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**Working Paper**

## Vietnam's accession to the WTO: A roadmap for a rational approach in trade liberalization

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**Vietnam's Accession to the WTO**  
**- A roadmap for a rational approach in trade liberalization -**

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# **Vietnam's Accession to the WTO**

## **A roadmap for a rational approach in trade liberalization**

**by**

**Uwe Schmidt**

The paper was commissioned by the German Agency for Technical Cooperation (GTZ). The views expressed here are those of the author and neither necessarily reflect the views of the German government nor of GTZ. Closing date of the report was 1 December 2002.

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A less detailed version of this paper was presented at the Research Seminar in Economics of Duisburg University on 11 December 2002.

## **Abstract**

Aspiring to become a member of the World Trade Organization (WTO) the Vietnamese government is confronted with tremendous political, economic and institutional challenges. Issues to be addressed are not only technical questions such as the tariff regime, industrial and agricultural subsidies, market access for foreign service providers, and the protection of intellectual property rights. More far-reaching will be the consequences of the reform and modernization of the legal system, the privatization of state-owned enterprises as well as a new approach towards taxation and the strengthening of fiscal authorities. In order to ensure a result of bilateral and multilateral negotiations which is beneficial for the country's legitimate development interests, numerous economic and political stakeholders on central and provincial level have to be consulted and must cooperate in a well coordinated manner.

## **Keywords**

Vietnam, trade policy, WTO, institutional economics

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## **1 Introduction**

The recently started new round of global trade liberalization talks (Doha Round), China's accession to the WTO, the ratification of the Bilateral Trade Agreement (BTA) with the US, the tightening schedule for implementing existing commitments under ASEAN's Free Trade Area Agreement (AFTA) and not least Hanoi's new cabinet line-up have given Vietnam's WTO ambitions new impetus. Achieving WTO membership is now – as recently appointed Deputy Prime Minister Vu Khoan confirmed – of top priority for the new government.<sup>1</sup>

Based on the Politburo's decision 07/NQ-TW on international economic integration<sup>2</sup> the Government has started to think about a comprehensive “roadmap” for scheduling and advancing WTO accession. Since it is common knowledge that approximately half of the time scheduled for negotiations is devoted to preparations and planning, this draft paper attempts to provide some additional input which could enrich and complement the internal debate among Vietnamese stakeholders.

Trade policy should be an integral part of any comprehensive development framework. It seeks to ensure that trade policy priorities are set in accordance with the country's development stage and that it is consistent with the exchange rate policy, the legal system, the foreign direct investment regime, labor and competition practices, the banking system, administrative realities etc. Moreover, comprehensive tax reform<sup>3</sup> is an essential precondition for wide-ranging tariff cuts and helps to avoid fiscal instability.

If trade is to continue to serve as an engine of growth, Vietnam must develop a multidimensional strategy for trade expansion, which fits into an appropriate macroeconomic environment. Institutional reforms and improvements in the legal system are as important as human resource development and appropriate infrastructure for attracting FDI and expanding overseas markets.

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<sup>1</sup> Interview with DPM Vu Khoan in Vietnam Investment Review, (12-18 August 2002). See <http://www.vir.com.vn/virwebsite/Output/565vir/565new00.htm>

<sup>2</sup> The resolution of November 2001 emphasizes that “the Party will step up Vietnam's integration efforts by harnessing all internal strengths and resources”.

<sup>3</sup> By broadening the tax base and reducing tax evasion and avoidance.

This ambitious national agenda requires a vision of how Vietnam will continue the integration and globalization process in a way that sustains human development.<sup>4</sup> The priorities Vietnam accords to trade must receive *full* internal support and should come about through a national dialogue over development priorities and appropriate responses.<sup>5</sup> The outcome of this process will be a broad vision, which is far more comprehensive than the roadmap for WTO accession sketched here, and where structural and social objectives should be treated simultaneously with macroeconomic and financial concerns.<sup>6</sup>

The present report is structured along the WTO agreements but includes several issues that go well beyond the trade agenda. It is an attempt to address in a straight and fairly comprehensive way the key issues of WTO accession without neglecting the development dimension of trade liberalization.

Last but not least I would like to express my sincere gratitude for the invaluable support I received from two distinguished trade professionals, Mr. Arthur Dunkel<sup>7</sup> and Mr. Klaus Kautzor-Schroeder<sup>8</sup> who provided me with valuable details about the usual procedure of bilateral market access negotiations.

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<sup>4</sup> For elucidating the relation between trade and poverty see McCulloch, Neil, Winters, Alan L. & Cirera, Xavier: Trade Liberalization and Poverty – A Handbook. CEPR / DFID Publication, London 2001.

<sup>5</sup> The documents resulting from last year's CP congress are an excellent basis and contain many profound and guiding ideas. However, one flaw is that their formulation has lacked significant contributions from the (private) enterprise sector. Without considering the interests and views of this nascent and still to be unleashed sector, it seems less likely that Vietnam will fully realize its growth and export potential.

<sup>6</sup> However, the WTO accession of Vietnam remains a complicated and tedious issue. First and foremost because some privileged groups that have appropriated monopoly rents arising from the lack of transparency and from the manifold restrictions to the free flow of goods are still opposing the obligations arising from full WTO membership (i.e. transparency, predictability, rule of law etc.). Thus, without consensus at the inner circle of the government (including the Politburo) to advance accession preparations, the benefits of membership to Vietnam as a whole will not materialize easily.

<sup>7</sup> Mr. Arthur Dunkel held the position of Director-General of the General Agreements on Tariffs and Trade (GATT) from January 1980 to June 1993. He advises the Government of Vietnam in the context of its accession process to the WTO since 1996.

<sup>8</sup> Mr. Klaus Kautzor-Schroeder is a former director in the GATT/WTO Secretariat in Geneva. He was heavily involved in the Tokyo and Uruguay Round of multilateral trade negotiations. Before joining the GATT in 1972, he worked for twelve years in the Foreign Trade Department of the Federal Ministry of Economy in Bonn, Germany.



## **2 Vietnam's accession to the WTO**

Vietnam submitted its application for WTO membership<sup>9</sup> in 1995 and so has started the tedious process of negotiating the conditions of accession. The Working Party (WP) was established by 30 May 1995 and 15 months later Vietnam handed over the "Memorandum on Foreign Trade Policy" to the WTO. In return, Vietnam has received a list of – up to now - more than 1700 questions, which aim at clarifying further details of current Vietnamese economic, administrative and legal practices. Moreover, five WP meetings have contributed to create a higher degree of transparency of Vietnam's foreign trade regime, thus concluding the so-called "information gathering phase". A pioneering bilateral trade agreement with the US was signed in 2000 after three years of negotiations. Ratification by both Parliaments took, however, until December 2001. Initial offers for goods and for services have been submitted to the members of the Working Party in 2002, followed by requests of several WTO members to start individually bilateral negotiations. The 6<sup>th</sup> meeting of the Working Party is scheduled for spring 2003.

Despite the fact that Vietnam seeks full WTO membership because of its inherent advantages, the country wants to negotiate the terms of accession in a way that may be difficult to maintain, judging from the experiences of some recently joined WTO members. Moreover, since there is the fear that a swift WTO accession might have long-term negative effects on Vietnam's development prospects, not only the Communist Party acts with some restraint. Ambivalence is evident in other governmental institutions, too. Most of the Vietnamese ministries have not reached internal consensus about conditions, the time frame and administrative implications of the expected WTO membership.

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<sup>9</sup> Actually, Vietnam submitted an application to become GATT '47 member in June 1994 and was granted observer status thereafter. When WTO became operational (1.1.95), Vietnam forwarded a second request to join the organization.

## **The WTO Accession Process**

Any state or customs territory having full autonomy in the conduct of its trade policies may join the WTO, but WTO members must agree on the terms. Therefore, accession to the WTO is essentially a process of negotiation—quite different from the process of accession to other international entities. Broadly speaking, accession goes through four stages:

**Fact-finding / Information-gathering:** The government applying for membership has to describe all aspects of its trade and economic policies that have a bearing on WTO agreements. This information is submitted to the WTO in a Memorandum that is examined by the Working Party dealing with the country's application. At the initial meeting of the Working Party, members examine previously submitted questions and answers to study the conformity of the Applicant's trade regime with the various requirements of the WTO Agreements. In subsequent Working Party Meetings, additional questions in writing, responses, and further information papers are exchanged.

**Negotiation Phase:** When the Working Party has made sufficient progress on principles and policies, parallel bilateral talks begin between the prospective new member and individual countries. They are bilateral because different countries have different trading interests. These talks cover tariff rates, specific market access commitments, and other policies in goods and services. The new member's commitments must apply equally to all WTO members under normal non-discrimination rules, even though they are negotiated bilaterally. In other words, the talks determine the concessions other WTO members can expect when the new member joins.

**Protocol of Accession:** The summary of the discussions in the Working Party is contained in a Report of the Working Party. In addition, Schedules of Concessions and Commitments on Goods and of Specific Commitments on Services are prepared. These three documents are annexed to the so-called Protocol of Accession, which includes the terms of accession agreed by the Applicant and members of the Working Party.

**Membership:** All documents elaborated by the Working Party are presented to the WTO General Council or the Ministerial Conference. If a two-thirds majority of WTO members vote in favour, the applicant is free to sign the protocol and to accede to the organisation.

Compiled from WTO's Training Package and the WTO Guide „Trading into the Future“. For a comprehensive description of the accession process, see WTO: Technical Note on the Accession Process, Geneva 1999, WTO Document WT/ACC/7/Rev.1.

Vietnam's WTO accession is further constrained by some other obstacles, which are common to acceding WTO member countries. They can be summarized under the three "C's", namely (1) *coherence*, (2) *communication* and (3) *coordination*. The difficulties are:

- Deficits in implementing the legislative framework because of inadequate administrative structures,
- Limited knowledge of the requirements for formulating WTO-consistent laws and regulations,
- Conflicts among domestic ministries and their subordinate units, and a general lack of willingness by "participating" institutions and organizations to freely discuss their tasks, functions, structure, etc.
- Particularism and obstruction by administrative authorities at provincial level, which bypass WTO-consistent provisions of the central government by divergent own decision.

In order to facilitate interaction among public entities, in 1998 the Vietnamese government set up a "National Committee for International Economic Cooperation" (NCIEC). The primary task of the NCIEC is "to assist the Prime Minister in supplying concrete guidance and coordinating activities of Ministries and local governments in Vietnam's participation in trade-economic activities within ASEAN, ASEM, APEC; and in negotiating to access and participate in WTO and other international, regional trade-economic organizations."

As a coordinating and advisory body, the NCIEC is located between the Prime Minister's Office and the ministries. It is chaired by a Deputy Prime Minister. Each of the 20 member ministries is represented by a Vice minister. Representative(s) of the Communist Party's Economic Commission attend the meetings, too. The Minister of Trade is Vice Chairman.

Since Vietnam signaled during the IX<sup>th</sup> Party Congress in April 2001 its willingness to continue the country's integration into the global economic community, the demand for WTO-related interaction between ministries, public and business entities will further increase. Thus, the government has started to draw a comprehensive "roadmap" for the

country's accession to the global trade body that goes much beyond conventional trade subjects. The report in hand comments in a very comprehensive way on issues to be tackled and provides ideas how to overcome the slow progress in some sensitive areas of economic and institutional reform.

### **3 Trade in Goods**

Key issues in accession negotiations for trade in goods are: tariffs for agricultural and industrial products, domestic support and export subsidies, and non-tariff barriers such as quantitative restrictions and import licensing requirements. Based on the information provided by the applicant as well as by referring to the "initial offer"<sup>10</sup> Working Party members negotiate bilaterally<sup>11</sup> market access conditions and discuss obligations for bringing the trade regime in the goods section into compliance with WTO provisions. Of general interest for the established WTO members is the import-weighted average

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<sup>10</sup> At a certain point of the accession process, normally when the fact-finding phase is close to an end and most of the questions raised by WTO members have been answered, the applicant submits its so called "initial offer" in goods. The goods schedule comprises the tariff concessions and agricultural commitments made by the acceding government. Part I of the schedule contains most-favored-nation tariff concessions (i.e. the legally binding undertaking by the prospective member not to raise or levy customs duties above a specified level) for agricultural as well as industrial products. Part II focuses on any preferential tariff concessions; Part III encloses any non-tariff concessions and Part IV contains commitments limiting the subsidization of agricultural products (domestic support as well as export subsidies).

<sup>11</sup> Negotiations on tariffs are conducted bilaterally, because concessions on specific tariff lines are of different importance to individual members. Here, individual WTO members negotiate for concessions that benefit their main export industries. The "Quad" (US, EU, Japan & Canada) is interested in far reaching concessions for a wide range of agricultural and industrial products, whereas smaller economies prefer to negotiate on narrower product groups. New Zealand focuses, for instance, on meat and dairy products, Cuba on Rum and Cigars, Colombia on fresh cut flowers and coffee, Switzerland on wristwatches etc. Being aware of these national negotiation interests helps the applicant to prepare for the bilateral market access negotiations.

tariff level<sup>12</sup>, the dispersion of tariff rates across products<sup>13</sup>, the number of zero-rated products<sup>14</sup>, and, at least in theory, the number of tariff lines for which rates are not to be bound.<sup>15</sup>

Currently Vietnam is administering three categories of import duties: (1) normal rates, (2) preferential rates and (3) special preferential rates.<sup>16</sup> Special preferential rates are applied under AFTA/CEPT, i.e. customs unions and/or free trade areas. Preferential rates are employed for imported goods originating in countries which grant reciprocal MFN treatment<sup>17</sup>. Normal rates are relevant to remaining countries and impose a surcharge of usually 50 percent to the preferential rate. Additional import duties are applied in cases where goods are dumped into the Vietnamese market, i.e. where the exporting country subsidizes cross-border transactions.<sup>18</sup> A large number of non-tariff barriers impede and restrict imports.<sup>19</sup>

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<sup>12</sup> The key demand by current WTO members has been that acceding economies bind their tariffs for industrial goods at roughly double the average rate for OECD countries, which would imply an import-weighted average of bound rates of no more than 10 percent (!). However, the tariff bindings offered so far by many applicant countries are considerably higher. It seems, however, unlikely that applicants will succeed in obtaining agreement for the imposition of higher tariffs.

<sup>13</sup> Reducing dispersed tariff rates and/or tariff peaks, tariffs escalations etc. increases transparency and facilitates accession. A good example for a desired “flat-tariff structure” (i.e. where all tariffs rates are equal or nearly equal) is Chile (an established GATT ‘47 member!), which in 1997 introduced a tariff rate of 11 percent for all imports.

<sup>14</sup> Goods or sectors where applicants are prepared to enter into binding commitments to reduce tariffs to zero. The Information Technology Agreement (ITA) is a recent example of this approach and will be of particular importance for Vietnam.

<sup>15</sup> However, it is evident from the Protocols of Accession that past entries have seen *no* (!) unbound tariff lines. The number of individually bound tariff items for non-agricultural products are as follows (in brackets the total number of tariff items): Kyrgyz Rep. 6,068 (of 6,068), Latvia: 4,564 (of 4,564), Estonia: 5,328 (of 5,328), Jordan 5,896 (of 5,896), Georgia 5,206 (of 5,206), Croatia 6,469 (of 6,469), Albania 8,459 (of 8,459), Oman (4,858 (of 4,858). The situation for agricultural products is analogous. So negotiating for unbound tariffs seems to be a waste of time and effort for any applicant.

<sup>16</sup> See Law on Import and Export Duties, 30 May 1998.

<sup>17</sup> At present only the US and EU enjoy MFN tariff rates (EU because of the letter of Minister Vu Khoan to Trade Commissioner Lamy of 10 October 2000, in which he states that “Vietnam will give treatment to the European Union’s firms no less favorable than that to be given to US firms and that EU firms will not suffer any discrimination as a result of the Agreement between the Socialist Republic of Vietnam and the United States of America.”

<sup>18</sup> Moreover, quantitative restrictions and licensing requirements are applied to the importation of specific products by a decision the Prime Ministers issues each year.

<sup>19</sup> A comprehensive stocktaking report on Vietnam’s NTBs (and how to phase them out) was prepared by the Centre for International Economics (CIE), in 1999. Pls. refer to the CIEs website for downloading: <http://www.intecon.com.au/pdf/Vietnam%20NTB%20report-%20version%20for%20Web%20site.PDF>.

In order to facilitate accession negotiations, the stakeholders involved should take the following action:

*Conduct further studies on the international competitiveness of specific industries/sectors:* To continue the remarkable economic development Vietnam requires high rates of domestic and foreign investment. However, investment should be allocated in those sectors, where international competitiveness is given today, can be expected in the future, or where Vietnam has – due to its endowment with cheap labor and/or its abundance of natural resources - the potential to meet the challenges of integration. As this guiding principle was not always taken sufficiently into account during the first phase of economic reforms, in-depth studies on the international competitiveness of some specific sectors have to be conducted by the *actual key players* of cross-border transactions for better understanding the opportunities and challenges of integration. In order to ensure the usefulness and practicability of resulting recommendations, affected enterprises or business associations should commission sufficiently experienced local consultants for conducting in-depth studies of those export products/sectors which have the potential of becoming future engines of economic growth.<sup>20</sup> Accordingly, sectors/branches that have enjoyed preferential policies for many years should be thoroughly evaluated by teams of proved national experts and international consultants for guaranteeing the validity of results and ensuing policy guidelines. In particular it should be assessed whether the progress achieved in productivity growth provides enough basis for further protection and continued governmental support, i.e. to reconsider the rationale behind preferential policies.

Sectors/industries of particular interest are<sup>21</sup>:

- Textile / Garments,
- Leather / Shoes,

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<sup>20</sup> It should be examined which supportive and WTO compatible measures have to be taken by the government for strengthening the sector's ability to cope better with the challenges on global markets.

<sup>21</sup> First orientations for some of the listed sectors can be extracted from the report of Dean Spinanger: Vietnam's Industrial Strategy in Light of its WTO Accession Process, Report prepared under UNDP Project VIE/95/24, Hanoi May 2000.

- Maritime Products,
- Food Processing,
- Chemical / Fertilizer,
- Electronics / Information Technology,
- Electric Equipment,
- Automotive (Motorcycle) Industry,
- Paper,
- Polymer and Rubber Processing,
- Dairy Products,
- Glass / Porcelain,
- Steel-making Industry,
- Wood Processing (Furniture),
- Shipbuilding industry,
- Mining Industry.

Some recent examples are the reports on the Vietnamese sugar program financed by AusAid,<sup>22</sup> the “preliminary” analysis of the competitiveness of the agricultural sector, prepared by MARD and FAO,<sup>23</sup> the EC Multilateral Trade Policy Assistance Project’s (MUTRAP) sub-sector studies on IT accessories, steel and dairy products, corn and artificial wood, as well as the assessment of Vietnam's export potential for seafood and footwear conducted under the UNDP / ITC project VIE/98/021.

However, the usefulness of sectoral or product studies of international competitiveness by the government, consultants or international organizations depends very much upon *who is actually carrying out such surveys to what end!* One of the problems is the

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<sup>22</sup> Centre for International Economics (CIE) & Vietbid: Vietnam Sugar Program. Where Next?, Canberra December 2001, <http://www.intecon.com.au/pdf/WB,Vietnam%20Sugar.pdf>.

<sup>23</sup> MARD & FAO: The competitiveness of the Agricultural Sector of Vietnam. A Preliminary Analysis in the Context of ASEAN and AFTA, Hanoi October 2000.

difficulty to acquire knowledge concerning standards, tastes and preferences of consumers/end-users in target markets. Another is the danger of special interests influencing the conduct and outcome of the studies. Furthermore, in a rapidly developing economy comparative advantage (which ought to be the foundation of international competitiveness) is likely to change over time in a fashion only difficult to predict. Therefore international trade authorities tend to advocate a “neutral” trade policy regime that emphasizes equal treatment of all sectors and focuses on removing trade impediments (including export barriers) generated by domestic policies. The final responsibility for the evaluation of actual and potential competitiveness should then reside with individual domestic investors (whether private or corporatized government enterprises).<sup>24</sup>

*Reconsider tariff lines:* High tariffs are applied for those goods with considerable domestic production (up to 100 percent for passenger cars with up to 10 seats) while more than half of all tariff lines tax imports very moderately between 0 and 5 percent. Thus, a simple average approach to Vietnam’s tariff regime disguises the true extent of protecting domestic industries.<sup>25</sup> Not surprisingly the WTO members perceived Vietnam's initial offer for goods submitted in December 2001 as “insufficient”. Consequently, during bilateral negotiations VN will experience massive pressure to cut the highest tariffs to rates at least similar to commitments under AFTA/CEPT (target rates 2006!). And apart from that it will be extremely difficult to retain goods listed in the GEL under AFTA/CEPT from massive tariff cuts. Sensitive industrial goods such as automobiles, motorcycles, chemical products, electric equipment, consumer electronics etc. are of particular interest to some prominent members of the WP (e.g. EU, Japan, Canada, Australia). Consequently, they will insist during the bilateral negotiations on

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<sup>24</sup> While such a “level playing field” (only modified to deal with proven externalities and other market imperfections) is an ultimate goal, the optimal transition towards this goal may well imply an only gradual phasing out of existing preferences and protectionist arrangements in order to facilitate adjustment and make it socially acceptable. For the sake of transparency the relevant conditions for such phasing out should be clearly specified and adhere to a binding timetable. The adjustment period granted should take into account the flexibility (and alternative employability) of factors of production currently committed in the sector.

<sup>25</sup> Whereas the simple average applied tariff rate is 16.24 percent, the average figure for all tariff lines subject to duty runs up to 24.1 percent (simple average for textiles and clothing 37.69 percent, fish and maritime products 28.67 percent, agricultural goods 28.73 percent). An import-weighted approach would reveal a much higher level of protection; however, detailed import statistics are not available.



substantially reduced tariffs to improve market access. Since tariff cuts under the BTA with the US are not that severe, the main challenge for Vietnamese manufacturers are the country's obligations under AFTA/CEPT, where VN is actually practicing WTO. Past accessions have shown that applicants experience severe pressure to reduce average tariffs to about 20 percent for agricultural goods and to 10 percent (at most!) on manufactured products. Moreover, recent accessions have demonstrated that applicants must be prepared to participate in "zero-for-zero" initiatives, i.e. to eliminate tariffs on a broader range of products.

*Coherence of the tariff regime:* Too many different tariff rates are applied for similar import products. Until the mid nineties 18 different categories of tires were subject to tariff rates between 5-50 percent. Although such incoherence of the tariff regime has been remedied for tires, other products still face considerable tariff dispersion. In order to protect local manufacturers electric motors (HS 850100) are taxed 30 percent (below 750 W), 10 percent (0,75-37,5 kW), 5 percent (37,5-75 kW) and zero percent (above 75 kW). The same appears to be true for paper<sup>26</sup> or transmission shafts (HS 8483).<sup>27</sup> Thus, accession negotiations would be facilitated if the dispersed tariff structure is flattened by applying uniform tariff rates within groups of similar (industrial) products.

*Improve tariff collection:* In Vietnam - as in many developing countries - the taxation of cross-border transactions is an important source of government revenues. Since their significant fiscal role<sup>28</sup> complicates rapid tariff cuts within the process of WTO accession, a tighter collection could provide some additional room for a reduction of nominal tariff rates without a corresponding loss of government revenues. However, complicated and not very consistent customs regulations, discretionary tariff exemptions, little motivation of customs officers to work because of their low salary (causing increased receptivity for bribes), insufficient or outdated IT infrastructure for effective

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<sup>26</sup> Composite paper for paperboard 3 percent, other paper 20 percent, writing paper 40 percent, copy paper 20 percent.

<sup>27</sup> For vehicles over 10 seats: 20 percent, for marine engines 10 percent, for all other engines 0 percent.

<sup>28</sup> According to budget data recently released by the Ministry of Finance, the taxation of imports contributes about 20-25 percent to government revenues (see [http://www.mof.gov.vn/chingansach\\_e/dutoan.htm](http://www.mof.gov.vn/chingansach_e/dutoan.htm)).

clearance procedures<sup>29</sup>, lacking background and training in modern customs management, the lax inspection by higher authorities etc. are some prominent reasons for an overall meager performance<sup>30</sup> of the customs administration. Simplifying the tariff regime and creating more favorable conditions for an effective taxation of cross-border transactions would have the added benefit of a more transparent enforcement of tariff regulations and may result in a higher overall tariff collection rate<sup>31</sup>

*Prepare for the elimination of (industrial) export subsidies:* Although the Agreement on Subsidies and Countervailing Measures (SCM) recognizes that “subsidies may play an important role in the economic development programs of developing country members”, none of the recent applicants was able to negotiate the flexible application of the SCM rules for developing countries, which are laid down in Article 27 of the agreements special and differential treatment (S&D) provisions. For instance, low-income countries with a per capita income of less than US\$ 1000 (and which are mentioned in Annex VII to the Agreement) are totally exempted from the rule prohibiting export subsidies (Article 3).<sup>32</sup> However, recently acceded low-income members (China, Moldova) committed that from the date of accession they “would not maintain any subsidies, including export subsidies, which met a definition of a prohibited subsidy within the meaning of Article 3 of the Agreement on Subsidies and Countervailing Measures, and would not introduce such prohibited subsidies from the day of accession.” Given their per capita income, which is substantially lower than US\$ 1000, these obligations are unusually severe.

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<sup>29</sup> However, an US project on the computerization of the customs administration, which has started in late 2000 is beginning to show some effect.

<sup>30</sup> According to Vietnam’ Memorandum of Foreign Trade Regime (See WTO: WT/ACC/VNM/2, page 36) the average tariff collection rate was as low as 15 percent (1996) whereas the average tariff rate of major import items ran up to 33.5 percent at that time. In 2000 the simple average tariff rate was 23,96 percent for all goods subject to import tariffs (see [http://www.apec-iap.org/document/VN\\_2001\\_IAP.htm](http://www.apec-iap.org/document/VN_2001_IAP.htm)) while the tariff revenue from these goods was only about 8.4 percent of the import value (own calculations, based Ministry of Finance revenue data).

<sup>31</sup> Furthermore, reduced tariff rates would – ceteris paribus - help to reduce smuggling because of the reduced incentive to bypass the customs procedure. In particular those goods which are protected by high tariff barriers - such as (luxury) cars and cigarettes - are smuggled in large quantities. Although official figures are not available it is estimated that the total amount of smuggled goods runs up to US\$ 2 billion per annum (exceeding 12 percent of the total valued of imports).

<sup>32</sup> These countries will, however, be required to accept the obligation to prohibit export subsidies when their per capita income reach 1000 US\$.

Since Vietnam still maintains some (export) subsidies that are not allowed under SCM Article 3 – (for instance the Export Reward Program, support for domestic or FIE enterprises which produce goods for export<sup>33</sup>) – it should be prepared to phase them out by the date of accession.

*Reconsider agricultural policy:* Negotiations on agricultural issues will be extremely tough. Evaluating the Protocols of Accession of some recently joined member countries reveals that the demands Vietnam will (most likely) face will by far exceed the levels of commitments accepted by well-established WTO members. It can be expected that tariffs for agricultural products have to be bound at an average level of - at most – 20 percent.<sup>34</sup> However, in Vietnam the average import tariff rate for farm products is around 25 percent, with peak tariffs of 40-100 percent applied to fresh fruit, refined sugar, cereal products, wine, beer, tobacco products etc. Tariff rate quotas<sup>35</sup> could be a solution to maintain some protection for domestic farmers, but negotiations will be harsh<sup>36</sup> and members will request Vietnam to enter a commitment for administering TRQs in a simple, transparent, timely, predictable, uniform, non-discriminatory, and non-trade restrictive manner.<sup>37</sup> Other contentious issues – e.g. still maintained non-tariff measures such as import prohibition (for tobacco products) and import licenses (refined

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<sup>33</sup> See document WT/ACC/VNM/13/Add.1 of January 2002 for details.

<sup>34</sup> The simple average tariffs for agricultural items (bound individually) are as follow: Ecuador 25.8 percent, Bulgaria 34.9 percent, Kyrgyz Republic 11.7 percent, Latvia 33.6 percent, Estonia 17.7 percent, Jordan 25 per cent, Georgia 12.1 percent, Croatia 10.4 percent, Albania 10.6 percent, Oman 30.5 percent, Lithuania 15.6 percent, Moldova 12.4 percent; China 15 percent and Chinese Taipei 17.5 percent.

<sup>35</sup> Tariff rate quotas apply a reduced rate for a specified quantity of imported goods. Imports above this specific quantity face a higher – often several hundred percent – tariff rate. Vietnam has not yet applied TQRs

<sup>36</sup> The agricultural part of the Goods Schedules contain TRQ's as follow: Ecuador -17 commodities at the 6 and 8 digit level of the Harmonized System (HS); Mongolia - none; Bulgaria - 90 at HS 8 digit level; Panama - 57 at HS 8 digit level; Kyrgyz Republic - none; Latvia - 4 at HS 4, 6 and 8 digit level; Estonia – none; Jordan – none, Croatia 9 at HS 4, 6 and 8 digit level. Albania – none, Oman – none, Moldova – none, Lithuania – 4 at HS 4, 6 and 8 digit level; China – 46 at HS 8 digit level; Chinese Taipei 117 at HS 8 digit level.

<sup>37</sup> See conditions specified for China. Report of the Working Party (WT/ACC/CHN/49), p.21ff. The message here is that members will not allow that TRQs are exploited as formidable NTBs. According to WTO provisions seven principal methods of TRQ administration can be identified (e.g. licence on demand, first come first serve, historical, auction). Member nations must notify WTO about how they administer tariff quotas in their tariff schedules. See <http://www.ers.usda.gov/publications/tb1893/tb1893c.pdf> or

vegetable oil, raw and refined sugar) as well as minimum price requirements (beverages) – further foreshadow difficult accession negotiations.<sup>38</sup>

The stiffest opposition Vietnam will face is regarding domestic support and export subsidies for the agricultural sector. The Agreement of Agriculture (AoA) requires countries to accept commitments to reduce trade-distorting subsidies. For this purpose, the AoA divides subsidies into three categories: green, blue and amber subsidies.<sup>39</sup> Green and blue subsidies are permitted support measures to which reduction commitments do not apply. Amber (or yellow) subsidies that strongly impact upon trade have to be bound and reduced over time. Here, article 6.4 of the Agreement on Agriculture permits 10 percent “de minimis” domestic support for developing countries and 5 percent for developed countries (based on the calculation of the product specific value of agricultural production against a three-year reference period<sup>40</sup>). Recently joined members committed themselves to reduce the level of total domestic support (calculated as the Aggregate Measurement of Support, AMS) to de minimis level or below within a transition period of 4-7 years. Since most of them acceded as “developed country” the permissible ceiling rate for domestic support was only 5 percent.<sup>41</sup> Vietnam’s AMS has not exceeded 2 percent of the total agricultural production during 1996-98<sup>42</sup>; i.e. is much below the critical level. There are, however, some indications that the government’s policy on domestic support has changed in the last three years, which might have some implications for the multilateral negotiation with WTO members on rules. Therefore, and as an orientation for the future, it should be considered to shift some domestic support measures from “amber” to “green” instruments.

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[http://www.umanitoba.ca/afs/agric\\_economics/course/065.303/notes/Oct4.pdf](http://www.umanitoba.ca/afs/agric_economics/course/065.303/notes/Oct4.pdf) for more details on TRQ administration.

<sup>38</sup> For more background see Ministry of Agriculture and Rural Development: General report on analysis of Vietnam agricultural policy under the context of WTO, Hanoi 15 December 2001, downloadable under <http://www.isgmard.org.vn/Information%20Service/Report/Report.asp>.

<sup>39</sup> "Blue" subsidies are direct payments under production limitation programs (narcotics) or preferential credit programs. "Green" subsidies are, for example, government expenditure on agricultural research, pest control, marketing and promotion services, financial participation by governments in income insurance and income safety-net programs, payments for natural disaster, environmental or regional assistance programs.

<sup>40</sup> The most recent period for which data were available was used in all cases, except Bulgaria.

More critical for Vietnam are export subsidies, which are considered the most trade distorting of subsidies granted by governments. Applicants have experienced severe pressure (in particular by the so-called Cairns Group of agricultural exporters) to commit themselves to eliminate export subsidies (a commitment that goes much further than what was agreed during the Uruguay round). Ecuador, Mongolia, Kyrgyz Republic, Latvia, Jordan, Taiwan, Lithuania, Moldova and China, for instance, confirmed that, by the date of accession, they would not maintain or introduce any (!) export subsidies on agricultural products. Vietnam, in contrast, has awarded direct subsidies for exports of agricultural goods since 1998. Export subsidies, although very limited in total amount, first were given for pineapples plus preferential loans for vegetable, fruit and pork meat exporting enterprises. In 1998 an Export Reward Fund (ERF) was established, which has compensated, for instance, emerging losses from rice and coffee exports and provided direct support for the export of canned cucumber, pineapples, plums and pork meat. Meanwhile the ERF is transformed into an “Export Support Fund”, ESF, which is - according to official sources - fully consistent with WTO provisions. Communication with the WTO (WT/ACC/VNM/13/Add.1) reveals, however, that recipients are mainly enterprises that trade in agricultural products. Assistance is provided by preferential interest rates, direct financial support, export rewards and “other forms of support” under a Prime Minister’s decision (for which data is not available). The total amount of subsidies<sup>43</sup> provided by this fund was US\$ 9.2 million in 2000.

*Non-tariff Barriers (NTB).* The last issue to be discussed under the Goods section are government measures other than tariffs that restrict trade flows and thus contravene WTO provisions. Examples include quantitative restrictions, import licensing, customs valuation procedures, rules of origins, trade-related investment measures, standards (i.e. technical barriers to trade), sanitary and phytosanitary regulations that aim at ensuring food security, preventing animal- or plant-borne diseases from entering a country as well as other issues which are covered by corresponding WTO agreements. While some

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<sup>41</sup> Only China was able to negotiate an in-between domestic support rate of 8.5 percent.

<sup>42</sup> Based on the calculation for the reference period 1996-1998, see in WT/ACC/VNM/4.

<sup>43</sup> Including those for industrial products.

of those agreements are relatively straight forward, leaving not much room for interpretation, the implementation of others could be exploited for restricting trade flows.<sup>44</sup>

For practical reasons only two NTBs will be discussed in detail here: Quantitative Restrictions (QRs) and Import Licensing. Chapter 6 will deal with some other NTBs.

*Quantitative Restrictions:* The WTO Agreement on Trade in Goods recognizes that countries may wish to protect their industries from foreign competition, but urges them to provide protection only through (reasonable) tariffs. Article 11 of GATT'47, which prohibits member countries to use QRs on imports, reinforces this principle.<sup>45</sup> All past accessions under WTO provisions have demonstrated that applicants must confirm their commitment to eliminate upon accession all quantitative restrictions on imports<sup>46</sup> that cannot be justified under the provisions of WTO Agreements.

Although Vietnam has continued to phase out existing QRs some years ahead of agreed schedules<sup>47</sup> it still imposes quantitative import restrictions on some products.<sup>48</sup> Moreover, it remains questionable whether tenable reasons for all goods that are banned from importation can be provided. It is not clear, for instance, if import restrictions for “toxic chemicals”, “debauched and reactionary cultural products, children’s toys badly affecting the personality education, social order” or for “cigarettes, cigars, and other forms of finished cigarettes”<sup>49</sup> are based on internationally accepted standards and applied in an uniform, not discriminatory manner.

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<sup>44</sup> But they necessitate extensive background knowledge of the corresponding WTO agreements, and – at least partially - considerable institutional/research capacities to construct arguments for their application against other WTO members (e.g. SPS & TBT agreements).

<sup>45</sup> The rule, however, is subject to specified exceptions (e.g. when countries are in balance-of-payments difficulties).

<sup>46</sup> As well as other non-tariff measures such as licensing, quotas, bans, permits, prior authorization requirements, licensing requirements etc.

<sup>47</sup> In some agreements with the IMF, Japan and the US Vietnam had agreed to lift QRs on the import of paper, clinker and ceramic tiles in early 2003 and on wine and beverages in 2005. Actually, those quantitative restrictions were eliminated by 1 May 2001.

<sup>48</sup> For more details see Annex I to WT/ACC/VNM/9.

<sup>49</sup> See Decision No. 45/2001/QD-TTg of 3 April 2001.

In any case, QRs as well as import bans must be administered in a transparent and incontestable way.<sup>50</sup> Otherwise Vietnam must be prepared to eliminate them prior to accession.

*Import Licensing:* Import licensing procedures can adversely affect the flow of imports, particularly if these procedures are not transparent or if they unnecessarily delay the issue of licenses. Licensing requirements are adopted for administering quantitative restrictions under, e.g., Balance of Payments provisions or Safeguard action<sup>51</sup> or for purposes of maintaining trade statistics. The Agreement on Import Licensing Procedures lays down clear rules and principles for the issuing of national import licenses and distinguish between automatic and non-automatic licenses.<sup>52</sup>

Vietnam has gradually liberalized her import-export licensing requirements. Today, all domestic enterprises irrespective whether they are manufacturing or trading enterprises<sup>53</sup> are allowed to export and import goods<sup>54</sup> Restrictions for foreign invested enterprises that are only engaged in trading were, for the first time, eased by September 2000. Limitations for the importation of Portland cement (black and white), motorcycles and passenger cars with nine seats or less will be phased out by 1 January 2003. Some sensitive items, however, will remain under import license requirements, such as sugar (refined or crude), petroleum products, animal feeds, veterinary or plant protection drugs, radio transmitters/receivers, printing machines, medicines for human use, etc. Since not all import permits are administered in a non-transparent way, thus attracting

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<sup>50</sup> That is to say, they are imposed for reasons of national security, public health, environment etc. Recent accessions have shown that import bans that cannot be justified under the provisions of the WTO agreement have to be abolished (Ecuador eliminated by 1 July 1996 its import bans on used articles, e.g., bans on used clothing, automobiles and tires, Lithuania abolished the import ban on sugar products and Chinese Taipei eliminated the import ban on motorcycles over 150cc six months and on passenger cars equipped with diesel engines two years after accession to the WTO.)

<sup>51</sup> See Understanding on Balance-of-Payment Provision of GATT '94 as well as Agreement on Safeguards.

<sup>52</sup> Automatic licenses are granted „in all cases ... within a maximum period of 10 working days“. Provisions for non-automatic licenses are somewhat more complex but the procedure of granting import licenses must be handled in a transparent, objective and as simple as possible way. Moreover, when QRs are administered by national authorities they must take into account the purpose for which licenses are adopted.

<sup>53</sup> The only prerequisite is that they are fully Vietnamese owned.

<sup>54</sup> The importation of some goods is, however, prohibited for safety, health or environmental reasons (see above).

attention from WTO members, it is recommended to formulate an Action Plan on the implementation of the WTO Agreement on Import Licensing Procedures and to submit it to the Working Party as soon as possible.

#### **4 Trade in Services**

Services are an important part of international trade. Many service sectors provide inputs to other industries and have supporting roles in the production of goods. The timely, accurate and sufficient supply of services<sup>55</sup> reduces transaction costs for exporting manufacturing enterprises and thus co-determines the competitiveness of their internationally traded goods. Since growth in the manufacturing sector must be accompanied by growth in service industries as well, bottlenecks in the latter certainly impact upon macroeconomic performance and development.<sup>56</sup> If domestic providers are unable to meet the demands of exporting enterprises for high-quality services, it should be considered to permit foreign sources of supply.

The General Agreement on Trade in Services (GATS) has brought, for the first time, service transactions under an international regime. The agreement requires countries not to discriminate between service providers and products of different countries (MFN-principle)<sup>57</sup> and to establish enquiry points, from which (foreign) service suppliers can obtain information on laws and regulations affecting service transactions. Furthermore, members are obliged to mutually recognize qualifications which they demand for the

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<sup>55</sup> Services which are of particular importance to exporting enterprises are communication services (in particular basic and value-added telecommunication services), business services (legal and accountancy services, management consulting, market research), financial services (insurance / banking), as well as transport services (maritime or air transport services, cargo-handling, storage and warehouse services).

<sup>56</sup> For example, a country that exports agricultural products may benefit from the liberalisation of the transport sector, enabling freight costs to be reduced and improving the position of its products on international markets.

<sup>57</sup> However, in order to maintain preferential treatment under regional or bilateral cooperation agreements, exceptions to the MFN rule are permitted. These exemptions, which are listed in the country's Schedule of Concessions, are temporary and under review every five years.



supply of services. Liberalization obligations, which are laid down in so-called Schedules of Concessions<sup>58</sup> comprise two types of commitments: a) horizontal, which apply for all sectors and b) the more focused sectoral commitments.

For many years Vietnam has taken a rather restrictive approach to market opening in services<sup>59</sup> since this part of the Vietnamese economy is commonly perceived as not very competitive compared with internationally experienced suppliers.<sup>60</sup> Consequently, the Vietnamese government has offered only very conditional investment opportunities to foreign providers. Market access limitations are imposed by, for instance, permitting only Business Cooperation Contracts (for postal, express delivery and telecommunication services), restricting the number of branch offices (legal services) or licensees (insurance). Other measures include the limitation of the scope of business activities (tourism, banking, construction) or the granting of licenses on a case-by-case basis, “depending on the particular domestic demand” (distribution).<sup>61</sup>

In order to advance membership preparations Vietnam is expected to be much more generous in its market access commitments than developing countries have been during the Uruguay Round. Past accessions have shown that new members took on obligations that go beyond those initially negotiated under GATS. Horizontal as well as specific commitments of all recently acceded transition economies are comprehensive and ambitious. Limitations on market access are fewer than in many developing countries with high per capita income and, as a whole, more comparable to the commitments of developed countries.

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<sup>58</sup> The General Agreement on Trade in Services distinguishes between four Modes of Supply under which services can be provided:: (1) cross-border supply, i.e. telecommunication- or internet-based services (2) consumption abroad, (3) commercial presence, and (4) presence of natural persons.

<sup>59</sup> By, for instance, so-called “business cooperation contracts” (BCC), where foreign and domestic partner(s) share profits and losses without creating a unified legal entity; an approach that was pretty popular for telecom services. There is, however, one central problem with BCCs: irrespective of their paid-up capital (!) disputants are exhorted to settle their differences through negotiation and conciliation.

<sup>60</sup> Restrictions are also imposed in order to protect public moral or essential security interests.

<sup>61</sup> Current licensing and qualification requirements can be found in Vietnam’s Individual Action Plan (IAP) under APEC (see [http://www.apec-iap.org/document/VN\\_2002\\_IAP.htm](http://www.apec-iap.org/document/VN_2002_IAP.htm)). Somewhat outdated information on the regime in services in 1998 is provided by accession document WT/ACC/VNM/5.

Vietnam's WTO accession preparations must find a deliberate balance between the requirements of modernizing service industries so that they can play a supportive role for economic growth, and the legitimate - but difficult to defend - interest not to expose all service sectors with some development potential to unbridled foreign competition. Service sectors where Vietnam is perceived to possess a comparative advantage are tourism, computer and related services, construction, health-related services<sup>62</sup> and some maritime transport services. Conversely, among sectors where liberalisation will strengthen commercial infrastructure are distribution, transport, and some highly complex, specialized services that demand know-how-intensive inputs such as telecommunications or financial services.<sup>63</sup>

Since trade officials in transition economies are usually somewhat unaware of the importance of the service sector for maintaining the country's economic growth it is also advisable for Vietnam to implement the following measures for further streamlining accession negotiations:

- Examine critical inter-sectoral linkages, i.e. other (service) sectors where providers depend on other service inputs to be competitive (tourism, for instance, depends on architectural and construction services (design of hotels), local transportation (excursions), education and training (hotel staff), telecommunication and management services, banking<sup>64</sup> etc.).
- Remove all unfair barriers (administrative and regulatory, establishing a "level playing field") to the development of a broadly based domestic service sector; see below.

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<sup>62</sup> Cuba, for instance, has developed a strategy for attracting tourists for vacation plus low-cost medical treatment. Since health-care professionals can provide quality service at very reasonable rates this model has turned out to be a major success-story. (See <http://www.cubatavelusa.com/Health-Care%20Tourism.htm>). Vietnam, with its very comparable conditions, could apply a similar approach.

<sup>63</sup> However, concerning the key role played by financial services in the domestic economy great prudence has to be exercised when considering their liberalisation.

<sup>64</sup> For further details on banking and financial services, please refer to <http://www.usvtc.org/documents/vietnam%20Laws/Banking&Finance-Vietnam2002.pdf>

- Assess the competitiveness of domestic service suppliers and identify existing market entry barriers to trade in services by conducting in-depth studies in some prominent service sectors.
- Identify export opportunities for internationally competitive services. Formulate and/or review concrete action plans to support the sector's growth and development.<sup>65</sup> Consider also the potential of small and medium sized enterprises to tap foreign service markets.<sup>66</sup>
- Reconsider objectives for domestic regulation of services (attain social goals (pricing issues of services e.g. for "natural" monopolies), ensuring quality or certain standards, ideological or public moral-related reservations, national security concerns, maintaining rents for some privileged groups, fiscal or budgetary reasons etc.).
- Clarify policy objectives for promoting further economic growth ("What is intended to be achieved in 10 years time?"). Decide on restrictions on (foreign) market entry, business license requirements, deviations from the national treatment principle etc. but consider also appropriate policies and incentives for business development.
- Implement focused and firmly the policy program for those service industries and keep in mind that the complementary development of service industries is of vital importance for sound macroeconomic performance.

The initial offer which was provided for the 5<sup>th</sup> Working Party Meeting in April 2002 seems to reflect a (cautiously) liberal approach to services and is thus a good starting point for bilateral negotiations. Horizontal restrictions are moderate and MFN exceptions are few, but the sectoral part of the schedule contains several transition

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<sup>65</sup> Including the necessary degree of foreign competition on the domestic market for spurring local providers' performance.

<sup>66</sup> Service exports can (partly) absorb abundant, less qualified labor and create job opportunities for skilled university graduates who often find it difficult to obtain work.

periods and other restrictions<sup>67</sup> that may be strongly challenged in bilateral negotiations.

However, of some more immediate relevance is the overall regulatory framework for those service sectors which are designated to experience more foreign competition. Some urgent issues to be addressed are:

- Ease / fade out restrictions on national treatment for foreign service suppliers (qualification requirements, taking of mortgages etc.), limitations on the number of suppliers (e.g. exclusive service suppliers, economic needs test, numerical quotas), the number of natural persons employed, measures requiring specific types of legal entities (BCC) and limitations on the share of foreign capital.
- The reasonable and objective administration of all domestic regulations affecting trade in services by central authorities in Hanoi (including auxiliary licenses and authorizations which have to be granted within a reasonable time). Here, clear procedures are to be maintained and instituted (!) to review contentious administrative decisions.
- Central authorities seem to have not always full control of the policies and licensing regulations of provincial entities. This creates uncertainty and competitive disparities among foreign service providers and demands, moreover, for appropriate measures to assure the consistent interpretation and administration of relevant laws and provisions throughout the country.
- Providing *gradually* better access for foreign services providers – e.g. under the BTA - increases competition on the domestic market. Former monopolies and exclusive service suppliers will come under pressure and may tend to abuse their dominant position for adopting unfair and competition-distorting practices. Therefore it should be considered to revise the broader policy package that addresses regulatory reform and competition policy. To be more precise, Vietnam can expect, for instance, that WTO commitments in telecommunications will include the Reference Paper on Regulatory Principles.

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<sup>67</sup> E.g. five year transition periods for distribution, telecommunication and banking services; unbound market access limitations for insurance (Mode 1, 2 and 4).

This paper calls - among other issues - for the establishment of an independent regulatory body in order to safeguard domestic competition (Article 5). Since Vietnam is in the process of drafting the Law on Competition Policy it should be considered to establish an independent supervisory authority to regulate - in the public interest - telecom services (a recommendation which is also of practical relevance for implementing obligation under the US BTA!<sup>68</sup>)

## **5 Trade-related Intellectual Property Rights – TRIPs**

The process of globalization reveals that the competitiveness of economies is less determined by traditional factors of production such as land, natural resources or capital. Today, technology as well as sufficiently qualified manpower are more prominent inputs that affect the ability of a country to maintain high economic growth rates than some decades ago. Hence, a “knowledge-based economy” is built on the stimulation, expansion and application of knowledge and information. Success and sound macroeconomic performance lies in innovation, entrepreneurial spirit and ability of those economies to turn knowledge into profit. Countries that are not able to protect innovations and other creations of the human mind are imposing high transaction costs on commercial activities, thus restricting national competitiveness and running at risk of falling behind.

The WTO Agreement on Trade-related Aspects on Intellectual Property Rights (TRIPs) establishes minimum standards of protection for a wide range of intellectual property rights<sup>69</sup> (IPRs) and lays down procedures and remedies for their enforcement. It builds

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<sup>68</sup> In Annex F of the US BTA reference is made not only to the Annex on Telecommunication of GATS but also on the far more comprehensive Reference Paper on Telecoms, that demands the establishment of a regulatory body which “is separate from, and not accountable to, any supplier of basic telecommunications services.”

<sup>69</sup> Such as patents, copyright and related rights, trademarks, industrial designs, layout of integrated circuits, undisclosed information (including trade secrets), geographical indications (incl. appellation of origin)

on and extends the existing international conventions on IPRs<sup>70</sup> and codifies the private character of IPRs.<sup>71</sup> The Agreement provides a transition period of five years for developing countries (i.e. up to 1. January 2000) and of 11 years (up to January 2006) for least developing countries.

Recent accession agreements have shown, however, that almost all new members have entered the binding obligation “to fully apply the provisions of the Agreement on TRIPS by the date of accession, *without recourse to any transitional period*” [accentuation by the author]. Only the very first new member of WTO, Ecuador, was granted a transition period of six months (until 1 July 1996). Other entries were not able to negotiate for the transition period provided by the TRIPS agreement. Thus it is obvious, that the effective implementation of TRIPS-conform legislation *prior to accession* is of utmost importance (and practically non-negotiable!) for any applicant.

In the past few years, Vietnam has made considerable efforts to improve its legal framework on intellectual property. However, since enforcement institutions are weak and the strict enforcement of IPRs is often perceived as counterproductive for Vietnam’s development<sup>72</sup> efforts to prepare the strict TRIPS obligations have so far been rather halfhearted.

A more reasonable approach to this important issue is developing in the context of the negotiations of the IPR commitments under the US BTA<sup>73</sup> (which requires Vietnam to implement IPR obligations – comparable to those under TRIPS - within a timeframe of

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<sup>70</sup> E.g. Berne Convention on copyright (1971 revision), Paris Convention on industrial property (1967 revision), the Rome Convention (broadcasting, producers of phonograms), Treaty on Intellectual Property in Respect of Integrated Circuits etc.

<sup>71</sup> Developing countries, however, perceive know-how protected under IPRs, at least partially, as public goods and have argued, for instance, that urgent needs to prevent the spreading of human diseases (HIV) may call for a termination of protection rights. (Meanwhile, a decision by the WTO council responsible for intellectual property has been approved on 27 June 2002, to extend until 2016 the transition period during which least-developed countries do not have to provide patent protection for pharmaceuticals.)

<sup>72</sup> Because TRIPS prohibits reverse engineering, ensures monopoly rents for – foreign – patent holders, protects computer software etc.

<sup>73</sup> The BTA, however, goes beyond the TRIPS Agreement. Article 5 of Chapter II on Intellectual Property Rights protects encrypted program-carrying satellite signals. An issue which is not mentioned under the TRIPS agreement.

12 to 30 months after ratification<sup>74</sup>). The enforcement, however, remains difficult since corresponding institutions seem not well prepared or detailed implementation provisions<sup>7</sup> are still not available. Therefore it is highly recommended to:

- Issue legal documents on specific IPR issues (e.g. reversal of the burden of proof<sup>75</sup>, IPR registrations, protection of layout designs of integrated circuits / of computer programs and compilations of data, prevent the release of infringed goods by customs authorities etc.). Ensure that adequate and effective civil and administrative procedures and remedies are available to obtain redress against infringements of IPRs.
- Simplify administrative procedures for ensuring the expeditious granting of intellectual property rights.
- Upgrade IPR enforcement infrastructure (computerization, electronic filing system / IPR network).
- Further strengthen the capacity of IPR agencies to restrain IPR infringements by increasing enforcement institution's responsibilities or by establishing new IPR authorities (consider also the streamlining of the IPR regime's institutional landscape).
- Conduct regular and extensive training programs for IP officials, e.g. on patent search and examination.
- Intensify international networking (exchange of information, cooperation in international fora & authorities, e.g. Berne Convention, International Union for the Protection of New Varieties of Plants).
- Raising public awareness for the importance of IPRs by mass media, seminars, taking up the protection of intellectual property in curricula.

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<sup>74</sup> The agreed transition periods are: for trademarks and patents 12 months, for copyrights and trade secrets 18 months, and for the protection of phonograms (Geneva Convention) 30 months.

<sup>75</sup> Article 34.1 of the TRIPS Agreement stipulates that the burden of proof in process patent infringement actions is shifted to the defendant. In Vietnam, however, the burden of proof is imposed upon the plaintiff (according to prevailing laws and regulations).

Much support on IPR issues is provided by the Swiss project on enforcement of IPRs, Japan's support to the National Office of Industrial Property (NOIP) as well as by the USAID STAR project, which focuses – among other issues – on intellectual property rights under the US BTA.<sup>76</sup>

## **6 Other WTO provisions & agreements**

Full WTO memberships will require Vietnam to adopt many technical rules and provisions that are obligatory and non-negotiable. Thus, domestic legislation (some of which may even have still to be drafted) must observe corresponding WTO provisions and agreements. Past accessions have clearly demonstrated that:

- Customs valuation must be based on the transaction value of traded goods upon accession. Minimum price lists/conditions have to be abolished. Additional fees imposed by local/provincial authorities which do not comply with the national treatment principle, i.e. discrimination between imports of local and of foreign enterprises, are prohibited. Moreover, some countries committed to observe the Decision of the Committee on Customs Valuation of 13 October 1995 on the Valuation of Carrier Media Bearing Software for Data Processing Equipment<sup>77</sup> and the Treatment of Interest Charges in the Customs Value of Imported Goods (see WTO Document G/VAL/5). Both provisions impact upon custom revenues.
- National anti-dumping, countervailing and safeguards legislation must fully comply with corresponding WTO agreements.<sup>78</sup> Where legislation was not in place at the time of accession<sup>79</sup> the applicants committed full conformity of pro

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<sup>76</sup> Hank Baker, STAR's resident trade lawyer, is an expert in TRIPs issues.

<sup>77</sup> The decision decrees "in determining the customs value of imported carrier media data or instructions, only the cost or value of the carrier medium itself shall be taken into account."

<sup>78</sup> China committed to revise its current regulations and procedures prior to accession.

<sup>79</sup> Latvia, Estonia, Georgia, Albania, Oman, Croatia, Lithuania, Moldova.



visions to be developed and, at least most of them, not to apply any anti-dumping, countervailing or safeguard measure to imports from WTO Members until it had notified and implemented appropriate laws in conformity with the WTO provisions.

- All measures inconsistent with the Agreement on Trade-related Investment Measures (TRIMs) such as requirements on local content, forex surrender and/or balancing, export performance etc. have to be abolished prior to accession.<sup>80</sup>
- Technical standards as well as sanitary and phytosanitary provisions, as maintained by Agreements on SPS and TBT Agreements, have to be applied in a non-arbitrary manner from the date of accession without recourse to any transition periods.<sup>81</sup>
- Domestic provisions on Rules of Origin (RoO) for trade under MFN as well as under preferential agreements must be in conformity with the WTO agreement on Rules of Origin prior to accession. Since work on the harmonization of the different concepts for determining the origin of goods is still in progress some members (Kyrgyz & China) committed in advance to adopt harmonized RoO (for imports under non-preferential regimes) once they will be finalized by the joint WTO / WCO<sup>82</sup> working group.
- State trading enterprises have to fully conduct their business under commercial terms, i.e. they must have full management autonomy and responsibility to their own profits and losses.<sup>83</sup> Activities of such enterprises have to be notified to the WTO Secretariat.<sup>84</sup>

Thus, Vietnam is advised to formulate action plans and to designate sufficient institutional capacity to implement those agreements in a timely and efficient manner

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<sup>80</sup> Only Ecuador managed to negotiate a transition period of up to 1.1.2000 to phase out non-conformities, (but committed a stand still clause, i.e. not to introduce any new measures which increase the degree of non-conformity).

<sup>81</sup> Only China was able to negotiate some exemptions to the TBT Agreement (see paragraph 197 of the Report of the Working Party).

<sup>82</sup> World Customs Organization.

<sup>83</sup> That is to say they have to observe Article XVII of GATT and Article VII of GATS.

<sup>84</sup> Moreover, Estonia and Oman committed “to eventually eliminate their state trading role”.

(again, *prior* to accession!).<sup>85</sup> In particular provisions on anti-dumping and safeguards are important instruments to address unfair trade practices of foreign suppliers and can help to cope with a surge of imports causing serious injury to domestic industry. Their application, however, requires detailed knowledge of relevant WTO provisions, sufficient and well-managed analytical capacity, and a domestic industry sector familiar with the rules relevant in this area.<sup>86</sup> Moreover, it is highly recommended to program corresponding legislative action in a way that there is enough time for getting a sound experience with the administration of those fairly complex instruments, i.e. before full membership is achieved.<sup>87</sup>

Additional issues of particular concern are obligations to be expected beyond present WTO requirements. Plurilateral Agreements under WTO are arrangements that are not a precondition for WTO membership in principle. At present plurilateral agreements are administered for trade in civil aircraft and for the procurement of products and services by governments. Whereas membership in the first named agreement became an obligation for more than half of recently acceded member countries<sup>88</sup>, negotiating the conditions of entry to the Agreement on Government Procurement seems to be inevitable, according to past accession experiences.<sup>89</sup> Since Vietnam has gained a doubtful reputation for its opaque tender procedures it will experience much pressure from current WTO members to implement the provision of this agreement and to

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<sup>85</sup> Plans and schedules have been designed by MoT's Multilateral Trade Policy Department for the implementation of Article VII of GATT or Customs Valuation (WT/ACC/VNM/20), for the Implementation of the TRIMs Agreement (WT/ACC/VNM/18), and for the implementation of the SPS Agreement (May 2000). They provide a sound basis for action to be taken.

<sup>86</sup> There has been a steady increase in the number of anti-dumping and countervailing actions among WTO members, confirming that those rules can be (mis) appropriated for protectionist purposes (e.g. US - EU steel dispute)

<sup>87</sup> Document WT/ACC/VNM/15/Add.1 (Legislation Program up to 2003) provides a useful perspective.

<sup>88</sup> Kyrgyz Republic, Latvia, Estonia, Georgia, Albania, Croatia, Lithuania, Moldova, and Oman. Some however, were able to negotiate some delay before they become signatory to this agreement (Kyrgyz Republic, Oman and Moldova).

<sup>89</sup> Of all accessions to the WTO only Ecuador – the first new member of the global trade body after its establishment in 1995 – did not become signatory to that plurilateral agreement.

specify the products and services to be covered within a very short time frame after accession (max. one year).<sup>90</sup>

## **7 Action to be taken in reform Areas not directly related To trade**

WTO accession addresses a wide range of reform areas that are – for not always obvious reasons – linked to trade and integration issues<sup>91</sup>:

- An appropriate macroeconomic framework<sup>92</sup> is as important as viable and stable structures of legal, regulatory and financial institutions.
- Foreseeable tariff reductions may require to rethink fiscal and budgetary policy (broadening the base for all taxes, i.e. reducing tax privileges as well as budget consolidation by drying out “undue” subsidization of SOEs).
- Shaping the legal system requires skill and decisiveness, since reforms require improving the independent status of courts and judges as well as the systematic public release of all legal documents and court decisions.
- Obligations on privatization have become compulsory for new (transition) members, thus demanding binding commitments to transfer public ownership rights to private hands and to establish a level playing field for the nascent private sector.<sup>93</sup>
- Institutional arrangements and property rights should be well defined, thus requiring accelerated as well as comprehensive administrative reforms.
- Allow sufficient flexibility in exchange rate management.<sup>94</sup>

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<sup>90</sup> Regarding goods it has become common practice that the agreement applies to all purchases of listed procurement entities. The purchase of services is much less covered, but has predominantly included construction services.

<sup>91</sup> Other issues such as intellectual property, standardization, and the protection of human, animal and plant life have been addressed already in previous chapters.

<sup>92</sup> E.g. low level of inflation, stable financial markets, sound fiscal policies, reasonably faded-out capital controls, an environment promoting exports.

<sup>93</sup> Pls. refer to chapter 7.2 for more details.

<sup>94</sup> Since imports surge (the trade deficit this year may exceed 2 billion US\$) the exchange rate against the US Dollar is increasingly coming under pressure. Although the deficit has been offset by other external revenue sources through rising disbursement of ODA funds and increased overseas remittances by Viet Khieu, it remains unclear whether those inflows remain high and stable enough to cover a potentially

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widening trade deficit caused by AFTA/CEPT implementation. Thus, the exchange rate should be allowed to play an increasing role in the external adjustment process.

- The National Treatment Principle of WTO should be anchored in domestic competition policy by setting up anti-trust regulations and authorities.<sup>95</sup>
- The business community - (private) enterprises & business associations - must be prepared (and permitted!) to take over their essential role in co-determining national trade policy by articulating needs and concerns.
- Human resource capacity building has to be addressed for reducing deficiencies in trade-related expertise and/or negotiation skills (e.g. by systematically overhauling and updating curricula at university & commercial colleges).
- Standardization and inspection capacities (as required by TBT, SPS and TRIPs agreement) have to be brought to a level corresponding to international standards.
- Special social safety net arrangements may be required for softening undue hardship for redundant labor at the initial phase of WTO-membership (frictional unemployment).

Among those pressing reform issues, three topics of particular importance will be discussed here more in detail.

## **7.1 Tax reform**

Like other transition economies Vietnam had a somewhat arbitrary and narrowly based tax structure when fiscal reforms gained ground in the early 1990s. Now, the country has a tax system, that is imperfect, but, at least, it functions and raises revenues from various kinds of consumption, income, and trade.<sup>96</sup> Among all taxes, levies imposed on cross-border transaction contribute significantly (around 20 percent) to current budget revenues.<sup>97</sup> Therefore, tariff cuts - as to be implemented under AFTA/CEPT and US

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<sup>95</sup> It should be considered to draft and apply only one unified business law for both, SOEs as well as private enterprises!

<sup>96</sup> However, the present tax system, with all its exemptions and deductions, conflicts with the principles of transparency, practicability, and continuity in taxation and thus distorts and complicates economic activities unnecessarily through high transaction costs.

<sup>97</sup> See budgetary data provided by Ministry of Finance at [http://www.mof.gov.vn/index\\_e.html](http://www.mof.gov.vn/index_e.html).

BTA schedules - create opposition not only because of their implications for domestic industry protection. They are (at least!) of similar importance because of their strong impact upon government revenues.

For securing sustainability of the national fiscal position, and in order to provide additional leeway for tariff reduction negotiations conducted with current WTO members, the government should consider the following measures:

- Make taxation more transparent and predictable.
- Broaden the tax base (i.e. unify VAT rates<sup>98</sup> and narrow disparities in corporate income tax rates).
- Revise the individual income tax system so that it conforms to international norms.<sup>99</sup>
- Remove discretionary tax breaks, abolish tax discrimination between local and foreign enterprises and employees.
- Improve tax collection by modernizing tax administration and strengthening local revenue offices (training, infrastructure).
- Proceed firmly and in a non-discriminatory way against corruption and tax evasion.

Without sustainable improvements at the revenue base, progressive trade liberalization will worsen the budget deficit and may threaten fiscal stability.

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<sup>98</sup> Although there is some evidence that the redistributive effects of indirect tax reforms tend to swamp the aggregated gains since they cause a sharp redistribution against lower income groups who spend a significant portion of their income on previously non-taxed products. See "Evaluating tax reform in Vietnam using general Equilibrium methods", <http://econpapers.hhs.se/paper/uwouwowop/9906.htm>.

<sup>99</sup> Currently Individual Income Tax contributes less than 2 percent to total tax revenues, a percentage much lower than in most other countries. Different thresholds are applied for domestic and foreign employees; progressive taxation is eminent while no opportunities for deduction exist. However, at this stage of Vietnam's development, the revenue yield from the personal income tax is likely to be fairly low, but that yield should increase markedly if Vietnam's attempts at economic development are successful. The political obstacles to the design of a fair and progressive personal income tax are likely to be much less significant now, when the yield from the tax is low, than they will be in the future, when the yield will be high.

## 7.2 SOE reform

Although WTO provisions do not contain a specific article about the ownership structure of enterprises, they implicitly assume that state enterprises must act in a manner consistent with the general principle of non-discriminatory treatment, i.e. they have to be run solely on a strictly commercial basis. Article XVII of GATT 94 obliges state enterprises<sup>100</sup> to make purchases or sales solely in accordance with commercial considerations, including price, quality, availability and marketability, transportation and other conditions of purchase or sale” and that enterprises in other countries should be provided with adequate opportunity “to compete for participation in such purchases and sales.”<sup>101</sup> Moreover, in order to ensure transparency of state enterprises, member countries are required to notify the WTO Secretariat on their activities.<sup>102</sup>

Since the majority of state enterprises in transition economies are making losses, and because it is extremely difficult to demonstrate incontestably that state enterprises conduct their business operations solely on commercial considerations, many applicants have accepted demands of some prominent WTO members to implement comprehensive privatization programs<sup>103</sup> and, moreover, to provide annual reports to WTO Members on developments in their programs of privatization.<sup>104</sup> China was able to avoid

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<sup>100</sup> State enterprises – according to the definition provided by the Understanding on the Interpretation of Article XVII of GATT 94 – are “Governmental and non-governmental enterprises, including marketing boards, which have been granted exclusive or special rights or privileges, including statutory or constitutional powers, in the exercise of which they influence through their purchases or sales the level or direction of imports or exports” (see [http://www.wto.org/english/docs\\_e/legal\\_e/08-17\\_e.htm](http://www.wto.org/english/docs_e/legal_e/08-17_e.htm)).

<sup>101</sup> The rationale behind this article is that state enterprises could undercut market access commitments if they do not obey the obligation to base operations purely on commercial considerations.

<sup>102</sup> Understanding on the Interpretation of Article XVII of GATT 94, Paragraph 1.

<sup>103</sup> Additional pressure has also been exercised in the past through privatization obligations under IMF Structural Adjustment Credits (SAC).

<sup>104</sup> Refer to Protocols of Accession of Mongolia, Bulgaria, Kyrgyz Republic, Latvia, Estonia, Georgia, Albania, Croatia, Lithuania, Moldova and Taiwan.

such a concession<sup>105</sup> but confirmed that it would ensure that all state-owned and state-invested enterprises obey the provisions under Article XVII of GATT '94.<sup>106</sup>

In Vietnam, it is obvious that strong reservations against accelerated privatization exist. The implementation of the multi-year SOE reform program – as agreed under SAC II – progresses at a very slow pace.<sup>107</sup> However, poor management has left many SOEs with huge debts. Although well protected by extensive trade barriers, most of them are running at losses or are only marginally profitable. Non-performing loans, a consequence from their weak financial position, are increasingly endangering fiscal and (indirectly) monetary stability.

However, although ideological reservations prevail on the Vietnamese side, and some empirical evidence exist that maladjusted privatization programs generate doubtful economic results<sup>108</sup>, there seems to be no other option than to persist with privatization. Otherwise, ineffective state supervision will continue to provide opportunities for rent seeking and thus create more burdens for the banking sector. In institutionally weak transition economies, like Vietnam, where the foundations of market economy are not well underpinned, privatization could be carried out less comprehensively and at a slower pace. But stakeholders should keep in mind that one advantage of the transfer of

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<sup>105</sup> However, the overall Chinese record of high and sustained growth, largely without comprehensive privatization of SOEs (at least so far) presents a sharp contrast to generally poorer transition performance in other countries. Therefore, Joseph Stiglitz concluded that “China had shown that an economy might achieve more effective growth by focusing first on competition, leaving privatization until later” Stiglitz, Joseph: Knowledge for Development: Economic Science, Economic Policy and Economic Advice, address given at the 10<sup>th</sup> Annual Bank Conference on Development Economics, World Bank 1998, <http://www.worldbank.org/html/extdr/extme/js-abcde98/abcde98.pdf>

<sup>106</sup> In addition, the Government of China would not influence, directly or indirectly, commercial decisions on the part of state-owned or state-invested enterprises, including on the quantity, value or country of origin of any goods purchased or sold, except in a manner consistent with the WTO Agreement.

<sup>107</sup> The SOE reform measures under SAC II include removal of shareholding caps for SOE equitization; conducting diagnostic audits for the 50 largest SOEs; developing and implementing restructuring plans for three selected general corporations; enforcing bank credit ceilings on SOEs, especially 200 of the largest debtors, and monitoring quarterly bank credit and budget support for these firms; adopting and announcing a timetable and targets for equitization, divestiture, liquidation, and mergers over the next three years, announcing the sale of SOEs 30 days before receipt of bids; and establishing appropriate terms and conditions for a social safety net fund for SOE workers made redundant. For more information about the trade relevance of SAC II please refer to Riedel, James (1999): Structural Adjustment Credit II (PHRD Grant TF # 29443), Report to The Ministry of Trade, Government of the Socialist Republic of Vietnam, on Trade Policy Reform Issues in Vietnam.



property rights to private hands is that these firms would be confronted with a more effective constraint to make further claims on tight public resources or the preferential access to loans.

In parallel with SOE reform, concrete measures to facilitate private sector development are of utmost importance. A vibrant private sector would not only make the environment for SOEs more competitive, but also help absorb unemployment resulting from SOE reform.<sup>109</sup> In any case, further action has to be taken to level the playing field between the state and the non-state sector, and to reduce market entry barriers beyond what has been achieved by the Enterprise Law.<sup>110</sup> Eliminating disadvantages in the access to bank credit and commercial property by private entrepreneurs will create a more attractive climate for domestic private investment. Of similar importance are better (equal) access to government support programs, to infrastructure, training services/human resource development, to information on domestic and foreign markets, to technical consultancy, simplifications in the accounting and tax system and less administrative obstacles to the foundation of private sector business associations.<sup>111</sup>

### **7.3 Legal reform**

International trade regimes, such as the WTO, relate in many ways to domestic laws and practices. In order to fulfil obligations under full WTO membership and for extending the rule of law, Vietnam will be required to design and implement a comprehensive legal reform and to coordinate donor support in this area. Among the many reforms Vietnam has to undertake for becoming a WTO member, legal reform is of crucial importance. Consulting China's Protocol of Accession might help to elucidate what is

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<sup>108</sup> Nellis, John: Time to Rethink Privatization in Transition Economies?, IFC Discussion Paper No. 38, Washington 1999 (<http://www.ifc.org/economics/pubs/dp38/dp38.pdf>).

<sup>109</sup> A complementary social safety net could help to mitigate the adverse social impact of intensified SOE reforms.

<sup>110</sup> Again, I strongly advocate the adoption of a unified business law (SOEs as well as private enterprises).

<sup>111</sup> For more information please refer to Vietnam's Comprehensive Poverty Reduction and Growth Strategy (CPRGS), Hanoi May 2002, p. 50ff ([http://poverty.worldbank.org/files/Vietnam\\_PRSP.pdf](http://poverty.worldbank.org/files/Vietnam_PRSP.pdf)).

ahead of Vietnam. Under “Administration of the Trade Regime” (Article 2 of the Protocol of Accession),<sup>112</sup> China agrees to:

*“apply and administer in a uniform, impartial and reasonable manner all its laws, regulations and other measures of the central government as well as local regulations, rules and other measures issued or applied at the sub-national level (collectively referred to as "laws, regulations and other measures") pertaining to or affecting trade in goods, services, trade-related aspects of intellectual property rights ("TRIPS") or the control of foreign exchange.”*

And, to

*“establish or designate, and maintain tribunals, contact points and procedures for the prompt review of all administrative actions relating to the implementation of laws, regulations, judicial decisions and administrative rulings of general application referred to in Article X:1 of the GATT 1994, Article VI of the GATS and the relevant provisions of the TRIPS Agreement. Such tribunals shall be impartial and independent of the agency entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.”*

Similar obligations can be expected for Vietnam. Currently, Vietnam’s legal system is still too intertwined with the country’s political bodies.<sup>113</sup> Even after a decade of (often incremental and piecemeal) reforms the legal system remains largely underdeveloped and incapable to implement and enforce provisions of law. Causing great concerns is the - at present - very limited legal capacity to seek redress through any international dispute settlement mechanism (e.g. under WTO law!). The Cat Fish quarrel with the U.S. is a foretaste of trade-disputes which will occur more frequently when integration into the global economy progresses.

Another issue of concern is that corruption and red-tapism – indicating a lack of transparency as well as the insufficient rule of law - have a significant negative impact on foreign direct investment (and thus on economic growth). Since the legal system is

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<sup>112</sup> Refer to WT/ACC/CHN/49, p. 74 & 75.

<sup>113</sup> The basic problem is that there is no clear separation of powers and no distinct concept of independent judiciary.

still regarded as an instrument to maintain social discipline or to promote policy – rule *by* law, not rule *of* law – it is hoped WTO membership will accelerate the much-needed legal reform and help to bring uniformity and transparency that foreign investors have long sought and often not found. Clear and timely policy measures are needed for accelerating reform of the jurisdictional system. Action to be taken include upgrading legal professional education and training (in terms of quantity and quality), the systematic public release of legal documents and of court decisions, the improvement and streamlining of legal institutions and processes (e.g. independence of lawyers and courts, judicial reviews, right to comment before implementation) etc.<sup>114</sup> Only by tackling those pivotal reform issues firmly will Vietnam regain ground as an attractive location for foreign investment.<sup>115</sup>

## **8 Cross-references to AFTA, US BTA and APEC**

WTO accession and membership issues overlap to varying degrees with other integration projects; among which AFTA/CEPT, the US BTA and commitments under APEC are the most prominent ones.<sup>116</sup> A particular feature of those obligations is that the coverage of the agreements tends to go well beyond conventional goods-related market access concessions. However, although commitments considerably overlap across agreements<sup>117</sup> implementation has been conducted, so far, in an irregular and not very well

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<sup>114</sup> The Legal System Development Needs Assessment (LNA), a study in which key Vietnamese state legal agencies have collaborated closely with international legal experts, provides concrete steps for improvements. Under [http://www.vnforum.org/docs/gov/law/en/Exsum\\_5\\_8\\_English.doc](http://www.vnforum.org/docs/gov/law/en/Exsum_5_8_English.doc) an executive summary is available.

<sup>115</sup> However, even if there is enough political will at the central level, Vietnam will have a difficult time ensuring compliance at the subnational (i.e. provincial, district and municipal) levels and upgrading the judicial system for efficiently managing and reviewing trade and investment disputes!

<sup>116</sup> Others projects with integration-relevant provisions are the IMF's PRGF, the World Bank's PRSC, the Miyazawa Plan, and the recently agreed creation of a China-ASEAN Free Trade Area.

<sup>117</sup> For example obligations under US BTA anticipate concessions required from Vietnam before joining the WTO, and AFTA/CEPT requires certain customs reforms that will be compatible with standards of the global trade authority as well.

coordinated manner, reflecting both the lack of a coherent integration strategy as well as insufficient coordination capacity.

Since obligations accepted by Vietnam cannot be discussed here in detail for reasons of space and complexity, only the main features of bilateral or regional trade agreements are to be highlighted.<sup>118</sup>

## **8.1 AFTA/CEPT**

Most of the changes induced by AFTA require the removal of trade restrictions and the easing of market access among members. Under the Common Effective Preferential Tariff (CEPT) Agreement ASEAN members are requested to reduce tariffs to 0-5 percent for a wide range of products traded within the region.<sup>119</sup> For the initial six signatories the ending year of tariff reduction schedules was moved up to 2002; for the new members of ASEAN it depends on the date when implementation of CEPT obligations were started, i.e. in the case of Vietnam commitments have to be implemented by 2006.<sup>120</sup> The CEPT reduction schedule affects four categories of products/items summarized in (1) the Inclusion List, IL, (2) the Temporary Exclusion List, TEL, (3) the Sensitive List, SL, and (4) the General Exception List, GE.<sup>121</sup>

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<sup>118</sup> Currently UNDP Hanoi together with the NCIEC conducts a so-called “Integration Study”, which aims at helping the government of Vietnam “to undertake an initial baseline study for preparing for the successful implementation of trade-related agreements.” The scheduled completion of this joint exercise was December 2002. However, the author has been unable to obtain information about the progress of this project; cf. <http://www.undp.org.vn/undp/prog/profile/eng/gov/vie01004.htm> for downloading the official project document.

<sup>119</sup> Moreover, quantitative restrictions on products on which members receive CEPT concession as well as other NTBs have to be eliminated (maximum time frame five years).

<sup>120</sup> In addition, as announced by the ASEAN Leaders at their Third Informal Summit on 28 November 1999, import tariffs of products in the Inclusion List (IL) would be reduced to zero percent by 2010 for the original six members, and by 2015 for the new members.

<sup>121</sup> Products in the IL undergo tariff rate reductions until the agreed limit of 0-5 percent is reached. TEL items comprise products which are shielded for a temporary period of time; they have to be transferred to the IL later. The SL contains unprocessed agricultural products for which tariff reduction commitments (as well as the phasing out of QR’s and other NTBs) are due by 2010 (for original AFTA members and by 2013 for Vietnam). Products under GE List are – in conformity with GATT Article XX - permanently excluded from liberalization commitments under CEPT.

**Table 1: Vietnam's Common Effective Preferential Tariff (CEPT) List for 2001**

	Total Number of Tariff Lines (8 digit classification)	Inclusion List	Temporary Exclusion List	General Exception List	Sensitive List	Total Number of Tariff Lines covered by CEPT
<b>Tariff Lines</b>	6,247	4,233	757	196	51	5,237
<b>Percentage covered</b>	100.00	67.76	12.12	3.14	0.82	83.83

Source: ASEAN Secretariat, 2001, own calculations.

Compared with the situation a few years ago, Vietnam has already come a long way in increasing openness under AFTA/CEPT. To implement commitments entered into, Vietnam has reduced tariffs for almost 85 percent of all products by the end of 2001. In the last of four equal installments the remaining 757 items will be transferred from the Temporary Exclusion List to the Inclusion List on 1 January 2003. Then, about 96 percent of all items in the tariff regime will have been reduced (see Table 1).

**Table 2: Vietnam's published simple average tariff rates under CEPT (1996-2006)**

<b>0</b>	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
<b>Inclusion List</b>	7.0	6.8	5.8	5.6	4.7	3.9	3.8	2.8	2.6	2.5	2.3
<b>Temporary Exclusion List</b>	19.9	19.9	19.9	19.9	19.8	19.6	19.4	17.5	13.4	8.9	3.9
<b>Total</b>	12.7	12.6	12.1	11.9	11.4	10.9	10.7	9.3	7.4	5.3	3.0

Source: Ministry of Finance, 2001.

An accelerated tariff reduction will be implemented from 2003 onwards (Table 2). Then, the simple average tariff rate will descend rapidly from 9.3 to 3.0 percent,

covering also many items which are currently produced in Vietnam. For many years Vietnam listed only those items in the Inclusion List that were not produced domestically. Correspondingly, the Temporary Exclusion List has contained most products with a strong domestic production base. Moreover, Vietnam's General Exception List appears not to comply with Article XX of GATT (restricting exceptions to the protection of national security, human, animal or plant life, public morals etc.), since it includes items such as fuels, broadcasting and receiving equipment, switchboards, used consumer goods, scrap, vehicles with less than 16 seats, etc., i.e. again items where Vietnam has strong protection and revenue objectives.

This approach towards fulfilling AFTA/CEPT obligations has fostered domestic enterprises' illusion that liberalization commitments are abstract and that implementation would be protracted by the government for a long time to come, i.e. as long as possible. Being published as late as June 2001, Vietnam's obligations<sup>122</sup> were administered in a very opaque way by the Ministry of Trade for many years and shielded particular, short-term interests of some vested interest groups. Consequently, domestic enterprise chances to prepare for stiffer competition from Asian neighbor states to secure their current level of employment are substantially reduced. Although it is rather an academic remark, a deliberate and comprehensive enterprise preparation program<sup>123</sup> for potentially competitive sectors, launched years ago (!), would have contributed much to reduce the risk of economic and social problems developing because of rising unemployment in the wake of trade liberalization.

## **8.2 BTA**

The US-Vietnam Bilateral Trade Agreement (BTA) became effective on 10 December 2001 and involves many legal and technical procedures, which will anticipate core WTO obligations. The BTA, which is the most comprehensive bilateral trade agreement

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<sup>122</sup> Vietnam's implementation schedule for AFTA/CEPT obligations (2001) can be found and downloaded as Excel file under [http://www.aseansec.org/economic/afta/2001\\_cept\\_package/vietnam\\_2001.htm](http://www.aseansec.org/economic/afta/2001_cept_package/vietnam_2001.htm).

<sup>123</sup> Practical advise in accounting / daily business operations, human resource management, market research, exploration of new distribution channels, marketing issues etc.

so far negotiated by USTR, covers WTO disciplines on trade in goods, trade in services and trade-related aspects of intellectual property rights, various international conventions on intellectual property<sup>124</sup> and the Basic Telecom Reference Paper negotiated under WTO.<sup>125</sup>

Obligations under market access provisions<sup>126</sup> include to:

- Guarantee MFN and national treatment to US goods and services upon ratification (including customs levies & charges, internal taxes, transportation, distribution and storage of products etc.).
- Eliminate import quotas over a period of 3 to 7 years after ratification.
- Tariff cuts of 30-50 percent on approximately 250 products, most of them agricultural goods, (phase-in period of up to 6 years).
- Abolish import-licensing requirements (gradually over 3 to 6 years).
- Apply WTO provisions on customs valuation, technical standards & SPS measures.
- Allow investment in service industries, including legal services, accounting, tax-counseling, integrated engineering, computer software, advertising, management consulting, telecommunication, construction, distribution, education, insurance, banking, and tourism.
- US investment is facilitated by protection against expropriation, clear provision on profit repatriation, eliminating the 30 percent minimum capital requirement for US stakes in a joint venture, and phasing out TRIM-inconsistent provisions.

Moreover, the BTA calls for a comprehensive review and - at least partly - overhaul of Vietnam's trade regime and legal system. Thus, the U.S.-Vietnam Trade Council

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<sup>124</sup> Berne Convention (Literary and Artistic Works), Paris Convention (Industrial Property), New Varieties of Plant Protection, Brussels Convention (Satellite Signals), Geneva Convention (Phonograms).

<sup>125</sup> For a summary of the BTA see <http://www.usvtc.org/BTA/CRS%20Vietnam%20BTA.21jun01.pdf>.

<sup>126</sup> Granted to US companies and service providers by Vietnam. For US concessions please refer to the BTA under [http://www.usvtc.org/BTA/usvtc\\_bta\\_text.htm](http://www.usvtc.org/BTA/usvtc_bta_text.htm).

(USVTC)<sup>127</sup> has devoted much effort to catalogue legislation and regulatory efforts made in areas relating to the BTA and in accordance with international trade and investment standards. Additionally, detailed roadmaps have been developed under USVTC patronage by Baker & McKenzie Vietnam to make the BTA work. The last one of March 2001 lists in six chapters<sup>128</sup> on more than 200 pages the laws and/or regulations per commitment that might require adjustments for being in compliance with the BTA.<sup>129</sup> Although the US legal experts do not indicate in detail interlinkages with other non-trade reform sectors, their BTA roadmap is a deliberate approximation for indicating adjustment requirements for full WTO membership.

### 8.3 APEC

APEC's main agenda is to dismantle trade and investment barriers among all members by 2020.<sup>130</sup> Regularly updated Individual Action Plans (IAPs) describe voluntary and not-binding action APEC members expect to take in order to reach that goal. IAPs contain each country's proposed individual liberalization steps in fifteen areas.<sup>131</sup>

Vietnam has become an official member of APEC in November 1998, thus committed to advance unilaterally liberalization measures by formulating and implementing IAPs. Up to now five IAPs have been forwarded to the APEC Secretariat in Singapore.<sup>132</sup> They are more specific on near-term actions than on the long-term view of trade liberalization. Since membership obligations under WTO will be by far more demanding and the time-frame for APEC is well beyond even any pessimistic forecast

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<sup>127</sup> The USVTC is a non-profit organization founded in 1989. Chairman of the Board of Directors is now the former US Ambassador to Vietnam, Mr. P. Peterson.

<sup>128</sup> (1) Trade in Goods, (2) Intellectual Property, (3) Trade in Services, (4) Investment Relations, (5) Business facilitation, (6) Transparency and Right to Appeal.

<sup>129</sup> Please refer to <http://www.usvtc.org/BTA/Roadmaps/Roadmap%20Descriptions.htm>.

<sup>130</sup> 2010 for developed member countries.

<sup>131</sup> Tariffs, non-tariff trade issues, services, investment, standards and conformance, customs procedures, intellectual property rights, competition policy, government procurement, deregulation, rules of origin, dispute mediation, mobility of business people, and information gathering and analysis. For more information on IAP format guidelines see <http://www.apecsec.org.sg> (under About APEC/Policies & Procedures).

<sup>132</sup> The last one in 2002.



of Vietnam's date of accession to the WTO, MoT designates – for understandable reasons – rather limited human resources to the APEC process.<sup>133</sup>

#### 8.4 Interjection

Fundamentally and for economic-technical reasons it would make much sense for Vietnam to become full WTO member before the core obligations under AFTA/CEPT and the US BTA are to be met. The burden of administering the various and fairly complex market access commitments would be alleviated somewhat by an early WTO accession in late 2004 / spring 2005. Moreover, the “entrance fee” Vietnam must be prepared to pay, might be somewhat lower than for a late accession, after the conclusion of the Doha Round<sup>134</sup> but will be, nevertheless, well above the aggregated market access commitments of AFTA and US BTA<sup>135</sup>.

Although an early WTO accession would (probably) be beneficial for FDI inflows (WTO membership being a sign of commitment to reform<sup>136</sup>) it remains unclear whether all the potential advantages of WTO membership will emerge immediately after accession.<sup>137</sup> Their appearance depends first and foremost of the overall management of Vietnam's reform process. If integration policy is continued to be administered like it is now – with no clear responsibilities in trade policy formulation

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<sup>133</sup> Moreover, IAP commitments are not binding (i.e. there is no mechanism for sanctions in case of non-compliance).

<sup>134</sup> However, the most important goal of that approach would seem to be to avoid “double payment” in market access commitments on goods and services, as well as additional reductions of domestic support in agriculture (provided such are agreed in the multilateral negotiations).

<sup>135</sup> Bilateral negotiations with current WTO members will result in a greater opening up of the Vietnamese economy; see next chapter for more details.

<sup>136</sup> Empirical evidence, however, indicates no distinctive correlation between WTO membership and FDI inflows. Positive evidence, apart from China, is given in the case of Bulgaria where FDI inflows increased more than 460 % in the year after acceding to the WTO. The Kyrgyz Republic, in contrast, experienced the opposite: FDI inflows halved after accession (and dropped much further in 2000). See statistical annex to UNCTAD's World Investment Report 2002. This indicates that WTO membership creates additional attractiveness for foreign capital inflows only if trade policy is mainstreamed into the broader national development strategy.

<sup>137</sup> One aspect which should be taken into faithful account is China's accession to the WTO. Even in times when global FDI inflows are substantially reduced China still attracts FDI in increasing order of magnitude (see UNCTAD's World Investment Report 2002). Since life is unpleasant in close vicinity to a “black (FDI) hole”, potentially positive effects of WTO membership on FDI inflows in Vietnam may be outshone by the neighbors' huge appetite on foreign investment capital.

assigned to relevant domestic stakeholders<sup>138</sup>, lack of political will, prevailing bureaucratic intransigence and obstruction etc. – it is not advisable to stick to the announced timeframe of a WTO entry by early 2005. But if political-ideological reservations are left aside and national resources are pooled and administered in a rational, coherent and comprehensive way, a deliberate integration policy might well have similar stimulating effects as the first batch of economic reforms initiated between 1987 and 1993.

Again, implementing integration commitments under regional or bilateral trade agreements ahead of schedule by an anticipated WTO accession is - first and foremost - a question of political will and thus implies the firm, comprehensive and immediate addressing of several pressing reform issues. Trade liberalization needs to be accompanied by supportive policies in such areas as export capacity formation, modernizing the legal system, SOE reform, providing a level playing field for the private sector, exchange rate management, but also by predictable governmental policies. Liberalization could thus be called one of the important goals of integration into the global economy, but it should be pursued with discretion and discernment.

## **9 Bargaining strategy**

The negotiation process for full WTO membership is carried out on two different levels: the multilateral and the bilateral one. For the multilateral level clear provisions are available.<sup>139</sup> There is a reasonable amount of transparency and, on the whole, one could say that this process helps acceding member countries to align their economy with the requirements of WTO membership. The bilateral process is somewhat different. Here, the applicant is confronted with two tracks of negotiations: (1) commitments on tariffs

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<sup>138</sup> That is to say a deliberate division of labor between ministries, business representatives, coordinating bodies such as the NCIEC etc.

<sup>139</sup> The organization and pursuit of the accession negotiations in each Working Party follow a well-established pattern based on procedures set out in a note by the Secretariat, WT/ACC/1 of 24 March 1995. This document is available in an updated version of 21 December 2001 (pls. refer to document WT/ACC/10 for more information).

and on agricultural subsidies, and (2) commitments on trade in services. In both strands the applicant not seldom finds itself exposed to pressures to make concessions that may not always be in its perceived national interests.<sup>140</sup>

In order to proceed with bilateral negotiations on market access in goods and on services an acceding country is required to submit a comprehensive “initial” tariff offer, usually arranged according to the Harmonized System (HS) tariff nomenclature<sup>141</sup>, and a corresponding - but in appearance somewhat different - offer for market access for trade in services. It should be noted here that bilateral negotiations are conducted on a confidential basis between the applicant and a WTO member. For advancing the accession process it is recommended to submit an offer first and to wait for specific requests from interested WTO members. After examining those requests, and by taking into account the national (trade) interests of the applicant, a revised offer can be forwarded, followed by further liberalization requests. This process continues until both sides agree on the results.<sup>142</sup> After bilateral negotiations are concluded with all interested WTO members, the bilaterally concluded concessions are consolidated into a single Schedule of Concessions (one for goods and one for services). The whole package is then submitted by WTO’s Accession Unit to the applicant’s Working Party for multilateral review and adoption. By the date of accession the applicant must extend agreed tariff concessions on a Most-Favored-Nation (MFN) basis to all WTO members.<sup>143</sup>

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<sup>140</sup> E.g. tariff reductions below an internally agreed level (protection of infant industries). Therefore it might help to examine the experiences of recently joined member countries with a similar economic structure.

<sup>141</sup> The HS nomenclature contains four digits level “headings”, six digits level “subheadings” which have been subdivided recently into eight digits subheadings to reflect national administrative and statistical requirements.

<sup>142</sup> Recent accession negotiations have provided evidence for a general trend of WTO members to push applicants to participate in sectoral tariff initiatives, in which involved parties aim at reducing tariffs to zero on a reciprocal basis (for instance the “Zero for Zero” Initiative, the Chemical Harmonization Initiative and the Information Technology Agreement (ITA).

<sup>143</sup> Procedures for trade in services are somewhat different since GATS permits member countries not to apply MFN-treatment in a given sector (due to regional or bilateral preferential cooperation / investment agreements). However, as mentioned above, MFN exceptions are for a maximum of 10 years.

So far, Vietnam has received more than 25 requests for bilateral consultations. Some officials have got excited about the total number of countries seeking vis-à-vis negotiations on market access. They perceive that bilateral negotiations correlate with the importance or “weight” of an economy in the multilateral trading system (bilateral negotiations as a yardstick for the power to make things go). But the matter is not that simple. The number of countries seeking bilateral negotiations<sup>144</sup> correlates with the complexity of the negotiations and thus rather calls for a deliberate bargaining strategy and, moreover, excellent negotiation skills. Taking into account the limited experience of most applicants with international trade negotiations (respectively the severe restrictions they face on governmental capacities) fewer negotiation partners would rather facilitate accession procedure and would ensure a bargaining result closer to identified national trade interests.<sup>145</sup> Since bilateral negotiations determine the “entrance fee” of becoming full WTO member, the number of bargaining partners rather correlates with “unwanted” concessions.

Moreover, the MFN principle, which still seems to be not fully understood in Vietnam, generally obliges applicants that any concession made bilaterally to another country must be extended from the date of accession to all other members of the WTO.<sup>146</sup> This means that the preferential treatment of certain imports of individual trading partners will definitely end when the applicant has become a full WTO member. For instance balancing requests from Australia for tariff reduction for wine and for mineral water with similar demands from the EU by providing each trading partner with better market access (lower tariff) in one product will result after accession – due to the MFN

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<sup>144</sup> During accession negotiations usually 10-30 WTO members (to which the applicant has established close trade relations) request bilateral negotiations. It is common knowledge that each country has got its own, very specific trade interests; e.g. New Zealand usually requests tariff concessions for dairy products and lamb meat. Chile, EU and Australia seek better market access for wine. Switzerland is known for its preferences for the domestic watch industry (besides other key products). Knowing those national “stakes” facilitates the preparation of bilateral negotiations and helps to avoid committing too much too early.

<sup>145</sup> Or put in another context: Would the fox be more fortunate about an increasing number of hunters, arguing that a shifter’s reputation increases with the number of huntsmen?

<sup>146</sup> The MFN principle is restated in several WTO agreements. There are, however, exceptions to the MFN obligation, e.g. under regional trade agreements (preferential market access), the General System of Preferences (GSP) of developed member countries for imports from developing member countries, temporary MFN exemptions under GATS etc.

principle – in the lowest bilaterally negotiated tariff for wine *and* for mineral water for *both* countries (as well as all other WTO members)!

Consequently, before conducting bilateral negotiations the applicant must consider the desired maximum total level of market access for *all* WTO members.<sup>147</sup> Only in a second step, the applicant's government may consider to whom of its trading partners it offers (temporarily!) preferential market access concession.<sup>148</sup> Whether the applicant can restrict the partner's market access demands to the internally agreed level is, however, another story.

Thus bilateral market access negotiations call for a deliberate bargaining strategy. The applicant must, first and foremost, identify and consider his own needs as well as those of all (!) potential negotiation partners. Second, (realistic) bargaining objectives have to be formulated and prioritized. Developing an appropriate negotiation strategy requires, moreover, considering the “bargaining power”<sup>149</sup> of each negotiation partner. Since acceding countries must be prepared to receive requests for substantial cuts in their tariff levels when negotiating bilaterally with major trading powers, well formulated arguments - backed by substantive evidence and a sound long-term development policy objective – have proven successful in justifying the appropriateness of tariffs set by the applicant on key product items.

No clear rules exist for conducting bilateral market access negotiations. There is no “provision” on country sequence<sup>150</sup>, simultaneous bargaining with more than one trading partner, the issue of sequential or parallel negotiation of concessions in goods

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<sup>147</sup> Taking into account possible reductions in governmental revenues and the applicant's desire to temporarily protect some sectors and strengthen infant industries or strategic sectors.

<sup>148</sup> For reasons of foreign policy or to demonstrate a certain sympathy for the trading partner's dominant industry.

<sup>149</sup> The bargaining power of a negotiation partner is determined by his (economic) size/weight, the access to (human) resources and information, his negotiation experience, the team's internal “cohesion”, the ability to hold out conflicts, the preparedness to take risks, by external support/allies, personal relations, offered incentive / exercised pressure etc. Consequently, high bargaining power helps to extract concessions from the applicant beyond his internally targeted level!

<sup>150</sup> That is to say to deal with the more important global trading powers first.

and services, the place of negotiations<sup>151</sup> etc. Customarily, the country sequence is according to the “first come first serve” principle. Therefore it is not advisable trying to put aside (at least temporarily!) the wish for bilateral market access talks of a minor trading partner since protracted bargaining might become later a major stumbling block for advancing WTO membership (thus providing the disdained counterpart with greater leverage at the end). Furthermore, offending trading partner’s rights to seek bilateral negotiation by pointing to already concluded market access commitments under regional trade agreements (e.g. AFTA/CEPT) is likely to backfire on the applicant by more demanding market access requests of the trading partner).

Last but not least, political aspects of comprehensive market access commitments should not be ignored. One important motive for Cambodia to conclude its accession negotiations prior to the Ministerial Meeting at Cancun / Mexico<sup>152</sup> is the resulting opportunity to extract commitments when Vietnam’s accession comes to the final stage.<sup>153</sup> How to handle emerging delicate situations is more a question of diplomacy and political bargaining than of rational trade policy!

Limited generosity is also to be expected from trading partners to which the applicant maintains – in general – amicable foreign policy relationships. One example will be Korea. Although Korea is chairing the Working Party Meetings at Geneva and both countries have recently celebrated the 10<sup>th</sup> anniversary of the establishment of diplomatic relations - during the past decade both countries have become increasingly intertwined in terms of trade and investment – Vietnam can expect little generosity from Seoul when negotiating bilaterally market access demands. It would be extremely surprising if Korea would not ask for comprehensive tariff concessions in – let’s say – HS heading 89, which comprises ships, boats and floating structures. In the past few years Korea has forcefully expanded ship building capacities, overtook even Japan in 1999, and is now the leading global player in this market. Excess production capacities

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<sup>151</sup> In principle, negotiations can take place in the capitals - either that of the applicant or of its bargaining partner - or in Geneva. Good arguments can be provided for all places, e.g. capacity of applicant’s Permanent Mission to Geneva, the accessibility of governmental officials, the making of advances to the trading partner etc.

<sup>152</sup> Which is scheduled for September 2003.

motivate government support to open up new markets – European shipbuilders are complaining for many years about distorted competition because of preferential loans, indirect subsidies and the Korean government’s repeated declarations of support given to highly indebted Korean shipyards. Since Vietnam is intending to develop (thus protect!) it’s very infant ship building industry - so that it can become a future engine of economic growth - tough bilateral negotiations are lying ahead.

The EU might generate another example where commercial interests override diplomatic considerations. The decision of November 2002 to cease operations of the Multilateral Trade Policy Assistance Project, MUTRAP, by end of January 2003 can be read as an early warning about how jagged bilateral negotiations might become. Since not all members of the EU are pleased by Vietnam’s initial offer and the way how Hanoi progresses with WTO preparation, the rationale behind reducing technical assistance is – perhaps – to keep Hanoi-based project staff out of the “line of fire”, i.e. Vietnam should be prepared to receive “US BTA-plus-plus” requests from Brussels.

## **10 Institutional arrangements**

Without doubt institutional reforms are at the very heart of any WTO accession process. Implementing obligations under TRIPS, SPS, TBT (i.e. establishing or improving the institutional framework for administering commitments vis-à-vis the WTO community), fulfilling notification requirements<sup>154</sup>, bringing national legislation into conformity with WTO provisions etc. places a heavy burden on the acceding member countries that not seldom exceed the available institutional capacities. Thus, applicants are exhorted to

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<sup>153</sup> Similar approaches have been or will be followed by Mongolia (vs. China), the Kyrgyz Republic (vs. Russia), or Armenia (vs. Azerbaijan).

<sup>154</sup> Notification requirements (information to the WTO Secretariat about changes in trade-related legislation), have to be fulfilled under the following Agreements and Provisions: Agriculture, Sanitary and Phytosanitary Measures, Textiles and Clothing, Technical Barriers to Trade, Trade-related Investment Measures, Rules of Origin, Import Licensing Procedures, Subsidies and Countervailing Measures, Safeguards, Trade in Services, Trade-related Aspects of Intellectual Property Rights, Regional Trade Agreements, Balance-of-Payments Provisions, Trade Policy Review Mechanism, Tariffs and Tariff Renegotiations, Quantitative Restrictions and Non-tariff Measures etc.

rethink administrative reforms anew and may have to redesign the internal preparation and coordination capacities within the government (and beyond<sup>155</sup>).

Since the author of this roadmap has comprehensively commented on the institutional dimension of efficient WTO membership<sup>156</sup> negotiations, only some of the most important recommendations should be recalled here:

- The National Committee on International Economic Cooperation (NCIEC)<sup>157</sup> should be further strengthened beyond what is envisaged in Resolution No 7 of the Politburo. For putting the sometimes aired idea of upgrading the NCIEC to an USTR-like authority into action, institutional linkages to the MoT must be unraveled. Despite of its administrative advantages, the still maintained approach has contributed much to the perception that the NCIEC is not an independent institution to facilitate the cooperation among ministries and other governmental entities. The administrative separation requires the physical relocation to outside the MoT (preferably in geographic proximity to the Government/Prime Minister's Office) as well as the strengthening of an own administrative authority for managing financial and personnel matters.
- The NCIEC is encouraged to establish an active link to the National Assembly by regularly informing NA committees and relevant key persons about the progress of WTO negotiations. Since accession will impact heavily upon the business community as well as on the Vietnamese society at large, it is politically wise to establish amicable relations early on by informing comprehensively about policy options and the (sometimes very limited) leeway

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<sup>155</sup> Empirical evidence has shown that national WTO membership preparations should take into account the views and opinions of non-government stakeholders, such as the business community and - for increasing the legitimacy of the negotiation result - civil society groups (at least to some extent!). Otherwise (justified) complaints will occur when the commitments entered into are implemented.

<sup>156</sup> For instance in the report "Inter-ministerial Coordination During WTO Accession. Experiences of Selected (Transition) Economies and some Considerations for Vietnam" which was co-authored by Mr. Bui Xuan Nhat and Mr. Tran Ngoc Anh (both Prime Minister's Research Commission, PMRC). The report was written June and August 2001 under the auspices of the German Federal Ministry for Economic Cooperation and Development's (BMZ) technical assistance project "Promoting International Competitiveness of Developing Countries (WTO)".

<sup>157</sup> As set down in the corresponding decisions of the Prime Minister, the National Committee is the focal authority for providing that kind of guidance for - and supervision of - the Vietnamese integration process.



during the market access negotiations. This move will facilitate subsequent NA's support of the ratification procedure.

- The Vietnamese business community (SOEs, private domestic enterprises as well as FIEs) should become further involved in the negotiation process by be-

ing allowed to communicate their views to the government, e.g. by sending their representatives<sup>158</sup> to the frequent NCIEC meetings. A more visible participation of the business sector is highly desirable for defusing conflicting situations after accession is accomplished.

- A gradual and deliberate mechanism for arbitrating disputed integration issues between ministries must be developed and cultivated.<sup>159</sup> This mechanism should be considered as a scale comprising three steps. Each step on the scale represents a qualitatively different level of arbitration capacity. Higher levels should build upon and add to the results elaborated at subordinate levels.<sup>160</sup>
- High-level arbitration capacities are important, but their use is not to be encouraged. If disputed issues can be solved directly among ministries on the technical level there is very limited need for a more centralized arbitration procedure on Vice-minister or even higher level. In order to avoid peak-load problems of the National Committee the domestic stakeholders should rely more on their inherent capacities to overcome inter-ministerial coordination and communication deficiencies on the important technical level.
- Sending line ministries' staff on a job rotation basis to Geneva should strengthen the Permanent Mission. One or two pre-qualified experts with sufficient language capacity and direct WTO responsibility should have the opportunity to

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<sup>158</sup> Official representatives of relevant business associations (VCCI, important industry or service sector associations including (!) private sector associations). Individual enterprises or corporations should air their opinion through those formal channels only.

<sup>159</sup> Preparation for WTO membership is, in principle, subject to two levels of coordination, one political and the other technical. The objective of *political coordination* is to achieve consensus among prominent national stakeholders about emerging integration and bargaining issues. The subordinated (!) *technical coordination* process is the daily business of organizing horizontal communication beyond ministerial boundaries for preparing (!) the political coordination process. Technical coordination consists basically of nitty-gritty WTO issues whose discussion requires a very detailed and not easy to obtain knowledge of WTO agreements, provisions and practice.

<sup>160</sup> Principally, arbitration of conflicting situations and issues should be sought first on the technical level. Since most of the disputed issues are caused by a lack of information, regular communication on a technical level reduces the risks (and the costs!) of misperceptions substantially. Only (!) if mediating contradictory positions is not successful and no compromise can be reached, the controversial issue should be forwarded to the next arbitration level. A discussion during a NCIEC meeting on the Vice-minister level (political coordination) might solve the problem. To this end each conflicting party must forward its perception in written form to the NCIEC chairman subject to a deadline fixed in advance. Provided that no conciliation is feasible at NCIEC level, the chairman should forward the case to the Prime Minister for final decision-making.

observe, experience and report (!) the dynamics of WTO's daily business to their home ministries. For facilitating the integration into the Mission's flow of work their assignment period should last between six months and one year. Suitable candidates should be nominated by the line ministries. The final appointment must receive the approval of a NCIEC meeting at Vice-minister level.

- The information channel between Geneva and Hanoi must be streamlined. At present the Multilateral Trade Policy Department of MoT receives much more information because of its close (informal) links to the Mission's staff, thus providing the Department with an information lead over other domestic stakeholders. Since information monopolies are seldom beneficial to an integration process, a NCIEC meeting should confirm the obligation to share information across institutional boundaries and should, moreover, elaborate detailed guidelines for the information flow between the Mission and the capital (who should receive what kind of information and when? Who is responsible for the filtering?). An excellent example of efficient communication between the capital and the country's Mission can be gained from New Zealand's "Merlin Messaging System". This system disseminates Mission's reports via a highly encrypted communication link to one or more previously defined lists of recipients<sup>161</sup> at the capital by a click on the right computer link.
- A "WTO Reference Center" should be established at MoT/NCIEC. The Center will enable interested officials of the government, business and academic communities to obtain trade-related information on the WTO internet site, in electronic form on CD-ROM, information and data in print as well as documents, thus contributing to the goal of raising public awareness and knowledge concerning Vietnam's WTO accession. A second center should be set up in the South under the auspices of MoT's HCMC office. Technical assistance for the establishment of the two centers could be provided (partly) by the WTO. Financial support for meeting the (very limited) infrastructure prerequisites could be sought from the (ODA) donor community.

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<sup>161</sup> Reports and information can be addressed to recipients within the Ministry of Foreign Affairs and Trade, to representatives of the business community or of civil society groups etc.

- Ensuring WTO conformity of decrees and bills is - first and foremost - the duty of the issuing line ministry.<sup>162</sup> Therefore, the present WTO Working Groups on line ministry level should be encouraged and trained for developing sufficient capacity to fulfill this task.<sup>163</sup> Essential for sustainable capacity building are sound career prospects<sup>164</sup> and a clear mandate for the department's staff to deal with integration issues on behalf of the ministry (i.e. firm anchorage within the ministry's internal division of labor and practically no opportunities to bypass the WTO desk).

The key difference between active and dynamic WTO members and those with a more "back seat"-oriented approach is usually directly linked to the performance of the member's internal system of administration and bureaucracy. Thus, it is of crucial importance to consider capacities to coordinate between ministries and other prominent stakeholders.<sup>165</sup>

Moreover, it is worth observing that the result of accession negotiations is built and depends on the institutional arrangements at the capital as well as in Geneva (where the country should be represented by an adequately staffed Permanent Mission). If there are weaknesses or shortcomings in the general system of domestic policy coordination, it is very likely that they will be exposed in the negotiations with WTO members - perhaps at considerable economic and political cost. Conversely, deliberate efforts to improve and upgrade institutional arrangements with a view to more effective management of external relations is likely to have the added benefit of pointing the way towards strengthening domestic policy coordination capacities.

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<sup>162</sup> The Ministry of Justice has conducted a "conformity check" for the BTA, which has revealed a great number of legal documents which have to be brought in conformity with BTA provisions.

<sup>163</sup> In reference to article 2, section 3 of the Prime Minister's Decision on establishing the NCIEC it is suggested that the NCIEC secretariat offers - preferably in cooperation with appropriate training institutes - WTO courses which aim at raising the WTO-related knowledge of the bureaucracy.

<sup>164</sup> Training abroad, taking over of staff when an upgraded NCIEC becomes operational etc.

<sup>165</sup> Frictional losses, inappropriate information filtering, unacceptable processing times, clogged coordination capacities, poor internal arbitration, low sense of responsibility, ritual behavior or little institutional flexibility - to name some but not all occurring problems - can only be reduced or overcome if stakeholders understand and accept the functions of the different "nodal points" within the national trade-related coordination network.

There is enough evidence to conclude that the performance of (trade-related) governance capacities is the main determinant of competent WTO-membership. In a well-managed system of government, there is a division of labor in coordination as well as in operational responsibilities. From this perspective it is more important to consider *capacities* and *processes* for coordination rather than the more conventional emphasis on *structures*.<sup>166</sup> Since reaping maximum in benefits from WTO membership requires identifying and formulating domestic interests inside as well as outside the national government, ministries and other interest groups must overcome exaggerated institutional egoism and develop sufficient capacities for aligning divergent positions in order to achieve a negotiation result that above all serves the *national* interest.<sup>167</sup> Those economies whose national stakeholders are making constant effort to optimize their pattern of internal communication and cooperation are rewarded by an increasing ability to place their views and positions on the global trade agenda. It is this very specific, not easy to obtain “comparative advantage”, which make some economies more successful than others in leaving their mark upon the multilateral trading system.

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<sup>166</sup> If coordination on the technical level is weak, seldom practiced, or perceived as a loss of institutional autonomy, too much of the workload of preparation and arbitration will fall upon top level coordinating institutions. Consequently, they will become overloaded and clogged with a large numbers of technical problems, which require detailed decisions. Thus the structural approach runs the risk of over-centralization and slow responses. This is an important weakness because WTO membership often requires quick action.

<sup>167</sup> The conventional top-down approach describes the way that policies are legitimized and authorized, rather than the way they are effectively managed in practice. In reality, no single ministry or central institution can exercise a monopoly. Coordination is a collective process to which the expertise of the functional ministries as well as the overview of central institutions contributes. Coordination is how the efforts of different parts of the system mesh with each other, rather than how one part of the system attempts to control the rest. Therefore, effective coordination requires a clear recognition of the plurality of organizations (ministries and other bodies) and interest that must be involved in the preparation of WTO membership. It is an adaptive, networking process, rather than a hierarchical control process.

## 11 Final Remarks

This study has tried to present in a comprehensive way the scope of action necessary for advancing Vietnam's WTO membership preparations. It has become obvious that institutional and (policy) coordination issues - enriched by the heated internal debate of the advantages and costs of membership – actually determine the pace of Vietnam's accession. However, trade liberalization is no panacea. It is a means to an end. The cohesion of the reform process must be kept in mind. There is enough evidence that economies which do not have a clear definition (and understanding) of what belongs to whom - i.e. where property rights, in the broadest sense<sup>168</sup>, suffer from dysfunction - are unable to perform successfully on the world market.

The observations and recommendations that have been provided here are, however, only a first approximation to the complex issue of formulating a comprehensive integration roadmap. Understanding the WTO agreements and being able to act according to the rules of the multilateral trading system requires a long-term process of investing into human capital. Thus, trade-related technical assistance (TRTA) can help to acquire the necessary knowledge and to build up sufficient institutional capacities. For the efficient allocation of scarce resources, a systematic approach to identify own needs and suitable sources of supply is necessary.<sup>169</sup> Addressing TRTA needs in a structured and transparent way will raise the overall confidence in the work of the government and give a clear indication of the intention to derive benefits from the full participation in the global trade body.

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<sup>168</sup> Ownership rights and obligations, division of labor between administrative authorities on macro, meso and micro level, autonomy of legal authorities (separation of powers) etc. Basically, the transition towards market economy should be considered as a process of redefining and strengthening property rights.

<sup>169</sup> Please refer to Uwe Schmidt: The Institutional Dimension of WTO Accession. Observations and Practical Guidelines for Improving National Trade-related Governance Capacities, INEF Report No. 65, accessible at <http://www.uni-duisburg.de/Institute/INEF/publist/report65.pdf>

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