase out the investment licencing regime for many sectors. Foreign investors will be granted the same rights of profit repatriation as Vietnamese enterprises, minimum capital contribution

requirements will be phased out, and investment measures that are inconsistent with the WTO agreement on trade-related investment measures (TRIMS), including local content and foreign exchange balancing requirements will be eliminated.

Transparency provisions

Viet Nam will adopt a fully transparent regime with respect to the above four areas. This will involve issuing draft laws, regulations and other rules for comment, ensuring advance public notice for all such laws and regulations and that the appropriate documents are published and readily available, and allowing US citizens the right to appeal rulings made with respect to these laws and regulations.

Future implications

Most of Viet Nam's commitments in the implementation of regional and bilateral trading agreements (AFTA, AIA, ASEAN Industrial Corporation Scheme (AICO), APEC) are based on the founding principles of the WTO. (Although some commitments in regional pacts are at higher level than those in the WTO, such as the tariff reduction schedule in CEPT/AFTA). However the level of binding and enforcement in regional trading blocs is generally lower. Experience of the implementation of CEPT/AFTA in recent years (of Viet Nam and other member countries) shows that there is room for renegotiations of commitments in case the member countries face difficulties. Therefore, most pressure for Viet Nam to adjust the policies, legal frameworks and institutional arrangements will be from the implementation for accession to WTO. Pressure will also come from the commitments made under the US Viet Nam BTA, which has a specified time frame for implementation of each of its articles.

In the last ten years, Viet Nam has done much to liberalise trade and investment — almost all of it on a unilateral basis with little reference to bilateral, regional and multi-lateral agreements. (In this regard, it is like most other countries that have implemented significant trade and investment reforms). A lot of emphasis is now being placed on participation in international agreements. These provide considerable opportunities to nurture further reform in Viet Nam and in other countries. But they also carry risks of diverting attention from the main game, which can be pursued on a unilateral basis.

Broadly speaking, the actions called for under participation in these agreements are thing that would be sensible for Viet Nam to do, even if they were not called for by articles of these agreements. And Viet Nam does not have to tie these actions to membership of these agreements. However, it is also clear that the agenda of organizations like the WTO does not always reflect the priorities or capabilities of countries like Viet Nam. This agenda is often driven by the interests of specific interest groups in developed and developing economies (as evidenced by the recent attempts to link trade to labour and environmental standards in the next round of WTO negotiations).

Moreover, the market access negotiations linked to accession to the WTO may lead to inappropriate sequencing of reforms, unless Viet Nam has a clear and broadly accepted domestic strategy for reform of trade policy, trade management, tariffs and investment and service sector regulation. It is in the nature of international institutions that there may be selectivity of priorities they pursue.

The key point is that Viet Nam is unlikely to be able to influence these priorities by holding back on its own liberalization agenda. There may be scope for exerting influence by joining coalitions of countries pushing for greater action in areas of interest. But to refuse to liberalize Viet Nam's policies because other countries still restrict trade is to make the fundamental mistake of mercantilism, and to fall into the 'concessions' trap discussed above. It is true that the gains to Viet Nam from liberalization would be greater if all countries were to liberalize. But this does not mean that Viet Nam only gains if all countries liberalize. A small economy like Viet Nam will always be better off with a liberalized trade regime, regardless of what her trading partners do.

The challenges

- Developing a comprehensive and integrated strategy/roadmap for implementing the agreements to which Viet Nam is or will become a party
 - focusing on policy, legislation and institutional issues
- Policy, legislative and institutional changes
 - competition law, commercial law, MFN, SPS, National treatment, foreign investment, service regulation etc
- Public education and awareness
- WTO accession
 - developing a negotiation strategy based on a thorough and realistic appraisal of what Viet Nam will have to do
 - addressing the agreements (GATS, TRIMS, TRIPS etc)
- Preparing for financial integration
- Complementary policies and actions
 - SOE reform
 - banking sector reform
 - taxation and public expenditure management reform
 - public investment planning reform
 - land, labour and capital model development
 - administrative reform
- Facilitating adjustment
 - special treatment
 - developing social safety nets
 - establishing principles for providing adjustment assistance
- Improving enterprise competitiveness
 - fostering entrepreneurialism

- eliminating the underwriting of failures
- facilitating access to international production and management practices
- removing the burden of social obligations
- The new economy — e-commerce
- Managing the risks of integration
- sovereignty
- socialist orientation
- constraints on policy choice
- greater exposure to world business cycles and external shocks
- social cost of adjustment
- revenue losses
- social and cultural impact

Making the most of economic integration

The centrality of economic integration to Viet Nam's future development seems to be firmly embedded in strategic thinking. However, there is clearly uncertainty about how to build on past actions and move forward in a way which captures the benefits to be had from integration while limiting risks and possible disruption.

Some of this uncertainty reflects concern that Viet Nam's transition to an integrated market economy is a 'journey without maps'. It also reflects the fact that the next steps in the transition are much more complex and technically and institutionally demanding than in earlier stages of the reform. And, as in many other countries, a lot of this uncertainty is fed by groups in the community who see their economic interests threatened, and who resist change even though it is in the overall interests of the community. The situation is also complicated by the reasonable concern about the incomplete nature of market institutions, which could possibly lead to perverse outcomes from further liberalization.

The experience of other countries is that trade and investment liberalization can generate significant and sustained gains, provided it is associated with supporting macro and microeconomic policies. And adjustment problems have generally been much less than feared: the only real exception being the states of the Former Soviet Union, where the evidence suggests that the countries that have liberalized trade as part of their transition programme have done better than those who have not.

One clear message from the experience of other transition economies is that the benefits of integration are most likely to be maximized, and risks minimised, if integration is pursued as one part of the broader transition process and is accompanied by:

- implementing prudent fiscal and monetary policies and a market-determined exchange rate system;
- fostering enterprise development and domestic competition;
- orienting trade and tax policies towards the incentives they create for decentralized decision making;
- continuing SOE reform;
- facilitating development of efficient markets for land, labour and capital; and
- creating a legal framework that fosters and reduces costs of business transactions.

The draft socio-economic development strategy lays out a strong commitment to moving on these fronts over the coming decade. The strategy places considerable emphasis on establishing the institutions of a market economy. However, beyond this a more specific strategy for integration is required. Two key principles should inform this strategy. First, the benefits of integration arise from having resources — capital, land and labour—respond to the incentives created by exposure to international prices, competition and market opportunities. Thus, it is counterproductive to take actions to shield local enterprises from the signals created by more open trade and investment policies. Second, investors — both foreign and domestic — are influenced primarily by their expectations of *future* policy. Thus credibility, consistency, transparency and coherence of policy is essential to ensure a positive rapid response to integration efforts. It is desirable to rely as much as possible on clearly established generally announced rules and timetables for reform.

A draft trade strategy for the period 2001-2010 has been prepared as part of the process of preparing the socio-economic development strategy. However, this document concentrates mainly on presenting trade projections and discussing market opportunities, and says very little about the policy challenges of integration.

“The integration strategy should address:

- developing a framework for identifying and addressing perceived risks, economic, social and political;
- the sequencing of further trade and investment reforms;
- adoption of complementary policies to secure the benefits and facilitate the structural adjustments that integration and growth will bring in their work;
- institutional changes needed to manage economic policies as integration proceeds; and
- the promotion of public awareness of, and support for, the changes involved with integration”.

Addressing the risks

Much debate about integration in Viet Nam focuses on perceived risks — of social and economic disruption, of threats to equity and social justice, and of constraints imposed

on national sovereignty — associated with integration and the growth it will bring. There may be some disruption as enterprises adjust to increased international competition and to new opportunities. Growth will generate new opportunities for those displaced by change. However, because of rigidities in markets for land, labour and capital and the fledgling nature of many market institutions, adjustment to change may not be smooth. Addressing the risk of disruption will require continued efforts on all aspects of the ongoing transition programme, and developing appropriate social safety nets. Since the benefits from integration come from the reallocation of resources to higher productivity uses, it would be counterproductive to offset the effects of integration with policies that impede adjustment.

Growth resulting from deeper integration will inevitably be associated with growing income disparities. Without the prospect of earning higher incomes, Vietnamese people will be unlikely to take the personal risks and make the investments required to achieve the productivity increases that must underpin national economic growth. But, without growth, government revenues will remain stagnant, unable to support an expansion of social services and infrastructure facilities needed to improve human and physical capital and reduce poverty.

Integration will impact on the role of government in economic management, imposing constraints on the scope to use certain policy instruments. But, rather than a *surrender* of national sovereignty, this should be seen as an *exercise* of sovereignty, to strengthen the nation's capacity to determine its own future.

There can be significant risks if capital account liberalization precedes the development of appropriate mechanisms to supervise and regulate the financial system and generate adequate disciplines on credit decisions by lenders and borrowers. But these do not apply to liberalization of international trade and direct investment.

It is therefore important to develop appropriate strategies to manage the risks of integration. Uncertainty about the implications of integration fosters a hesitant approach to change, which can be manipulated by vested interests threatened by reforms. Successful integration should therefore be accompanied by measures to address perceived risks. Table 2 presents suggestions for dealing with some of these.

Table 1.2 Managing the risks of integration

<i>Perceived risk</i>	<i>Comment</i>	<i>Risk management strategy</i>
Loss of national sovereignty	Integration should be viewed more as an exercise of national sovereignty than a surrender of sovereignty. Joining international agreements means joining many other countries that have judged that voluntary constraints on discriminatory policies are in the national interest	Improve national understanding of the nature of integration
Threat to socialist orientation and achievement of objectives of maintaining a just,	China has indicated that joining WTO is fully consistent with achieving the goal of a socialist market economy system. The	Develop modern instruments to meet equity objectives through public investment in health and

equitable, prosperous and civilised society. Increased regional disparities and less equal income distribution	growth resulting from integration will generate increased revenues to fund social and infrastructure expenditures.	education, fiscal transfers to aid the disadvantaged, while promoting the growth needed to general a government revenue base to fund such programmes
Limits on the scope to promote industrialization and acquire technology	Protection and state subsidies seldom lead to sustainable and efficient industries. The main impediments to industrial development lie in the fledgling state of market institutions and market oriented instruments of state management	Accelerate public administration reforms and construction of a legal and institutional framework for an efficient market economy
Greater exposure to world business cycles and external shocks	Greater volatility may be a consequence of a more open economy, but it will be at higher - and more rapidly growing - income levels. The biggest risk lies with state enterprises that are insulated from pressures to adjust to changing circumstances and economic policies that try to defer necessary adjustments	Strengthen instruments of macroeconomic management - especially fiscal and monetary policy - and reduce domestic impediments to adjustment. Accelerate processes of SOE reform to increase financial disciplines faced by management and divest non-strategic enterprises
Inefficient and wasteful foreign investment displacing local enterprises	Viet Nam's protection policies have led to some very inefficient foreign investment projects going ahead which will generate limited returns to the community	Adopt a less accommodating approach to protection and incentives for foreign investments. Eliminate barriers to domestic and international competition in the markets supplied by foreign (and domestically) invested projects
High social costs of adjustment as protection and barriers for entry are reduced	Pressures for structural adjustment will be strong and may be concentrated in certain sectors and localities. Adjustment costs may be high because of rigidities in markets for land, labour and capital. But resisting changes may mean foregoing the benefits of integration	Press ahead with reforms in land, labour and capital markets to ease the reallocation of factors of production to new uses. Develop social safety nets to ameliorate unacceptable personal hardship
Loss of revenue due to tariff reductions	Tariff reduction alone may lead to lower import tax revenues. But eliminating NTBs and tariff exemptions, along with lower tariffs, will lead to increased value of dutiable imports	Accelerate refinement of the value added tax (VAT) to ensure that expanding sectors of the economy are captured in the tax net. Adopt a non-zero minimum import tariff and eliminate all tariff exemptions except those accorded to exports and mandated by international agreements

Sequencing of trade and investment reforms

The sequencing of trade and investment reforms and associated institution building will be strongly shaped by Viet Nam's decision to pursue accession to the WTO, and implementation of AFTA commitments.

Most of the changes that accession and compliance with the various agreements will require are consistent with what Viet Nam would want to do regardless of WTO (although the sequencing and timing might be approached differently). But besides preparing for these changes — and developing a sensible strategy for negotiating the remaining stages of accession — Viet Nam should:

- incorporate the guiding principles of WTO into domestic policy formulation as quickly as possible;
- formulate and adopt a strategy for tariff based protection, involving a programme for phasing out NTBs and moving towards a lower and more uniform and more stable tariff structure;
 - for some NTBs, the key is to develop appropriate, non-discriminatory forms of regulation to achieve non-protective objectives
 - for others, the issue is to switch to tariff based protection as soon as possible to send clear signals to producers and investors that the level of protection is bounded;
- remove impediments to market determination of the exchange rate;
- adopt an appropriate policy and institutional regime to promote domestic competition — placing priority on review and reform of regulation, laws and administrative practices that impede competition; and
- moving towards a unified legal, regulatory and taxation treatment of domestic and foreign investment.

Viet Nam is now committed under the Miyazawa agreement to a timetable for phasing out non-tariff barriers. When the BTA with the United States comes into effect, it will also bring with it a commitment to phase out quantitative controls on imports and exports, as well as most exclusive state trading arrangements. The BTA also calls for relaxation of the the import licencing system, and elimination or replacement of technical barriers to trade. While many of these changes do not have to implemented immediately, they will in some cases need significant amounts of preparatory legal and institutional change. It will be desirable to have a clear timetable for implementing these changes.

“The two most important priorities are to:

- establish a clear road map for replacing NTBs by tariffs and/or more appropriate forms of regulation, and implement it as quickly as technically possible;
- send a clear signal that the government will not longer accord protection to underwrite the financial viability of existing or new projects regardless of the economic costs”.

Complementary policies to manage and facilitate adjustment

Complementary policies

The debate over integration in Viet Nam makes much of a need to provide enterprises in protected industries with time to adjust and to make new investments to be able to

meet international competition. This is not a compelling argument, and suffers from the same flaws as the argument for infant industry protection: both ignore the costs imposed on the rest of the economy, and the difficulty of ever weaning enterprises off protection. However, there are reasons in Viet Nam for moving carefully on trade and investment liberalization:

- some trade controls are used primarily to achieve non-protective objectives, and will need to be replaced by other instruments;
- many current regulations and systems impede adjustment to change (for example, on land use and investment);
- the revenue system remains dependent on trade, and ongoing tax reforms are moving slowly to broaden the tax base;
- much state investment planning appears to assume that trade and investment policies will be adjusted to accommodate and validate investment decisions — planning processes will need to be changed to factor in the implications of changes in trade and investment policies;
- trade and investment liberalization has implications for, and is closely intertwined with, reforms of the SOE sector;
- ongoing efforts to develop a sound and competitive financial system will play a critical role in securing the benefits of liberalization.

For these reasons, liberalization will need to be accompanied by continued progress on other elements of the transition and renovation process.

Given linkages to other areas of policy and administrative reform, successful integration will be associated with profound changes in the role of the state in shaping the economy. It will contribute to the shift to state economic management through indirect means, relying on the incentives created by policies to influence decentralized — and increasingly private — production and investment decisions.

Facilitating adjustment

Implementation of the trade and investment liberalization strategy — and the growth it will bring — will generate pressures for structural adjustment. These adjustments will create some complex challenges for government policy. There will be intense pressure from vested interests for special treatment, and the social costs of adjustment in some areas of the country may be judged to be unacceptably high.

To address this challenge, the government will need to take actions to:

- develop mechanisms to assess requests for special treatment during the adjustment process, using criteria based on the overall national interest, and not sectoral, regional or personal interest;

- facilitate adjustment by removing impediments facing enterprises, industries and workers;
- develop social investment programmes to help people acquire the education and skills required by a modernizing economy; and
- support the development of appropriate social safety nets to address the needs of people lacking the capacity to take care of their own welfare regardless of the causes.

Institutional change

Many institutional changes will be called for by the integration process, especially to implement commitments made under the various agreements Viet Nam will enter into on accession to the WTO. A glimpse into the institutional demands is given by the requirements of the US BTA. Some of the institutional changes that implementation of the BTA will require include:

- Basing sanitary and phyto-sanitary controls on a scientific risk assessment framework;
- Restructuring regulations affecting sale, purchase, distribution, storage or use of goods to ensure national treatment of goods from the US;
- Adoption of the GATT code for customs valuation;
- Providing for an effective system of arbitration and dispute settlement and for enforcement of arbitral awards;
- Regulating state trading enterprises to ensure non-discriminatory treatment of US goods and that decisions are based solely on commercial considerations;
- Implementation of a TRIPS consistent intellectual property rights protection system, including fair and equitable and transparent civil judicial enforcement procedures, as well as criminal procedures and penalties to be applied to trademark counterfeiting or infringement of copyrights, and enforcement of intellectual property rights over imported goods;
- Adoption of judicial, arbitral or administrative tribunals to provide for review and, where justified, appropriate remedies for administrative decisions affecting trade in services;
- Adoption of procedures to ensure that standards and licencing and qualification requirements with respect to supply of many services are based on objective and transparent criteria, and that monopoly suppliers of services do not abuse their monopoly position;
- Ensure that investments covered by the agreement are accorded treatment no less favourable than that required by applicable rules of customary international law;
- Adoption of the provisions of the GATT Trade-Related Investment Measures agreement, including elimination of all measures inconsistent with the agreement;

- Implementation of comprehensive requirements with respect to transparency of regulations and administrative procedures.

Promoting public awareness

Integration will continue to face resistance from interests that are directly benefiting from protection from competition. There may also be continued hesitation on the part of those who fear adverse effects on national sovereignty or that integration will promote the spread of social evils. The fundamental political problem is that those who are benefiting from current policies know how they benefit, while those who bear the cost are not aware of these costs. And people understandably fear the unknown. That is why public education and the dissemination of clear road maps for future policy change are so important.

“A key part of the integration strategy should be to provide people with information about the effects of current policies and of reforms — to help them understand what is involved and how they will benefit — and to provide them with opportunities to express their views and to influence policy making”.

Section 3. An action programme for integration

An action programme for further trade and investment liberalization

<i>Programme objective</i>	<i>Programme elements</i>	<i>Timeframes</i>		
Proceed with unilateral actions to further liberalise trade in goods and foreign investment	Trade in goods	<ul style="list-style-type: none"> ▫ Phase out NTBs, replacing with tariffs or non-discriminatory regulations ▫ Develop target long - term tariff structure - simple, relatively uniform - and time path to implement it (taking account of CEPT commitments) ▫ Strengthen customs administration - valuation, compensation, procedural streamlining ▫ Develop mechanisms for evaluation of protection issues, develop industry restructuring plans 	<ul style="list-style-type: none"> 3-5 years 1 year development 5 years implementation 5-10 years 1-2 years 	
		Investment	<ul style="list-style-type: none"> ▫ Develop and implement programme for legislative reform aimed at phasing in national treatment ▫ Phase in uniform tax and incentive treatment of foreign and domestic investment ▫ Develop, where appropriate, sectoral regulatory regimes to replace direct investment controls (for example, telecommunications, transport infrastructure, banking and finance) 	<ul style="list-style-type: none"> 5 years 5 years 5-10 years
			AFTA	<ul style="list-style-type: none"> ▫ Publish tariff reduction schedule for CEPT to 2006 (implementing reductions on MFN basis) ▫ Prepare and implement programmes for AIA and other agreements
		US trade agreement		<ul style="list-style-type: none"> ▫ Update individual action plans ▫ Ratify and implement
	Formalise and implement strategies for WTO accession	Accession preparations	<ul style="list-style-type: none"> ▫ Complete assessment of legislative and institutional requirements of implementing most likely scenario of accession agreements ▫ Develop domestic consensus on pace, schedules and levels of market opening ▫ Prepare realistic negotiating strategy for accession negotiations 	<ul style="list-style-type: none"> Ongoing Ongoing Immediate

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Programme objective	Programme elements	Timeframes	
Develop complementary domestic reforms	WTO activities	<ul style="list-style-type: none"> • Actively participate as much as observer status allows in preparation for a new liberalization round 	Ongoing
	Competition policy	<ul style="list-style-type: none"> • Initiate process of regulatory review to identify and eliminate unwarranted legislative and administrative restrictions on competition 	1-3 years
		Develop regulatory regimes for network industries (utilities)	2-5 years
	Business and factor market regulation	<ul style="list-style-type: none"> • Streamline regulatory and legal systems governing business establishment and market entry 	3 years
		<ul style="list-style-type: none"> • Progress land and labour market reforms to facilitate reallocation to alternative employment opportunities 	5 years
	Financial sector development	<ul style="list-style-type: none"> • Restructure banking system 	Ongoing
		<ul style="list-style-type: none"> • Adopt modern methods of supervision and regulation 	Ongoing
		<ul style="list-style-type: none"> • Facilitate development of capital markets 	Ongoing
		<ul style="list-style-type: none"> • Develop legislative frameworks to support credit systems (for example, bankruptcy) 	Ongoing
	State enterprise reform	<ul style="list-style-type: none"> • Complete equitisation, leasing and divestiture 	Ongoing
<ul style="list-style-type: none"> • Commercialise enterprises remaining 100 per cent state owned 		Ongoing	
<ul style="list-style-type: none"> • Strengthen financial and fiscal disciplines in state enterprises 		Ongoing	
Strengthening tax and fiscal policy and administration	<ul style="list-style-type: none"> • Refine design and administration of VAT 	Ongoing	
	<ul style="list-style-type: none"> • Strengthen public expenditure management systems to facilitate better implementation of social sector and human resource development programmes 	Ongoing	
	<ul style="list-style-type: none"> • Strengthen public investment in planning and maintaining mechanisms to take better account of implications of trade and investment liberalization 	Ongoing	
Public administration reforms	<ul style="list-style-type: none"> • Develop and implement programmes to increase professionalism and efficiency of public administration and to reorient state administration to elements of a market economy 	Ongoing	

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Programme objective	Programme elements	Timeframes	
Facilitate adjustment	Public education and awareness	<ul style="list-style-type: none"> ▪ Initiate programmes to improve public understanding at all levels of the implications and nature of integration 	Ongoing
	Social investment programmes	<ul style="list-style-type: none"> ▪ Strengthen and/or develop mechanisms for retraining, skill development, enterprise development, etc. for displaced workers and new entrants to the workforce to facilitate labour mobility, taking account of gender dimensions of change 	Ongoing
	Social safety nets	<ul style="list-style-type: none"> ▪ Develop short and longer - term systems to provide social safety nets for those unable to support themselves, addressing gender differentiated needs 	Ongoing

Annexes

A *The Bilateral Trade Agreement*

On July 13 2000, Viet Nam and United States officials signed a comprehensive Bilateral Trade Agreement (BTA). This agreement, which awaits ratification by the US Congress and the President of Viet Nam, commits the United States to extend temporary MFN status to Viet Nam, and commits Viet Nam to undertake a wide range of actions in areas of market opening, protection of intellectual property rights, trade in services and investment liberalization.

This annex discusses some of the main policy, institutional and legislative implications for Viet Nam that are embodied in the agreement.

General

The BTA is a key step in the process of restoration of permanent Most Favoured Nation (MFN) status to Viet Nam, which was suspended in 1975 after unification. Under Title IV of the US Trade Act of 1974, MFN treatment may be restored to a Non-Market Economy after two requirements have been met:

- Issuance of a presidential determination that the country concerned is not in violation of the freedom-of -emigration requirements of the Jackson-Vanik amendment (currently Viet Nam has been granted an annual waiver from the amendment, as it has not yet been determined to be in full compliance with the requirements of the amendment);
- Completion of a bilateral trade agreement that contains certain required provisions, such as a reciprocal MFN clause.

This process came closer to completion with the signing of the BTA. The resulting MFN treatment is, however, temporary, because it is contingent upon continued issuance of waivers from the Jackson-Vanik amendment. Grant of permanent MFN status would come only when the US Congress “graduates” Viet Nam from its status as a Non-Market Economy, by terminating relevant provisions of Title IV.

The current BTA will remain in effect for a 3-year period, extended automatically unless terminated by either party at least 30 days before the end of a term.

The agreement comprises seven items, dealing with:

- trade in goods
- intellectual property
- trade in services
- development of investment relations

- business facilitation
- transparency related issues and rights of appeal
- general articles covering issues such as cross-border transactions and transfers, national security, taxation, and consultations.

The key features of the Viet Nam's commitments under these items are summarised below.

Market access for industrial and agricultural goods

All Vietnamese firms, and over time US persons and firms, will be allowed to import and export freely products not subject to explicit restrictions. Tariffs on approximately 250 products, most of which are agricultural, will be reduced by between 33 and 50 per cent. Nearly all non-tariff barriers on imports and export restrictions that are inconsistent with the GATT will be phased out. WTO standards will be adhered to with respect to customs, import licencing, state trading, technical standards and sanitary and phyto-sanitary measures (which effectively means that such measures cannot be used for protection purposes). Viet Nam has also agreed to implement the GATT Customs Valuation Code.

Intellectual property rights

Viet Nam will adopt the provisions of the WTO Trade Related Intellectual Property rights (TRIPS) agreement, and also extend protection to satellite signals.

Market access for services

Viet Nam will uphold WTO rules such as MFN, national treatment and disciplines on domestic regulation, and will allow US companies and individuals to enter the domestic market in a wide range of service areas, including financial services (insurance and banking), telecommunications, audio visual, distribution, legal, accounting, engineering, computer and related services, market research, construction, education, health and related services and tourism.

Investment provisions

Viet Nam guarantees MFN and national treatment, transparency and protection against expropriation, and will phase out the investment licencing regime for many sectors. Foreign investors will be granted the same rights of profit repatriation as Vietnamese enterprises, minimum capital contribution requirements will be phased out, and investment measures that are inconsistent with the WTO agreement on trade-related investment measures (TRIMS), including local content and foreign exchange balancing requirements will be eliminated. In addition Viet Nam will phase out the system of dual pricing by eliminating over a 4 year period all discriminatory prices for foreigners.

Transparency provisions

Viet Nam will adopt a fully transparent regime with respect to the above four areas. This will involve issuing draft laws, regulations and other rules for comment, ensuring advance public notice for all such laws and regulations and that the appropriate documents are published and readily available, and allowing US citizens the right to appeal rulings made with respect to these laws and regulations.

Trade and other policy implications

Some of the most obvious implications of the BTS are for Vietnamese trade policy. However, a number of the provisions, especially with regards to national treatment of US goods and suppliers reach deeper into domestic policies, such as taxation, sectoral regulation and state enterprise management.

The articles dealing with national treatment in item 1 of the agreement require that Viet Nam not impose any taxes or charges on US imports that are in excess of charges on local goods. This may have implications, for example, for current treatment of selected items under the Value Added Tax. Beyond that, the agreement requires comparable treatment with respect to technical regulations and standards, to ensure they are not used with a view to creating obstacles to trade. This will have important implications for current regulations in the pharmaceutical sector, among others.

The agreement also specifies phase out periods ranging from 3 to 10 years (from coming into force of the agreement) for quantitative restrictions on agricultural imports, and from 3 to 7 years for restrictions on industrial imports.

The parts of the agreement dealing with investments also have important trade and investment policy implications, calling as they do for a phasing out of all trade related investment measures that are inconsistent with the WTO agreement on such measures. This will impact on current policies on local content in transport equipment sector, and also regarding limitations on access to foreign exchange by foreign investors.

The agreement also will have strong implications for the regulation, management and operation of SOEs. Examples include:

- While the agreement allows for the establishment of state trading enterprises and the grant of exclusive or special privileges with respect to a defined list of goods, it requires such enterprises to act in a manner consistent with the principles of non-discrimination for governmental measures affecting imports and exports by private traders.
- The agreement confers the right for all domestic enterprises (including private enterprises) to engage in international trade in all goods except those subject to specific restrictions (where quantitative limitations or reservation to state trading enterprises are in place) up entry into effect of the agreement. It also provides that within 6 years

from this date, 100 per cent US owned trading enterprises can be established. Since most of the restrictions are to be phased out over a seven year period, this means that private and foreign enterprises will enter into areas of international trade currently dominated by state enterprises.

- The agreement also requires state trading enterprises to make purchases solely in accordance with commercial considerations.
- Article 5 of the item on Trade in Services requires the government to constrain the abuse of monopoly power, which will have implications for the regulation of state utilities in areas such as telecommunications. The provisions of this item also allow for the phased in entry of US firms into sectors currently dominated by state enterprises, such as banking, insurance, and telecommunications.

Box A.1 International conventions to which Viet Nam will accede

The agreement calls for Viet Nam to accede to or to implement a number of international conventions and agreements, dealing with matters such as customs administration and intellectual property rights. This will require considerable attention to enabling legislation, regulations and administrative guidelines. In some cases it will also require establishing new judicial or administrative arrangements, and developing new approaches to administrative appeals. Equally importantly, it may involve important changes in underlying approaches to the law, such as recognition that non-tangible rights can be traded and subject to laws of contract.

Some of the conventions mentioned in the agreement are:

- The International Convention on Harmonized Commodity Description and Coding Systems
- The GATT Code on Customs Valuation
- The annexes to the WTO Agreement on Trade in Services dealing with, Financial Services, Movement of Natural Persons, Telecommunications
- The GATT Agreement on Sanitary and Phytosanitary Services
- The Paris Convention on protection of industrial property
- The Berne Convention on literary and artistic works
- The Geneva Convention on phonograms
- The Convention relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite
- The International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations
- The UPOV Convention (1978) and the UPOV Convention (1991) on protection of plant variety rights
- The Treaty on Intellectual Property in Respect of Integrated Circuits
- The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

Legal and institutional implications

Implementing the various components of the BTA will require far-reaching policy, legislative, judicial and institutional developments in Viet Nam. The agreement contains commitments that will require Viet Nam to accede to and/or implement a number of international conventions (see Box A.1).

Some of the more profound institutional implications lie, however, in the requirements with respect to enforcement of laws and conventions, and for the establishment of judicial and administrative review processes that will allow foreign and domestic enterprises to appeal against administrative decisions and actions.

The agreement will therefore call for a big increase in the role of the judiciary, and for more independent scrutiny of administrative actions and procedures, along with means of addressing grievance against such administrative decisions. This could involve quite a profound shift in the role of courts vis a vis the government and the state.

In addition, the agreement calls for SOEs and provincial and local authorities to conform to certain standards of behaviour. The performance of these agencies will therefore come under more intense scrutiny.

Some of the more obvious implications of the agreement include:

- US nationals and companies will be accorded national treatment with respect to all competent courts and administrative bodies, and administrative bodies will not be able to claim immunity from lawsuits or execution of judgments.
- Parties to a transaction will be able to provide for arbitration of disputes in countries outside of Viet Nam, and Viet Nam will be obliged to ensure that effective means exist for the recognition and enforcement of arbitral awards.
- Under item 2 of the agreement, Viet Nam will have to provide for procedures in domestic law for action to be taken against infringement of intellectual property rights, and for remedies substantial enough to deter infringement of these rights. The agreement also calls for the establishment of criminal procedures and penalties for wilful counterfeiting of trademarks and copyright infringement.
- Viet Nam will also have to provide for judicial review of administrative decisions relating to intellectual property rights.
- The item on Trade in Services binds not only central government, but also provincial and local governments and authorities and non-government bodies exercising delegated powers. Central government may therefore have to exercise disciplines over the behaviour of lower levels of the administration.
- The agreement requires Viet Nam to establish judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier,

for the prompt review and, where justified, appropriate remedies for, administrative decisions affecting trade in services.

- The agreement also requires potentially significant changes in approaches to service sector licencing and qualification requirements, involving the injection of objectivity and transparency and an obligation to avoid making standards or requirements unnecessarily burdensome.
- The item on Investment requires that investments covered by the agreement should be accorded treatment no less favourable than required by the applicable rules of customary international law. It also has important implications for current incentives and controls on foreign investment, since it calls for the phasing out of all trade related investment measures that are inconsistent with the WTO Agreement on Trade Related Investment Measures, covering such matters as requirements for foreign investors to balance their own imports and exports, or foreign exchange controls on imports, as well as local content targets.
- The item also foreshadows significant changes with respect to mortgage and transfer of land use rights for foreign investors.
- The agreement also calls for the phased replacement of the investment licencing system by a system calling only for registration of investment.
- The item on Transparency issues requires that all laws, regulations and administrative procedures be published before they come into effect, and to allow US nationals to comment on the formulation of such instruments before they come into effect.
- The item also specifies laws with general application will not be enforced or enforceable unless they are published and readily available to other governments and persons engaged in commercial activity.
- The item also requires the maintenance of administrative and judicial tribunals and procedures for prompt review and correction of administrative matters covered by the agreement. These procedures are to provide the opportunity for appeal (without penalty) by persons affected by a decision. And if the initial right of appeal is to an administrative body, there is also to be an appeal to a judicial body.

One of the more important implications of the agreement is that it will over time bring US companies into deeper contact with the domestic legal and judicial system, with a consequent increase in pressures for adoption of more transparent and consistent performance. This could be especially important regarding the proposed judicial role with respect to adjudication on administrative decisions. This effect may be compounded by the arrangements for periodic consultation on the operation of the agreement, which will place the US administration in a position to comment on a wide range of legal and administrative matters.

B *The WTO Agreements*

The WTO Agreements

<i>Item</i>	<i>Implementation</i>	<i>Required actions</i>	<i>Comment</i>
<i>General principles</i>			
Most favoured nation	Accord all members the most favourable treatment accorded any trading partners	Review of bilateral trade agreements to ensure MFN consistency	Unnecessarily costly for Viet Nam to maintain multiple tariff regimes - best to harmonise normal and MFN rates
National treatment	Treat domestic and foreign products, services and nationals the same	Reform of discrimination taxation (for example tobacco, automobiles) Move to unified legislation, regulatory framework for foreign and domestic enterprises operating in Viet Nam	Complex issues with respect to investment and services need to be addressed
Limiting use of non-tariff trade instruments	Limited use of quotas, technical barriers to trade for protection except in special circumstances	Phase out QRs on import Reform specialised management of imports of certain commodities	Programmes laid out in Miyazawa SAC/ESAF framework Needs change in design and enforcement of standards
Reducing and binding import tariffs	Commit not to increase tariffs and to participate in future negotiations to reduce tariffs	Tariffication of NTBs Formulate strategy on tariff binding for access negotiation Develop long - term tariff structure	Limited value in trying to bind tariffs at rates in excess of current applied rates
Customs Valuation	Adopt GATT customs valuation agreement, placing invoice value as primary base for value for duty	Phase out minimum price list, train customs in valuation procedures	Significant strengthening of customs systems and capabilities required
Agreement on Technical Barriers to Trade	Refrain from using technical requirements to create barriers to trade and provide protection	Reform of specialised line management of imports. Upgrading of systems, procedures associated with design, recognition and enforcement of technical standards	Involves significant technical upgrading

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The WTO Agreements (continued)

<i>Item</i>	<i>Implementation</i>	<i>Required actions</i>	<i>Comment</i>
<i>Special agreements</i>			
Agreement on Sanitary and Phytosanitary Measures	Quarantine measures should be transparent and based purely on scientific considerations. Information bureaus required to meet needs of interested parties	Review and upgrading of quarantine system and capabilities	Long - term technical improvement required
Agreement on Import Licencing Procedures	Ensure licencing procedures are transparent, predictable, fair and do not create extra constraints on trade	Review and shorten list of goods under specialisation management. Make basis of restriction on importation of selected goods explicit. Reform procedures for enforcing standards to replace licencing system	
Agreement on Subsidies and Countervailing Measures	Discourages and constrains use of subsidies which may impact and distort trade. Allows members to impose measures to countervail effects of subsidies. Determines principles for imposing antidumping duties	Modification of certain export promotion measures and regional investment promotion. Review subsidies provided to state enterprises (concessional credit, debt write offs and debt rescheduling)	Special treatment for developing countries may limit changes Viet Nam required to make for accession. But SOE subsidies will be under scrutiny. Little value in Viet Nam developing complex antidumping and countervailing measures system.
Agreement on Trade Related Investment Measures (TRIMS)	Prohibits using measures inconsistent with national treatment and rules against use of QRs, including local content and trade balancing requirements, restrictions on access to foreign exchange for imports	Significant changes in foreign investment legal framework	Will require further development of market based management of foreign exchange
General agreement on Trade in Services (GATS)	Application of general principles of national and MFN treatment, mutual recognition, qualifications for supply of services, transparency of	Changes to mechanisms for formulating and implementing laws and regulations impacting on services to meet transparency principle. Detailed analysis to	May require extensive and long - term process of developing appropriate framework for regulation of service sectors, especially