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**TRADE AND INVESTMENT POLICY REFORM IN VIETNAM:  
INTEGRATION TO THE WORLD ECONOMY AND ACCESSION TO  
THE WORLD TRADE ORGANIZATION**

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## INTRODUCTION

In 1986, the Communist Party of Vietnam announced its “Doi moi”<sup>1</sup> policy with one primary objective: a gradual economic transition from a highly planned and centralized model to a “market-oriented”, fast growth economy. Among the policy reforms since Doi moi, trade and investment policy are two of the most important ones and have contributed to steady growth in trade over the last two decades in addition to USD \$44.76 billion of foreign direct investment from 1988 to October 2004.<sup>2</sup>

Trade and investment policy reforms have two main objectives. The first objective is to feed the capital-starved economy by creating a secure and healthy investment environment to attract investment from foreign investors and the private sector. The second objective is to liberalize trade within the country and promote exports. To reach these objectives, trade and investment reforms are carried out through four processes: (i) reform of administrative procedures, (ii) removal of restrictions on investment and trade, (iii) improvement of legal transparency, and (iv) harmonization of the legal system with fundamental principles of international law and practice.

This paper is divided into two parts – investment reform and trade policy reform. In each part, I discuss the four paths to reform (administrative procedures, removal of restrictions, improvement of legal transparency, and harmonization of Vietnamese law with international law and practices) as they apply to investment and trade policy reform. In addition, I will discuss the existing problems and challenges to the government’s efforts to date. Finally, I make several policy reform recommendations.

## INVESTMENT POLICY REFORM

### Investment since Doi Moi

The Vietnamese government encourages investment from all sectors, including – but not limited to – foreign investors (through direct and indirect investment), Vietkieu<sup>3</sup>, and the private sector. From 1986 to immediately before the East Asian financial crises in 1997-98, the government’s investment policy was mainly focused on attracting foreign direct investment (FDI). However, as FDI to South East Asia declined following the crisis, more attention has been given to attract investment from Vietnamese enterprises, “Vietkieu”, and indirect foreign investment.

FDI inflow was low during prior to 1991. However, it gradually increased after two amendments were made to the foreign investment law in 1990 and 1992. FDI reached a peak of USD \$8.5 billion in 1996, the year a new foreign investment law was enacted. The East Asian financial crisis was one of the main causes of the sharp decline in FDI into Vietnam from 1997 to 1999. FDI has gradually recovered since 2000 and is expected to reach USD \$4.5 billion in 2005.<sup>4</sup>

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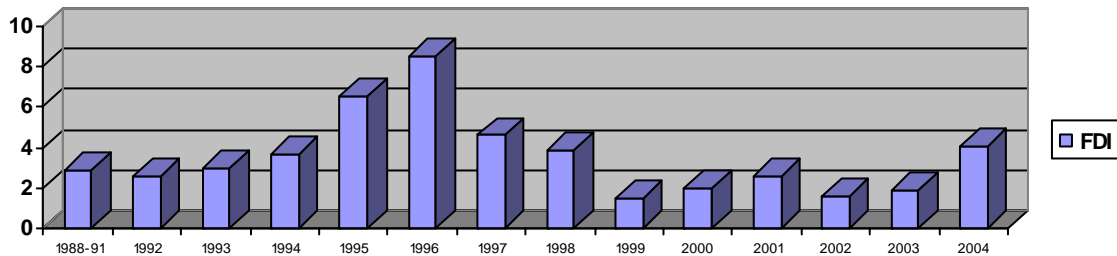
<sup>1</sup> “Doi moi” might be literally translated into English as “renovation”.

<sup>2</sup> Ministry of Planning and Investment, *Tinh Hinh Dau Tu Nuoc Ngoai Den Thang 10 nam 2004* [Foreign investment status up to October 2004], <http://www.mpi.gov.vn/fdi/tinhhinhdtnn.aspx?Lang=4>.

<sup>3</sup> Overseas Vietnamese.

<sup>4</sup> Interview by *Tuoi Tre* newspaper with Phan Huu Thang, Director of Foreign Investment Bureau. (December 29, 2004) (available in Vietnamese at <http://www.tuoiitre.com.vn/Tiayon/Index.aspx?ArticleID=61593&ChannelID=11>)

Figure 1 FDI in Vietnam from 1988 to 2004. (USD billion)



Domestic investment reform started much later than that of foreign investment. The most fundamental reform took place in 1999 with the issuance of the Domestic Investment Encouragement Law in 1998 and the Enterprises Law in 1999. Since the year 2000, approximately USD \$12 billion has been registered by new enterprises or has been reinvestment by existing companies.<sup>5</sup>

### Administrative Procedure Reform

Administrative procedure is consistently an issue for foreign and domestic investors alike. Foreign investors often complain that investment license granting procedures are complicated and time consuming. Prior to the year 2000, it normally took from four to six months and sometimes up to a year to obtain an investment license in Vietnam. However, in 2000, an amendment to the Law on Foreign Investment<sup>6</sup> significantly simplified the procedures. In accordance with this amendment, the licensing procedure was divided into two categories: (i) investments that could be registered without evaluation by the authority and (ii) investment that are subject to evaluation prior to licensing. Registration without evaluation is applied to investments in non-strategic areas and small-scale investments. The time for obtaining a license was reduced to 30 days in the case of investment registration or 45 days in the case of investments requiring evaluation. Since 1996, the government has also applied a “one door” policy, which means instead of working with dozens of state agencies each in charge of issues related to investment approval, the investors could now send their application only to the licensing authority. The licensing authority is now responsible for obtaining all required approvals from other state agencies. The investment licensing process has also been decentralized. After 1996, provincial authorities gained the power to grant licenses to small scale investments and investment in low importance sectors. Only large scale investments<sup>7</sup> or investment in strategic sectors<sup>8</sup> are authorized by the Ministry of Planning and Investment (MPI) with the Prime Minister’s approval.

<sup>5</sup> General Statistics Office, *Von dau tu phat trien phan theo nganh kinh te* [Development Investment by Economic Sector], (available at <http://www.gso.gov.vn/default.aspx?tabid=392&idmid=3&ItemID=1261>).

<sup>6</sup> The Law on Foreign Investment was issued in 1987. This law was amended twice in 1990 and 1992, replaced by a new law in 1996. In 2000, the Law on Foreign Investment (1996) was amended once more.

<sup>7</sup> Projects with investment capital in excess of US \$40 million in electricity, mining, metallurgy, cement, mechanical engineering, manufactures, chemicals, hotels, apartments for lease, tourism, and entertainment.

<sup>8</sup> The strategic sectors include: (i) infrastructure construction of industrial zones (IZ) and export processing zones (EPZ), urban areas, build-operate-transfer, build-transfer-operate, and build-transfer projects; (ii) construction and operation of seaports and airports, as well as operation of sea and air transportation; (iii) oil and gas; (iv) post and telecommunications services; (v) culture; including publishing, press; radio and television broadcasting; medical examination and treatment establishments; education and training; scientific research and production of medicine for human diseases; (vi) insurance, finance, auditing and inspection; (vii) exploration and exploitation of rare and precious natural resources; (viii) construction of residences for sale; and, (ix) national defense and security projects.

For domestic investors, administrative procedure reform took place later with the issuance of the new Domestic Investment Encouragement Law in 1998 and the Enterprises Law in 1999. The Enterprises Law also applied a “one door” approach to business registration policy. Thanks to the new policy and the abolishment of hundreds of special licenses required by state agencies and other cumbersome regulations,<sup>9</sup> the number of new enterprises significantly increased.<sup>10</sup>

The decentralization of investment license granting power resulted in competition between provinces and cities to attract investment from foreign and domestic investors. Recently, Ho Chi Minh City has become the first to implement an online registration system for both foreign and domestic investors. The time taken for issuing investment approval decreased significantly to 10-20 days for investments subject to evaluation and 2-5 days for investment registration (not subject to evaluation).

### **Removal of Restrictions**

Currently, the government is focusing significant resources on the removal of investor restrictions to create a good business environment. One of the most important changes was the government’s April 2003 decision to abolish the requirement for Vietnamese and Foreign Investment Enterprises (FIEs) to convert income from foreign currencies<sup>11</sup> to Vietnamese dong<sup>12</sup>. Other reforms include: (i) the expansion of sectors open to foreign investment, including real estate property and domestic distribution; (ii) easing the conditions for foreigners to invest in privatized state-owned enterprises; (iii) permitting FIEs to issue stock to the public; (iv) reduction of prohibited FIE exports; (v) gradual elimination of the dual-pricing system in areas such as tourism, air, rail transportation, seaport charges, charges for television advertising and utilities such as telephone charges, electricity and water.<sup>13</sup>

### **Improvement of Legal Transparency**

The Vietnamese government understands that legal transparency is the greatest concern to foreign investors and, without it, governmental incentives are much less attractive. Transparency is the reason why the 1987 Law on Foreign Investment has established a glossary of important terms for the first time. This feature was subsequently incorporated into other laws. The 2002 Promulgation of Legal Instruments Law also required legal document drafting committees to consult with all relevant state agencies, organizations, and individuals during the drafting process. Since 1987, the MPI has regularly met with foreign investors, and since 1996, the Primer Minister himself has annual meetings with FIEs to hear their concerns relating to foreign investment policy. Since 1996, the MPI has also set up a hotline to answer foreign investors’

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<sup>9</sup> Before the 1999 Enterprises Law, after obtaining a general business registration, enterprises had to obtain special licenses for each product or service if a state agency require it. There were hundreds of these licenses issued by dozens state agencies. In 2000, the Government abolished 145 special licenses, the ministry of trade and the ministry of finance abolished 700 and 300 regulatory documents respectively. See Vietnam Chamber of Commerce and Industry (VCCI) and The Asia Foundation, “*Doanh nghiệp va viec hoan thien moi trong phap ly kinh doanh*” [Enterprises and the improvement of legal framework for business], 9, (2003) (Hereinafter VCCI, “*Enterprises and the improvement of legal framework for business*”).

<sup>10</sup> From 2000 to 2002, three years after the Enterprises Law was issued, 55,793 private enterprises have been established, a number higher than that of the entire 1990s (approximately 45,000 enterprises). *Id* at 8 n. 22.

<sup>11</sup> This regulation was issued in 1998 during the East Asia financial crisis to strictly control the circulation of foreign currency within Vietnam. According to this regulation, enterprises can keep only a small portion of its income in foreign currency and have to convert the remainder into Vietnam dong.

<sup>12</sup> Vietnam dong is the legal tender of the Socialist Republic of Vietnam.

<sup>13</sup> In the dual pricing system, FIEs normally have to pay more in comparison to Vietnamese enterprises for the same utility or services.

questions concerning the foreign investment law. With respect to Vietnamese enterprises, the government also organizes regular meetings to discuss and consult with the business community about regulations to be issued.

### **Harmonization with International Law and Practice**

Vietnam is negotiating WTO accession and has committed to fully implementing the WTO Trade Related Investment Measures Agreement without a transition period. At present, Vietnam has 45 bilateral investment agreements with the following countries and territories. Vietnam has not concluded a bilateral investment treaty with the U.S. However, the bilateral trade agreement between the two countries contains an investment chapter with fundamental principles regarding investment guarantees.

### **Existing Problems and Challenges to Investment Policy Reform**

Although FDI inflows have regained momentum, Vietnam is still more attractive to investors in Asia than European and American investors. About 62.5% of FDI originates from Singapore, Taiwan, Japan, South Korea and Hong Kong. The main reason is that the East Asian investors are more familiar and flexible in relation to “Asian” difficulties (e.g. poor infrastructure, bureaucratic red tape, unpredictable policy) compared to their European and American counterparts.<sup>14</sup> This means that further reforms are required.

First, the discrimination between foreign and domestic investors is a long standing issue. While foreign investors enjoyed more favorable corporate income tax rates than that of domestic investors, they are required to pay higher fees for public utilities such as telecommunication, electricity, transportation, and land lease. Efforts to eliminate this discrimination have recently taken shape. In 2002, the Ordinance on MFN and National Treatment provided that the foreign investors shall be treated the same as domestic investors. In 2003, the government imposed a common corporate income tax rate on both foreign and domestic investors. In 2003 and 2004 the discrimination in airfare and administrative fees were abolished. The dual pricing scheme in electricity is expected to be eliminated in 2005. However, discrimination against foreign investors still persists. This discrimination is visible with the exception of the treatment in the bilateral trade agreement (BTA) between Vietnam and the United States. Some of these exceptions must be eliminated according to the schedule provided in the BTA. Some will remain indefinitely.<sup>15</sup>

Secondly, the rather independent status of foreign investment law leads to problems as well. Instead of waiting for the completion of comprehensive legal system reform, the government chose a more practical “fast track” approach through issuing a foreign investment law which was relatively independent from other laws. The law can be called “laws within a law” because it covers not only the forms and procedures of FDI, but also contains provisions on issues which are normally governed by other laws. The two regulatory systems, one for foreign investors and one for Vietnamese investors, lead to confusion in implementing the laws and regulations, particularly at the provincial level where public servants lacked legal expertise and have poor

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<sup>14</sup> Kazi M. Martin, *Vietnam: Deepening Reforms for Rapid Growth*, 9, [http://siteresources.worldbank.org/INTRANETTRADE/Resources/WBI-Training/vietexports\\_matin.pdf](http://siteresources.worldbank.org/INTRANETTRADE/Resources/WBI-Training/vietexports_matin.pdf) (last accessed March 8, 2005).

<sup>15</sup> Mike Firs, *Vietnam Country Commercial Guide FY 2004*, 58, <http://vietnam.usembassy.gov/wwwhccg2004.html>.

access to information. Preliminary efforts to create a universal business environment for both foreign and domestic investors commenced in 2004. The government has started to draft two new laws: (i) a Common Investment Law and (ii) a Unified Enterprise Law. The first law is designed to create a unified procedure, provide investment incentives, and guarantee measures which are commonly applied to both domestic and foreign investors. The second law is designed to regulate the establishing procedures and corporate governance of companies in private, state-owned and foreign investment sectors. The two laws are expected to be issued in 2005.

Third, enforcement of the law is another concern to investors. According to Vietnamese press reports, many court judgments on business issues are ignored because the affected party can use "influence" to forestall the application of the judgment.<sup>16</sup> Enforcement of arbitration awards is also a matter of concern. Besides the Vietnam International Arbitration Center (VIAC), investors may choose economic arbitration centers<sup>17</sup> for dispute settlement. However these arbitration centers do not have a track record of competence or impartiality and the awards are not enforced by law. For that reason, foreign investors normally choose a foreign arbitration body for dispute settlement. Foreign investors are also concerned about the enforcement of foreign arbitral awards in Vietnam. Vietnam acceded to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards in 1995. The convention requires that awards of recognized international arbitrations shall be respected by courts of member countries without a review of the case's merit. However, the U.S. embassy in Vietnam has reported that it is aware of contradictory judgments and decisions by different Vietnamese courts with respect to a foreign arbitral award concerning a case between a subsidiary of a U.S. firm and an Australian-Vietnamese joint venture. The award was recognized by a municipal Economic Court<sup>18</sup>, however was subsequently reversed by the Supreme Court upon appeal. The Supreme Court's decision is based on a narrow definition of a "commercial contract" set forth in the Law of Commerce, which the construction contract between the two disputing parties does not fall under. The results of this case indicated that the enforceability of a foreign arbitral award in Vietnam remains questionable. In February 2003, the Government tried to address some of the issues raised by this case through an Ordinance on Commercial Arbitration. The ordinance provided for a broader definition of "commercial contract". However, it is still not clear how courts interpret and apply this new provision.<sup>19</sup>

Fourth, the inconsistencies in which laws and regulations are implemented are also of concern. The recent dispute between Phu My Hung Joint Venture Company (PMH) and the Ministry of Planning and Investment (MPI) has drawn attention to the business community. In 1993, MPI granted an investment license to PMH for an urban development project valued at US \$242 million in Ho Chi Minh City and with a corporate income tax rate of 10 percent. However, in 2003 the MPI, upon reviewing the investment license, found that license's contents were not compliant with the current land law. The MPI then amended the license and additionally increased the tax rate from 10 percent to 25 percent. PMH's appeal to the Ho Chi Minh City

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<sup>16</sup> *Id* at 60.

<sup>17</sup> Economic arbitration centers are private arbitral institutions dealing with disputes between legal entities. In accordance with Vietnamese law, disputes between legal entities are "economic disputes" and should be dealt with by either economic courts or economic arbitration centers. Unlike economic disputes, civil disputes are between a legal entity and a person or between two persons. Civil disputes should be dealt with by civil courts.

<sup>18</sup> *Id*.

<sup>19</sup> Mike Firs, *supra* n. 15 at 60.

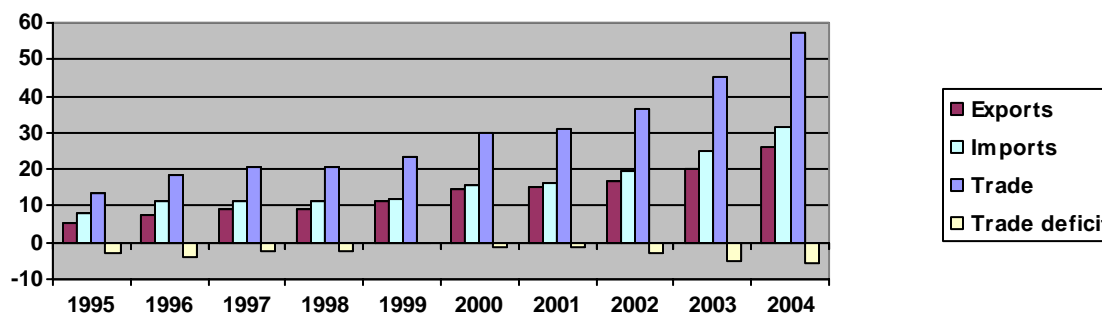
Administrative Court was denied because the limitation period had ended. The Prime Minister later reprimanded the authority of Ho Chi Minh City and MPI for not respecting the law when issuing the investment license. This incident raised an alert for investors regarding the consistency in which authorities implement laws and regulations.

Fifth, as the quality of legal drafting has improved in recent years<sup>20</sup>, the major challenge for the government in reforming investment law is to determine how to make the state agencies and officials implement the reforms; or, in other words, how to change the perceptions of these agencies regarding the purpose of the reforms. Many state agencies feel their control over enterprises has lessened due to the reform process and, in some cases, have attempted to retain such power through alternative means. For example, the task force set up by the Prime Minister to oversee the implementation of the Enterprises Law reported that after the government abolished a special license issued by a state agency the license was – soon thereafter – re-issued but in an alternative form and name. However, the government continues to show a strong determination to continue the reform through (i) increasing dialogue with the business community in order to hear their opinions on state agencies’ activities, (ii) improving the capabilities and skills of state agencies, and (iii) establishing a special independent task force to supervise the reform process.

## TRADE POLICY REFORM

During the last two decades trade in Vietnam has grown quickly and steadily. Total international trade in 2004 was almost four times that of 1995 with steady growth in both exports and imports.

Figure 2 Vietnam’s International Trade (US\$ billion)



Source: Ministry of Trade and General Department of Statistics

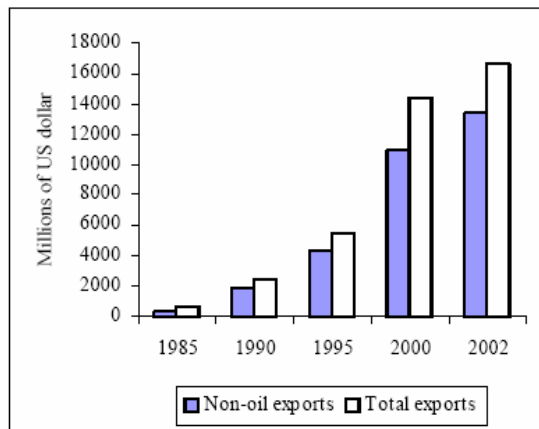
Although the country’s trade balance remains in deficit, imports and exports show a positive trend in relation to the ratio of non-oil exports to total exports. This ratio has steadily increased. Machinery and intermediate goods (including refined petroleum, textile fabric, etc.) are important to Vietnam’s economic development and have played an important role in import composition.<sup>21</sup>

<sup>20</sup> Public consultation has become popular practice in drafting laws and regulations that directly affect business climate in recent years. Discussion between authorities and business community on the implementation of the law also becomes regular.

<sup>21</sup> Asia Invest, *Guidebook for European Investors in Vietnam*, 37, <http://europa.eu.int/comm/europeaid/projects/asia-invest>.



Figure 3 Vietnam's Non-oil Exports<sup>22</sup>



Before 1988, a small number of state-owned enterprises monopolized international trade. The import volumes of particular goods were set by authorities based on the differences between domestic demand and supply. The country's annual export volume is set by the government in order to fund the imports. In 1988, the government started to reform the trade regime with a strong determination to introduce new reforms each year. In general, trade policy was designed to simultaneously encourage exports and gradually integrate Vietnam into global trade while providing domestic industries with

protection from shocks. Similar to investment policy reform, trade reform can be seen as a set of four initiatives: (i) administrative procedure reform; (ii) removal of restrictions to investment and trade; (iii) improving legal transparency; and (iv) harmonizing the legal system with fundamental principles of international law.

### Administrative Procedure Reform

Administrative reform's main purposes are to develop and refine trade policy instruments such as tariffs and licenses, as well as simplify administrative procedures to reduce enterprises' import- and export-related costs.

#### Tariffs

Tariff reforms related to international trade are characterized by three major efforts: (i) reduction of tariff rates; (ii) introduction of a duty drawback system<sup>23</sup>; and (iii) the adoption of the Harmonized Tariff System. The first Import and Export Duties Law was introduced in 1988 when the government abolished the "planned import/export regime". The law was amended in 1992 and 1998, following Vietnam's accession to the AFTA<sup>24</sup> and following the commitments that Vietnam had made during several rounds of negotiation from 1995 to 1998 for WTO membership, respectively. In general, tariff rates are being gradually reduced in accordance with Vietnam's commitments to the AFTA and WTO. There are three sets of tariff rates: (i) most favored nation (MFN) tariff rates, (ii) Common Effective Preferential Tariff (CEPT) rates, and (iii) general tariff rates. The MFN tariff rates were introduced in 1998, amended in 2003, and were applicable to imports from countries enjoying MFN status (about 75% of imports in 2000). The CEPT rates are applicable to imports from ASEAN countries and were introduced in 2000. In accordance with Vietnam's obligations under the CEPT scheme, tariff rates for 6,130 categories of goods are to be reduced to below 5% by 2006 and tariff rates for nearly all commodities eliminated by 2015. The general tariff rates are applicable to all other imports at a rate 50% above the MFN rates.

<sup>22</sup> Martin, *supra* n.14 at 2.

<sup>23</sup> Duty drawback system is a mechanism through which enterprises are refunded the value added tax which they has paid. The enterprises got tax refunded when they export their products or invest in new projects.

<sup>24</sup> ASEAN Free Trade Area.

To encourage exports, import duties applied to goods used to produce exports is either exempted or refunded to enterprises through a duty drawback system. Recent government efforts to simplify the procedures and improve the capabilities and skills of customs officials has reduced the time for duty rebate claims from three months to three to four weeks.

### *Customs*

Customs reform commenced in 1990 through the issuance of the Ordinance on Customs, and gained further momentum in 2001 with the enactment of the Customs Law and a subsequent series of new reforms. With respect to customs procedures, reforms focused on (i) reduction of the number of required supporting documents for customs clearance and (ii) procedural simplification to reduce customs clearance time. The result has been remarkable – the average time for customs clearance has been reduced from 1-3 days to a half day.<sup>25</sup> As of 2004, instead of using two registered codes (one for paying tax and one for customs clearance) each enterprise now uses a single code for both tax payment and customs clearance. Since 2004, e-customs procedures have been experimentally introduced into major ports around Vietnam including Haiphong, Ho Chi Minh City, Da Nang and Vung Tau. In 2005, a governmental decree is expected to be issued to create a legal framework for e-customs.

International customs rules and practices are also being gradually introduced and applied. Since December 2003, customs valuations for calculating import duties have been based on transaction price in accordance with the WTO Customs Valuation Agreement (CVA).<sup>26</sup> The Harmonized System of Tariff Nomenclature has also been introduced in order to classify imports.

### **Removal of Restrictions**

Along with administrative reforms, the government has also gradually removed restrictions on trading rights, imports and exports, and foreign exchange.

### *Quotas*

In accordance with Vietnam's commitments under AFTA and WTO membership negotiations, quotas, which once were a major governmental tool for international trade control, have been progressively eliminated. By 2004, all import quotas were abolished with the exception of raw tobacco, salt, cotton, condensed milk, non-condensed milk, maize seed, and chicken eggs. Export quotas were applied to textile exports under agreements between Vietnam and the United States and EU. However, in 2005, the EU quotas will be abolished.

### *Trading Rights*

Before 1988 international trade was monopolized by a small number of state-owned enterprises. However, by the issuance of the 1990 Private Enterprises Law and the Law on

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<sup>25</sup> Le Thi Bang Tam, Speech, (the Investment Promotion Conference jointly held by the Ministry of Planning and Investment, Vietnam Chamber of Commerce and Industry (VCCI), Keppel Corporation and Temasek Holding, August 17-18, 2004) (copy of transcript on the file with the Ministry of Finance, the summary is available at <http://www.mof.gov.vn/DefaultE.aspx?tabid=616&ItemID=14201>).

<sup>26</sup> However, customs valuations based on transaction price is applied to countries to which Vietnam has an agreement on implementing CVA. Up to now this method is applied to imports from 51 countries. For the country list see <http://www.customs.gov.vn/Default.aspx?tabid=508#pptrigiagiaodich>.

Companies, private enterprises were allowed to engage in import-export activities provided that the enterprises satisfied a number of conditions and obtained an import license from the respective authority. However, due to the complication of the licensing procedure, only a small number of private enterprises were licensed to engage in direct import/export activities. The procedures were simplified with the abolition of the import-export license through Decree 57/1998/ND-CP in 1998 and the 1999 Enterprises Law, which stipulated that all registered enterprises were allowed to engage in international trade. Nevertheless, importation and exportation of commodities were limited to those stipulated by the authority in business registration certificate for each enterprise. In 2001, this regulation was further amended. While imports were still limited to those commodities specified in each business' registration, this limitation was not applied to exports and, as a result, enterprises could exports all non-prohibited commodities.

The trading rights of foreign traders are still limited. In accordance with the Commerce Law, foreign traders are permitted to do business in Vietnam under the form of a "foreign trading branch" with limited trading rights. The branch is allowed to export only certain commodities, including handicrafts, agricultural products (except rice and coffee), processed fruit and vegetables, fast-moving consumer goods, and other processed foods. The right to import is more limited. In terms of commodities, only the following products are permissible: mining equipment for mining, agricultural and aqua-product processing industries; pharmaceutical materials; and materials for fertilizer and insecticide production. These imports are to be funded by foreign currency from the branch's exports, subject to licensing by the Ministry of Trade, and not in excess of the volume of exports.<sup>27</sup>

#### *Foreign Exchange*

From time to time the government has used foreign exchange control as a means to control the balance of international trade. In 1998, when the current account deficit widened as a consequence of the East Asian crisis, the government tightened the control over foreign currency by imposing an obligation for enterprises to surrender at least 80 percent of foreign exchange earnings. The foreign exchange surrender rate was then reduced to 50 percent in 1999, 40 percent in 2001, 30 percent in 2002 and abolished in April 2003.

### **Harmonization with International Law and Practice**

Vietnam has an ambitious program of economic and trade reform through agreements with ASEAN countries (the AFTA agreement), the United States (the U.S.-Vietnam BTA), the World Bank and IMF, and the commitments made during WTO membership negotiation.

#### *ASEAN*

The Common Effective Preferential Tariff (CEPT) is an agreement of ten ASEAN member countries to reduce regional import tariffs and eliminate non-tariff barriers to trade. Once a country has fully implemented the scheduled tariff reduction according to the CEPT agreement it becomes a full member of AFTA (ASEAN Free Trade Area). Vietnam joined the AFTA agreement in 1995 and planned to complete the CEPT tariff reduction program in 2006. In accordance with the CEPT scheme, Vietnam also implemented the CEPT-AFTA

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<sup>27</sup> Decree 45/2000/ND-CP of the Government dated September 6, 2000.

“rules of origin” in customs procedures. Since July 1, 2003, the ASEAN Harmonized Tariff Nomenclature (which is based on the World Customs Organization’s HS2K) has been applied for import duty calculation.

#### *Vietnam – U.S. Bilateral Trade Agreement*

The Vietnam-U.S. bilateral trade agreement (BTA) became effective on December 10, 2001 and was a milestone in trade liberalization for Vietnam. In accordance with this agreement, Vietnam has committed to the following reforms: (i) reduce tariffs and eliminate trade barriers to U.S. exports; (ii) provide protection and enforcement for U.S. intellectual property rights; (iii) open Vietnam’s services market to U.S. companies; and (iv) create fair and transparent rules and regulations for U.S. investors. The Vietnamese government has cooperated with the U.S. government to build a reform roadmap in order to implement its commitments under the BTA. The number of legal texts to be amended or replaced in order to be in compliance with the BTA is in the hundreds.<sup>28</sup>

#### *WTO*

Vietnam applied for WTO membership in January 1995 and expects to complete negotiations in 2005. The U.S. BTA already contains many fundamental principles of the WTO, which covers national treatment, most-favored nation status (MFN), transparency, discipline related to trade in goods, Trade-Related Investment Measures (TRIMS), Trade-Related Aspects of Intellectual Property Rights (TRIPS), General Agreement on Trade in Services (GATS), and the WTO’s Basic Telecom Reference Paper.<sup>29</sup> This will help Vietnam in its WTO membership negotiation. In order to formalize the international agreement ratification procedure, a Signing and Implementation of International Treaties Law has been drafted and is scheduled to be passed by the National Assembly in 2005. This law will govern the ratification of Vietnam’s accession to international organizations like the WTO, the enactment of implementation legislation, and the hierarchical order of treaties in Vietnam’s legal system.

#### *New Commerce Law*

In order to speed up the negotiation process for WTO membership Vietnam is revising its Commerce Law, which is expected to be issued in 2005.<sup>30</sup> The objectives of the new law are several: (i) to create a market economy; (ii) to protect free trade; (iii) to implement Vietnam’s commitments to the international community; and (iv) to ensure legal transparency. The draft shows that further trade liberalization is scheduled to be introduced (for example, less restrictions on foreigners’ trading rights).<sup>31</sup>

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<sup>28</sup> See generally U.S.-Vietnam Trade Council, *U.S.-Vietnam Bilateral Trade Agreement Commitments Roadmap III*, (available at <http://www.usvtc.org/BTA/Roadmaps/Roadmap%20III%20Index.htm>).

<sup>29</sup> U.S.-Vietnam Trade Council Education Forum, *Catalog of Legal Updates: Vietnam Trade Policy Regime*, 7 (available at <http://www.usvtc.org>).

<sup>30</sup> The 8<sup>th</sup> draft of this new law is published for public consultation and can be downloaded at <http://www.mot.gov.vn>.

<sup>31</sup> See generally, “*Proposal on the Amendment of the Law of Commerce*” No. 1456/CP-PC, the Government of Vietnam, dated October 5, 2004.

## Existing Problems and Challenges to Trade Policy Reform

Although Vietnam has achieved remarkable progress in maintaining steady growth in trade and a continuous liberalization of its international trade policies, there still exist a number of shortcomings.

### *Bureaucracy and Corruption*

Bureaucracy and corruption are two issues most often mentioned by enterprises during annual meetings with the Prime Minister. Bureaucracy and corruption impose high costs on enterprises and result in disruption to business schedules. In November 2004, the vice minister of trade was discharged from his position and arrested with a number of his staff for “abusing power and duty” in allocating the export quotas of textiles to the U.S.<sup>32</sup> According to the police, an enterprise reported that one of his staff members – who was also his son – took a “commission” of US \$100,000 for allocating a quota of 70,000 shirts for the enterprise in 2004.<sup>33</sup> Also of concern to enterprises is the abuse of customs procedures by officials.<sup>34</sup> Understanding the seriousness of the problem, the authority has showed a strong determination to fight corruption. The customs authority has recently applied “ten measures to combat corruption and abuse of power in customs” which requires customs officials not only cooperate with enterprises but also to communicate with them in a polite manner (and even with a “smile”).<sup>35</sup>

### *Restrictions*

Restrictions on imports have led to high prices for imported goods. For example, the import scheme on pharmaceutical products, which the Ministry of Health insists on maintaining, has been criticized as the main reason for the unreasonably high price of imported pharmaceutical products relative to neighboring countries. The scheme requires that each registered medicine is imported through a registered importer in order to guarantee the products’ quality, as determined by the Ministry of Health. This is said to create a monopoly and, subsequently, the reason for high priced medicine in Vietnam.

### *Lack of Expertise in International Trade Law and Practice*

Vietnam began its integration to the world economy about twenty years ago, and has sped up in the last decade. Understandably, international trade law and practice are quite new to Vietnam and, as a result, there are only a few international trade experts and lawyers in the country. Currently, Vietnam has about 3,000 lawyers – the majority of which practice

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<sup>32</sup> Vnexpress, *Bat giam nguyen thu truong thuong mai Mai Van Dau*, [Former Vice Minister of Trade Mai Van Dau arrested], (available at <http://www.vnexpress.net/Vietnam/Phap-luat/2004/11/3B9D8AC4/>)

<sup>33</sup> Vnexpress, *Mai Thanh Hai co dau hieu lua dao chiem doat tai san?* [Mai Thanh Hai corrupted?], (available at <http://vnexpress.net/Vietnam/Phap-luat/2004/10/3B9D71DD/>).

<sup>34</sup> Mr. Truong Tri Trung, vice minister of finance, acknowledged that despite of the ministry’s and customs authority’s efforts to fight with corruption, enterprises still did not believe that there would be an end to corruption in customs. The customs authorities agreed that this disbelief of enterprises led to the fact that very few enterprises chose to take a customs agency to court, afraid that their future business would be affected if customs loses the case. Truong Tri Trung, Speech, (“Dialogue with enterprises on tax and customs” conference held by the Ministry of Finance and Vietnam Chamber of Commerce and Industry (VCCI), July 7, 2004.) (copy of transcript on file with the Ministry of Finance, the summary is available in Vietnamese at <http://www.mof.gov.vn/Default.aspx?tabid=612&ItemID=13258>).

<sup>35</sup> Le Kien Trung, Vice Director of General Department of Customs, Speech, (meeting with enterprises held by the Trade Promotion Center of Ho Chi Minh city on August 5, 2004) (summary is available at <http://www.tuotire.com.vn/Tanyon/Index.aspx?ArticleID=44175&ChannelID=3>).

criminal and civil law.<sup>36</sup> Within the government, there are few officials with deep knowledge in this area. Considering the growth of Vietnam's trade flows and the increasing number of Vietnamese enterprises engaging in international trade, the lack of expertise is a serious issue and could cost Vietnamese enterprises significantly in the near future.

#### *Possible Conflict of Various Reforms*

A recent World Bank study predicts that the fast pace of trade reform may soon conflict with the slower pace of implementation of other reforms, including the restructurings of state-owned enterprises (SOEs), state-owned commercial banks (SOCBs), and tax administration reform.<sup>37</sup> The conflict may be incurred in three areas: trading rights, tariffs, and foreign exchange. Trade liberalization has created a relatively level business playing field for SOEs and private enterprises. However, SOEs having a competitive advantage in raising funds and have less administrative problems compared to private enterprises.<sup>38</sup>

## CONCLUSION AND SUGGESTIONS

The results of investment and trade reforms in Vietnam have been remarkable. Within two decades the country has changed from a neo-Soviet central planning system into a market economy. The country has attracted a considerable amount of foreign investment and maintained a high and steady growth rate in international trade. The government is determined to maintain a fast reform pace. Administrative procedures have been radically reformed to reduce costs for enterprises. Many restrictions on investment and trade have been removed. The drafting process of new laws and regulations is more transparent and accessible to the public. Vietnam is also in the process of harmonizing its legal system in accordance with international standards.

However, there are still a number of problems and challenges. Two problems are of particular concern and require the government's focus. First, it is imperative to increase awareness among public servants regarding the purposes of reforms. The mindset of state agencies and the staff should be transformed from a controlling and intervening tendency to one of enterprise-focused cooperation and helpfulness. If this culture does not change, reforms will remain a one-dimensional top-down process. The government is leading the reform process; however, the implementation has been obstructed and delayed at lower levels. Second, corruption is a serious problem because it not only increases costs to enterprises, but also undermines their belief in the state and law. A business environment spoiled by corruption is fruitless regardless of the amount of effort and resources applied, just as salted land produces nothing but dust.

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<sup>36</sup> See generally Vnexpress, *Gia nhap WTO, can rat nhieu luat su gioi*, [Accession to WTO, good lawyers needed], <http://vnexpress.net/Vietnam/Phap-luat/2005/02/3B9DB978/>.

<sup>37</sup> Philippe Auffret, *Trade Reform in Vietnam: Opportunities With Emerging Challenges*, 5-7, (The World Bank Policy Research Working Paper Pub. No. 3076, 2003).

<sup>38</sup> *Id.*

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