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**THE WORLD TRADE ORGANIZATION'S  
(WTO) IMPACT ON THE POLICY AND THE  
LAW OF VIETNAM  
FROM 2007 ONWARDS**

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## **ASLI WORKING PAPER**

### **THE WORLD TRADE ORGANIZATION'S (WTO) IMPACT ON THE POLICY AND THE LAW OF VIETNAM FROM 2007 ONWARDS**

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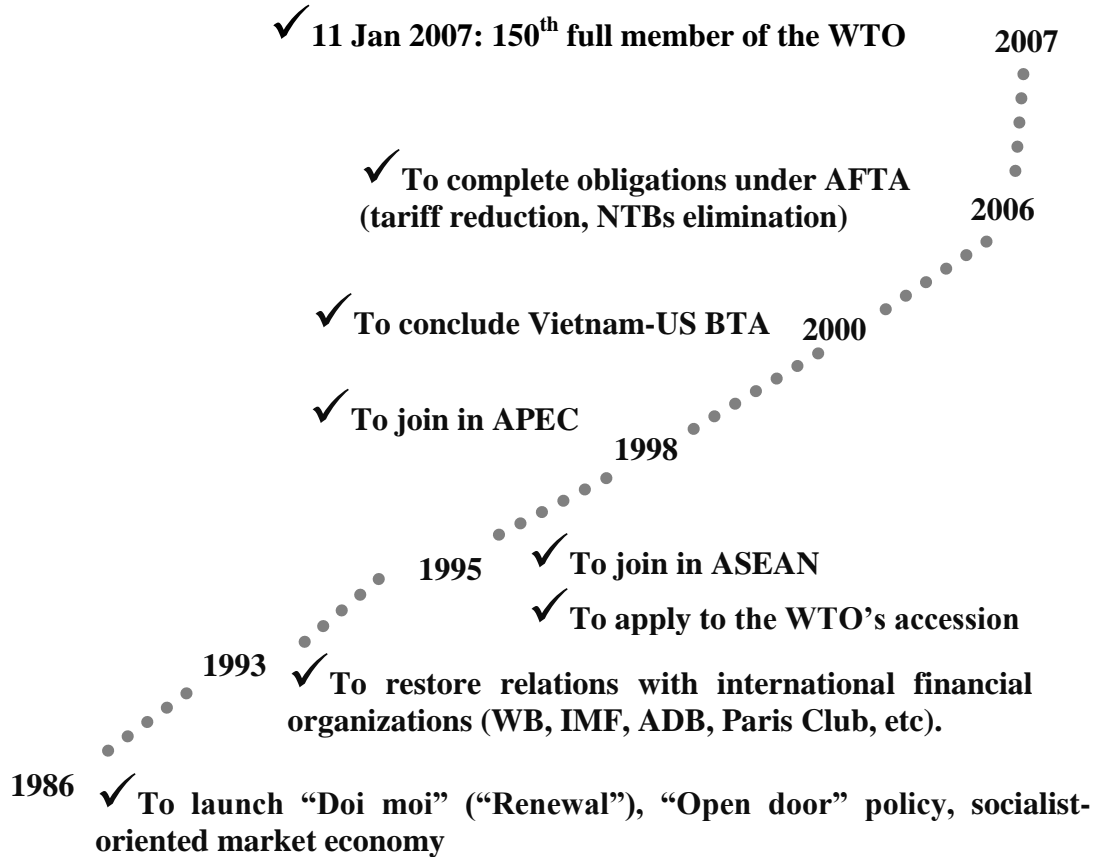
#### **ABSTRACT:**

Vietnam became the 150<sup>th</sup> full member of the WTO on 11 January 2007. Being a member of the WTO does not in itself mark the fulfillment of Vietnam's international economic integration, but it is a significant landmark in Vietnam's renewal ("Doi moi"), creating a socialist-oriented market economy, an "open door" policy, and generally helping to further Vietnam's attempts over the last 25 years to achieve a higher international economic profile.

Upon accession to the WTO, Vietnam committed to comply with the WTO's agreements. The impact of the WTO on the law and policy of Vietnam has been extremely significant. Vietnam, previously a "closed door" economy, has changed into an "open door" economy, and has turned from being a planned economy to a socialist-oriented market economy. Membership of the WTO has also had a positive impact on building and improving the legal system of Vietnam, leading to administrative and judicial reforms. The efficient implementation of law and policy has always been a major concern of the government of Vietnam, as well as of foreign investors.

The six years of Vietnam's membership of the WTO is not long enough to assess the full extent of the WTO's impact, and there is certainly more to be done. This paper will give an overview of the landmarks of Vietnam's international integration (I); two decades of policy and law reform: period 1986-2006 (II); the summary of the WTO's commitments of Vietnam (III); and try to comment on the WTO's impact on the policy and law of Vietnam from 2007 onwards (IV).

## I. LANDMARKS OF VIETNAM'S INTERNATIONAL INTEGRATION



Vietnam has been carrying out economic reforms since 1986 under the "Doi moi" ("Renewal") policy, focussing on the socialist-oriented market economy; restructuring to build a multi-sectoral economy; financial, monetary and administrative reforms; and the development of external economic relations. Vietnam has joined the Association of Southeast Asian Nations (ASEAN), the Asia-Europe Cooperation (ASEM) and the Asia-Pacific Economic Cooperation Forum (APEC) – regional institutions which are committed to the WTO's rules. During the international integration process, Vietnam has been revising its legislation to gradually adapt to the rules of the WTO.

## II. TWO DECADES OF POLICY AND LAW REFORM: PERIOD 1986-2006<sup>1</sup>

### A. Policy and Law Affecting International Trade

#### 1. Policy and Law Affecting Trade in Goods

##### 1.1. Import-Export Duties

Vietnam began levying *import duties* in accordance with the Law on Import-Export Duties of 29 December 1987. In 1991, Vietnam promulgated the Law on Export-Import Duties, which had replaced the 1987 Law. The 1991 Law on Export-Import Duties was amended in 1993, 1998 and 2005.

Pursuant to the Law on Import-Export Duties of 1998, as amended, Vietnam's trading partners were subject to tariff treatment at "special preferential" rates, Most Favoured Nation (MFN) or "preferential" rates, and "standard" rates (also referred to as "normal" or non-MFN rates). "Special preferential" rates applied to goods imported from countries which signed special preferential trade agreements with Vietnam. These special preferential trade agreements include free trade and customs union agreements and agreements to facilitate border trade, such as the Common Effective Preferential Tariffs, which implemented the ASEAN Free Trade Area (CEPT). MFN rates (or "preferential" rates) were levied on goods imported from countries having signed agreements on MFN treatment with Vietnam. "Standard" rates applied to products imported from other remaining countries. Under this Law, "standard" rates could not exceed 170 per cent of the MFN rates. "Standard" rates were uniformly applied at 150 per cent of the MFN rate, however rarely applied, since Vietnam had signed bilateral trade agreements (BTAs) with almost all of its trading partners. General provisions also allowed Vietnam to impose additional import duties on goods originating in countries that discriminated against goods originating in Vietnam on the basis of tariffs or other measures. However, Vietnam had never invoked these general provisions.

As of April 2005, Vietnam's simple average import duties was 17.8 per cent. In principle, the rate of duty applied to imports should not exceed 60 per cent of the CIF price at the point of customs clearance. In order to improve the transparency of its trade policy regime and fulfill commitments *vis-à-vis* the International Monetary Fund (IMF) and the World Bank (WB), Vietnam had gradually removed import restrictive non-tariff barriers (NTBs) after 2000 and replaced them with import duties and surcharges. By the end of 2003, most import surcharges had been incorporated into import duties to ensure greater transparency. In fact, Vietnam's tariff included some MFN tariff rates exceeding 60 per cent.

Vietnam levied *export duties* on some raw minerals and natural resources. The main purpose of these export duties was to protect scarce natural resources, limit the export of strategic goods, and to regulate and reconcile revenue to the state budget. Export duties were imposed in accordance with the Law on Import-Export Duties, and the Decision on

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<sup>1</sup> See "Protocols of accession for new members since 1995, including commitments in goods and services", WT/ACC/VNM/48, 27 October 2006 (06-5205), online: World Trade Organization (WTO) <[http://www.wto.org/english/thewto\\_e/acc\\_e/completeacc\\_e.htm#vnm](http://www.wto.org/english/thewto_e/acc_e/completeacc_e.htm#vnm)>.

replacing the export tariff<sup>2</sup>. Vietnam's export duties were applied on the MFN basis. Rates of export duty ranged from one per cent on certain precious stones to 45 per cent on scrap metals.

### *1.2. Tariff Rate Quotas (TRQs)*

Vietnam's TRQs system was regulated by the Decision on the application of duty quota to goods imported into Vietnam<sup>3</sup>; Circular No. 10/2004/TT-BTM<sup>4</sup> guiding the implementation of Decision No. 91/2003/QD-TTg<sup>5</sup>, as amended by the Circular adjusting the 2005 list of import goods subject to tariff quotas<sup>6</sup> and the Decision on the management of goods import and export in the 2001-2005 period<sup>7</sup>, subsequently replaced by the Decree detailing the implementation of the commercial law regarding international goods purchase and sale and goods purchase and sale agency, processing and transit with foreign countries<sup>8</sup>. TRQs were being applied on a pilot basis as a step in the process of increasing market access and in the elimination of NTBs such as prohibitions, licenses or import quotas affecting the same products. TRQs on salt, un-manufactured tobacco, sugar and eggs were administered pursuant to Circular No. 04/2006/TT-BTM<sup>9</sup>, guiding the implementation of Decree No. 12/2006/ND-CP<sup>10</sup>.

### *1.3. Quantitative Restrictions Measures, Including Prohibitions, Quotas and Licensing*

All WTO-inconsistent import restrictions, with the exception of the restriction applied to sugar, had effectively been eliminated pursuant to the Prime Minister's Decision No. 46/2001/QD-TTg<sup>11</sup>; the Decision on the application of duty quota to goods imported into Vietnam<sup>12</sup>; and the Decision promulgating the Regulation on management of petrol and oil trading<sup>13</sup>.

### *1.4. Customs Valuation*

Customs valuation of imported and exported goods was carried out in accordance with the Law on Export-Import Duties of 1998, which had come into effect in 1999. The basic valuation principle was the "contract price", which was not entirely synonymous with the "transaction value" stipulated in the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (the Customs Valuation Agreement)<sup>14</sup>. Several provisions of the Agreement had not yet been implemented in Vietnam. However,

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<sup>2</sup> Ministry of Finance, Decision No. 45/2002/QD-BTC (10 April 2002).

<sup>3</sup> The Prime Minister, Decision No. 91/2003/QD-TTg (9 May 2003).

<sup>4</sup> Ministry of Trade, Circular No.10/2004/TT-BTM (27 December 2004).

<sup>5</sup> *Supra* note 3.

<sup>6</sup> Ministry of Trade, Circular No. 04/2005/TT-BTM (24 March 2005).

<sup>7</sup> The Prime Minister, Decision No. 46/2001/QD-TTg (4 April 2001).

<sup>8</sup> The Government, Decree No. 12/2006/ND-CP (23 January 2006).

<sup>9</sup> Ministry of Trade, Circular No. 04/2006/TT-BTM (6 April 2006).

<sup>10</sup> *Supra* note 8.

<sup>11</sup> *Supra* note 7.

<sup>12</sup> *Supra* note 3.

<sup>13</sup> The Prime Minister, Decision No. 187/2003/QD-TTg (15 September 2003).

<sup>14</sup> WTO, *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994* (Customs Valuation Agreement), 1868 UNTS 279, online: WTO <[http://www.wto.org/english/res\\_e/booksp\\_e/analytic\\_index\\_e/cusval\\_e.htm](http://www.wto.org/english/res_e/booksp_e/analytic_index_e/cusval_e.htm)>.

Vietnam's customs valuation system was being reformed to conform to the Customs Valuation Agreement. A new Law on Customs was adopted on 29 June 2001<sup>15</sup>, and the Government Decree detailing the post-customs clearance inspection of export and import goods<sup>16</sup> provided detailed procedures and process to conduct post-clearance examination for exported and imported goods.

### *1.5. Rules of Origin*

Vietnam had issued several legal documents to implement ASEAN preferential as well as non-preferential rules of origin, including Decision No. 416/TM-DB<sup>17</sup>, which had since then been replaced by the Decision promulgating the regulation on issuance of Vietnam's certificates of origin<sup>18</sup>, Joint Circulars of the Ministry of Trade and the General Customs Department<sup>19</sup>, and the Decree detailing the provisions of the commercial law on goods origin<sup>20</sup>. Vietnam was participating in the ASEAN Free Trade Area (AFTA) and the preferential rules of origin of AFTA, thus importers were required to submit certificates of origin (Form D), proving 40 per cent ASEAN cumulative origin, for goods imported under the Common Effective Preferential Tariff (CEPT) implementing the AFTA.

*1.6. Pre-shipment Inspection (PSI):* Vietnam's Customs Law did not include any provision regarding pre-shipment inspection. Vietnam was not operating any PSI system and was not preparing any legislation covering this subject matter.

*1.7. Anti-dumping, Countervailing Duties, Safeguard Regimes:* The Standing Committee of the National Assembly had approved the *Ordinance on Self-Protection in Import of Foreign Goods into Vietnam*<sup>21</sup>, *Ordinance Against Dumping of Imported Goods in Vietnam*<sup>22</sup>, and *Ordinance on Measures Against Subsidized Products Imported into Vietnam*<sup>23</sup>.

## **2. Policy and Law Concerning Trade-related Intellectual Property Rights**

Since the early stages of the WTO's accession of Vietnam, the main legal instruments for the protection of intellectual property (IP) in Vietnam had been the *Civil Code of 1995* (Part VI); Government Decree on detailed regulations on industrial property<sup>24</sup>; Circular on guiding the implementation of the provisions on the procedures for establishing industrial property rights<sup>25</sup>, and a number of other procedures stipulated in the Decree on

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<sup>15</sup> Customs Law No. 29/2001/QH10 of 29 June 2001.

<sup>16</sup> The Government, Decree No. 102/2001/ND-CP (31 December 2001).

<sup>17</sup> Minister of Trade, Decision No. 416/TM-DB (13 May 1996).

<sup>18</sup> Ministry of Trade, Decision No. 1420/QD-BTM (4 October 2004).

<sup>19</sup> Ministry of Trade & General Customs Department, joint-agency Circular Nos.09/2000/TTLT-BTM-TCHQ (17 August 2000) and 22/2001/TTLT-BTM-TCHQ (2 October 2001).

<sup>20</sup> The Government, Decree No. 19/2006/ND-CP guiding the implementation of the Commercial Law regarding the origin of goods in accordance with the Kyoto Convention and the WTO Agreement on Rules of Origin (20 February 2006).

<sup>21</sup> Ordinance No. 42/2002/PL-UBTVQH10 (25 May 2002).

<sup>22</sup> Ordinance No. 20-2004-PL-UBTVQH11 (29 April 2004).

<sup>23</sup> Ordinance No. 22-2004-PL-UBTVQH11 (20 August 2004).

<sup>24</sup> The Government, Decree No. 63/CP (24 October 1996).

<sup>25</sup> Ministry of Science, Technology and Environment, Circular No. 3055/TT-SHCN (31 December 1996).

industrial property<sup>26</sup>; Government Decree on guiding the implementation of the provisions on copyright in the *Civil Code*<sup>27</sup>; Circular on industrial property fees<sup>28</sup>; and Circular on copyright registration fees<sup>29</sup>.

In 2005, Vietnam had promulgated a new *Civil Code*, which reaffirmed the basic civil principles of intellectual property rights (IPRs) (Part VI of the *Code*), as well as a new intellectual property law governing all aspects of IPRs. The *Intellectual Property Law*<sup>30</sup> became effective on 1 July 2006. These two legal instruments formed a complete and uniform system of regulations on IP, which would replace previous legislation. Various decisions and decrees on copyright, industrial property, plant varieties and enforcement of IPRs guiding the implementation of the *2005 Intellectual Property Law* had been adopted in September 2006.

Vietnam had been party to the *Paris Convention for the Protection of Industrial Property*<sup>31</sup> and the *Madrid Agreement Concerning the International Registration of Marks*<sup>32</sup> since 1949, the *Convention Establishing the World Intellectual Property Organization*<sup>33</sup> since 1976 and the *Patent Cooperation Treaty*<sup>34</sup> since March 1993. Vietnam had become party to the *Berne Convention for the Protection of Literary and Artistic Works*<sup>35</sup> on 26 October 2004, *Geneva Convention* on 6 July 2005, *Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite*<sup>36</sup> on 12 January 2006, and *Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks*<sup>37</sup> on 11 July 2006. Vietnam had concluded bilateral agreements on IP protection with the United States and Switzerland. Vietnam's Law on Conclusion, Accession and Implementation of International Treaties 2005 provides for the direct applicability, in whole or in part, of international treaties to which Vietnam was a party as decided by the National Assembly.

Vietnam applied National Treatment (NT) and Most Favoured Nation treatment (MFN) to foreign nationals in consistent with international agreements to which Vietnam was a party.

*IPRs Enforcement* – Vietnam's law stipulated all of IPRs enforcement measures as follows:

Civil litigation procedures and remedies: In Vietnam, civil courts at district and provincial levels had jurisdiction over disputes of infringement relating to IPRs.

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<sup>26</sup> The Government, Decree No. 63/CP (24 October 1996).

<sup>27</sup> The Government, Decree No. 76/CP (29 November 1996).

<sup>28</sup> Ministry of Finance, Circular No. 23-TC/TCT of (9 May 1997).

<sup>29</sup> Ministry of Finance, Circular No. 166/1998/TT-TC (19 December 1998).

<sup>30</sup> Law No. 50/2005/QH11 of 29 November 2005 [*2005 Intellectual Property Law*].

<sup>31</sup> 20 March 1883, 25 Stat. 1372, revised 14 July 1967, 21 UST 1583, 828 UNTS 305.

<sup>32</sup> 14 April 1891, amended 28 September 1979.

<sup>33</sup> 14 July 1967, amended 28 September 1979.

<sup>34</sup> 19 June 1970, amended 28 September 1979, modified 3 October 2001.

<sup>35</sup> 24 July 1971, Treaty Series No. 063 (1990) Cm 1212.

<sup>36</sup> 21 May 1974.

<sup>37</sup> 27 June 1989, amended 12 November 2007.



Provisional measures: the courts having jurisdiction over violations and disputes in relation to IPRs could decide on the recourse to provisional measures. Detailed provisions are laid down in the 2004 *Civil Procedure Code* and the 2005 *Intellectual Property Law*.

Administrative procedures and remedies:

Vietnam has no special agency for the administrative enforcement of IPRs. Pursuant to Article 200.1 of the 2005 *Intellectual Property Law* and the 2002 *Ordinance on Handling Administrative Violations*<sup>38</sup>, the bodies competent to take administrative action in relation to infringement of IPRs are the Customs Agencies, Market Control Agencies, Economic Police, Culture and Information Inspectorates, Science and Technology Inspectorates, and People's Committees at provincial and district levels. The above-mentioned agencies are responsible for handling infringements of IPRs within their own competence and for imposing administrative remedies or, in appropriate cases, preventive measures and measures to ensure the imposition of administrative sanctions. Customs authorities are also in charge of the application of border control measures on IP-related imports and exports. The competences of the above-mentioned agencies had been detailed in the Government Decree on Handling Administrative Violations in the Industrial Property Field<sup>39</sup>; and the Government Decree providing detailed provisions and guidelines for implementing certain Articles of the 2005 *Intellectual Property Law* regarding the Protection of Intellectual Property Rights and State Management of Intellectual Property<sup>40</sup>. Under the 1998 *Law on Complaints and Denunciations*<sup>41</sup>, as amended in 2005, any natural or legal person, including non-resident foreigners or foreign legal persons without a representation in Vietnam, has the right and obligation to denounce a violation by informing the competent authorities in writing or by other means.

Border measures: Customs agencies have the right to detain imported or exported goods temporarily upon request of the right holder.

Criminal procedures:

The criminal courts at district and provincial levels have jurisdiction over crimes relating to IPRs. The *Criminal Code* of 1999 included provisions on copyright infringement (Article 131), production and trade in counterfeits (Articles 156-158), deceptive practices (Article 162), false advertising (Article 168), and infringement of industrial property rights (Article 171). These provisions are in compliance with Article 61 of the TRIPS Agreement. Acts of wilful trademark counterfeiting and copyright piracy on a "commercial scale" are considered crimes under Articles 156-158 of the *Criminal Code* and Article 213 of the 2005 *Intellectual Property Law*.

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<sup>38</sup> World Intellectual Property Organization, Ordinance No. 44/2002/PL-UBTVQH 10 (2 July 2002).

<sup>39</sup> The Government, Decree No.106/2006/ND-CP (22 September 2006).

<sup>40</sup> The Government, Decree No. 105/2006/ND-CP (22 September 2006).

<sup>41</sup> Law No. 09/1998/QH10 of 2 December 1998.

### 3. Policy and Law Affecting Trade in Services

As a member of the ASEAN and APEC, Vietnam was participating in negotiations to liberalize trade in services. Vietnam had offered certain commitments in some services sectors such as telecommunications, tourism, transportation, and financial services under the ASEAN Framework Agreement on Services (AFAS). Foreign service suppliers were free to choose their partners unless otherwise specified in Vietnam's Schedule of Specific Commitments. Foreign investors were not obliged to establish a representative office in Vietnam.

#### B. Transparency

Provisions on publication of legal acts and the opportunity for public comment had been included in the *Law on the Enactment of Legal Normative Documents* of 12 November 1996 together with its amendment approved by the National Assembly on 16 December 2002. Detailed rules and procedures had been established through the Government Decree implementing the *Law on the Enactment of Legal Normative Documents*<sup>42</sup>; the Government Decree on Official Gazette of the Socialist Republic of Vietnam with respect to Official Gazette Activities under Central Authority<sup>43</sup>; the Circular guiding the implementation of Decree No. 104/2004/ND-CP<sup>44</sup>; and the Prime Minister's Directive on the Continuous Improvement of the Business Environment<sup>45</sup>.

There was no specialized website for the publication of draft legal documents; draft legal documents were published on the website of the responsible ministry and drafting agency.<sup>46</sup> Drafting agencies could also organize workshops/seminars to discuss the drafts with those interested. The Directive on Further Creating Favourable Business Environment for Enterprises<sup>47</sup> required ministries and agencies to seek comments from the business community through the Vietnam Chamber of Commerce and Industry (VCCI) in the drafting of any policies or rules affecting business operations. Draft legal documents affecting the business community were published on the website of the VCCI<sup>48</sup>.

The obligation to seek the opinions of those directly affected by the legal documents, and the possibility to take account of these opinions in the drafting process, was laid down in Articles 3, 26.4 and 61.4 of the amended *Law on the Enactment of Legal Normative Documents*.

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<sup>42</sup> The Government, Decree No. 161/2005/ND-CP (27 December 2005).

<sup>43</sup> Government Decree No. 104/2004/ND-CP (23 March 2004).

<sup>44</sup> Office of Government, Circular No. 04/2005/TT-VPCP (21 March 2005).

<sup>45</sup> The Prime Minister, Directive No. 28/2001/CT-TTg (28 November 2001).

<sup>46</sup> For documents related to investment, see online: the Ministry of Planning and Investment <<http://www.mpi.gov.vn>>. For documents concerning trade rules, see online: the Ministry of Industry and Trade <<http://www.moit.gov.vn>>. For documents on tax and finance, see online: the Ministry of Finance <<http://www.mof.gov.vn>>. A number of draft documents were also published online: the Ministry of Justice <<http://www.moj.gov.vn>>.

<sup>47</sup> The Prime Minister, Directive No. 28/2001/CT-TTg (28 November 2001).

<sup>48</sup> See online: the VCCI <<http://www.vibonline.com.vn>>.

As for the publication of legal instruments, the *Law on the Enactment of Legal Normative Documents* required that these documents be published in the Official Gazette or made known to the public through the mass media. As the effective dates of most legal documents were attributed to the time of publication in the Official Gazette as regulated by the *Law*, the Official Gazette was published almost daily. According to the amended *Law*, legal documents were required to be published in the Official Gazette and would only become effective 15 days thereafter, or at a later date if so specified.

### ***C. Trade Agreements***

As of April 1995, Vietnam had acceded to 73 treaties. The trade agreements, although concluded on a bilateral basis, provided for MFN treatment. As of 2006, “preferential” rates of import duty were applicable only to ASEAN countries and on 243 tariff lines of textile items imported from the EU. Within the framework of ASEAN, Vietnam had signed 21 ASEAN agreements and two Memoranda of Understanding. Vietnam had not entered into any labour market integration agreements.

Vietnam had signed and acceded to various bilateral and/or multilateral arrangements on investment, including bilateral agreements on the encouragement and protection of investment, on the avoidance of double taxation, the Framework Agreement on ASEAN Investment (AIA), the MIGA and the 1958 New York Convention, etc.

### ***D. Main Outcomes of the Period 1986-2006***

1. Vietnam had carried out the proactive international integration policy at all levels (global, regional, bilateral and unilateral). Vietnam had restored relations with the IMF and the WB; negotiated to the WTO accession; become an active member of ASEAN and AFTA, APEC, and ASEM; participated actively in “ASEAN+” FTAs such as the ASEAN China Free Trade Area (AC-FTA) and ASEAN Korea Free Trade Area (AK-FTA); and concluded many BTAs such as the Vietnam-US BTA.
2. Under the pressure of the WTO accession negotiations, particularly during the years 2004-2006, more than 25 WTO-related Acts were approved by National Assembly, including important Acts such as Law on Investment; Law on Enterprises; Commercial Law; Law on Intellectual Property; Law on Competition; Law on Conclusion, Accession and Implementation of Treaties; Law on Import-Export Taxes; Law on Tax Management; etc. Basically, as of 2006, Vietnam’s legal system had complied with the WTO’s standards.
3. As of 2006, Vietnam had fulfilled the AFTA obligations. The tariff reduction reached the rate of 0-5 per cent and NTBs were generally eliminated within the AFTA.
4. Vietnam had reached the significant progress on transparency and democracy.

### III. SUMMARY OF VIETNAM'S WTO COMMITMENTS<sup>49</sup>

#### A. Overall

Upon accession to the WTO, Vietnam committed to comply with all the WTO's binding Agreements.<sup>50</sup>

#### B. Commitments on the Access to Goods Market

1. Tariff Reduction – Vietnam committed to reduce 10,600.0 tariff lines to the average MFN tariff rate of 13.4 per cent in 5-7 years. Vietnam's commitments on bound tariffs are contained in the Schedule of Concessions and Commitments on Goods annexed to Vietnam's *Protocol of Accession to the WTO*<sup>51</sup>. Any other duties and charges applied to imports other than ordinary customs duties and fees and charges for services rendered would be in accordance with the WTO's rules from the date of the WTO accession.

Vietnam would apply export duties, export fees and charges, as well as internal regulations and taxes applied on or in connection with exportation in conformity with the GATT 1994.

2. Non-tariff Barriers (NTBs) Eliminations – from the date of the WTO accession, Vietnam would eliminate and not introduce, re-introduce or apply quantitative restrictions on imports, or other non-tariff measures, such as quotas, bans, licences, prior authorization requirements, licensing requirements and other restrictions having equivalent effect, that could not be justified under the WTO's rules.

3. Vietnam accepted to be treated as a non-market economy (NME) for 12 years (up to 31 December 2018).

4. Vietnam committed to bind and reduce export duties to only ferrous and nonferrous scrap metals.

5. Vietnam committed to eliminate the prohibited subsidies stipulated by the WTO's *Agreement on Subsidies and Countervailing Measures* (SCM).

6. Vietnam committed to grant to foreign traders the trading rights, i.e. export-import rights, on the NT treatment basis.

7. Vietnam committed to control prices in compliance with the WTO's rules.

8. Vietnam committed to comply with the WTO's rules on goods in transit.

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<sup>49</sup> WTO, WT/ACC/VNM/48, 27 October 2006 (06-5205), online: the World Trade Organization <[http://www.wto.org/english/thewto\\_e/acc\\_e/completeacc\\_e.htm#vnm](http://www.wto.org/english/thewto_e/acc_e/completeacc_e.htm#vnm)>.

<sup>50</sup> i.e. General Agreement on Tariffs and Trade (GATT), General Agreement on Trade in Services (GATS), CVA, TRIPS, ADA, SCM, SA, RoO, TRIMs etc.

<sup>51</sup> *Supra* note 49.

### ***C. Commitments on the Access to Services Market, Including Investment Policies***

1. Vietnam committed to open all of 11 GATS service sectors together with 110 sub-sectors (among 160 sub-sectors). Some service sub-sectors are not allowed to be accessed, such as printing, publishing, media, broadcasting, post, etc. In addition, Vietnam attached the List of Article II MFN Exemptions in its commitments.
2. The regulations and policies applicable to special economic zones would comply with the WTO's rules and Vietnam's WTO commitments on subsidies, internal taxes, trade-related investment measures, etc.

### ***D. Others***

1. State-owned Enterprises (SOEs) would run on commercial considerations.
2. Vietnam committed to report annually to the WTO the schedule of SOEs' privatization and equitization.
3. Vietnam committed to comply with the WTO and IMF rules on the financial and monetary, foreign exchange and payment policies.
4. The WTO's rules would be applied uniformly throughout the customs territory of Vietnam, including in regions engaging in border trade areas, special economic zones and other areas where separate regimes for tariffs, taxes and regulations were established. Government of Vietnam would ensure that laws, regulations and other measures, including those of local governments, comply with Vietnam's WTO commitments.
5. Vietnam would fully implement Article X of the GATT 1994, Article III of the GATS and the other WTO transparency requirements, including those requiring notification, prior comment and publication. All laws, regulations, decrees, court decisions and administrative rulings of general application pertaining to or affecting customs issues, trade in goods and services, IP and the control of foreign exchange would be published promptly in a manner that fulfills the WTO's requirements.

The WTO commitments above-mentioned seem to go beyond Vietnam's capacity and economic development level. This is leading to ineffective law enforcement in reality.

## **IV. THE WTO'S IMPACT ON THE LAW AND POLICY OF VIETNAM FROM 2007 ONWARDS**

### ***A. Policy and Legal Framework for Implementation of the WTO's Commitments***

For many years, Vietnam's international trade policies have been made on the basis of the WTO's principles. Especially by now, reviewing and revising law and regulations to comply with the WTO's rules has become one of the most important tasks of Vietnam. The implementation of the WTO commitments has mainly been based on the following policy and legal framework:

- ❖ Strategy for Eco-social Development 2010-2020.

- ❖ Government Resolution No.16/2007/NQ-CP dated 27 February 2007 on the Action Plan after the WTO's Accession.
- ❖ National Assembly Resolution No.71/2006/QH11 dated 29 November 2006 Ratifying the Protocol of Accession of the Socialist Republic of Vietnam to the Agreement Establishing the World Trade Organization.

### ***B. Impact of the WTO on the Policy of Vietnam***

The assessment of the WTO's impacts on the policy making of Vietnam should be based on the following criteria:

#### **1. Awareness of the Society**

In reality, Vietnamese people support the Government policies in general and the WTO accession in particular. The people understand the WTO commitments, however their understanding on opportunities and challenges of the WTO accession is still limited. Hence this leads to ineffective law enforcement even though the legal system has been much improved.

#### **2. Improvement of the Policy and Legal System**

The WTO accession has made Vietnam's legal system more transparent and introduced many policy changes. Vietnam, previously a "closed door" economy, has changed into an "open door" economy with an export-oriented production policy. It has turned from being a planned economy to a socialist-oriented market economy and has integrated into the global market.

#### **3. Development of the Different Markets**

The WTO accession has helped create and develop six different markets, including goods market, services market, monetary market, labour market, real estate market, and science and technology market. However, the existence of these markets has still been unstable and incomplete.

### ***C. Positive Impact of the WTO on the Law of Vietnam***

Integration into the world economy and accession to the WTO have been the main drivers for Vietnam's transition to the socialist-oriented market economy. The WTO accession has substantially expanded and accelerated reform of the legal framework, which is now up to international standards.

#### **1. Outcomes of Building and Improving the Legal System of Vietnam**

- Vietnam has a strategy for building and perfecting its legal system up to 2020.
- The legal system of Vietnam has been basically built and improved.

The legal framework has been largely revised and upgraded to international standards during and after the WTO accession process.

- The WTO accession has helped improve the competitive environment of Vietnam.
- The WTO accession has helped create and develop different markets.

## ***2. Challenges for Vietnam's Legal System in Accessing the WTO***

- How to implement the WTO commitments within the legal order of Vietnam? Does Vietnam adopt “Monism” or “Dualism” or “Mix” to implement the WTO's commitments?

The National Assembly Resolution No.71/2006/QH11 seems to give the answer that Vietnam follows the “Mix” applicability of the WTO commitments.<sup>52</sup>

*2. To apply directly Vietnam's commitments stated in the Annex to this Resolution and other WTO commitments that are adequately detailed and clear in the Protocol, attached annexes and the Report of the Working Party on the Accession of Vietnam to the Agreement Establishing the WTO.*

...

*3. Within their respective tasks and powers, the Government, the Supreme People's Court and the Supreme People's Procuracy have the following responsibilities:*

*a/ To review Vietnam's WTO commitments that are adequately detailed and clear in the Protocol, attached annexes and the Report of the Working Party on the Accession of Vietnam to the Agreement Establishing the WTO but are not specified in the Annex attached to this Resolution for direct application and reporting to the National Assembly Standing Committee;*

*b/ To review legal documents before submitting them to the National Assembly and the National Assembly Standing Committee for amendment, supplementation or promulgation; to amend, supplement or promulgate legal documents falling under their competence in consistency with Vietnam's WTO commitments;*

...

According to this:

- ✓ Some WTO commitments are to be applied directly (see Point 2 above).
- ✓ Other WTO commitments are to be “transplanted” into the legal order of Vietnam. Thus, the promulgation of new rules, or the amendment or revision of rules should be done.

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<sup>52</sup> The National Assembly, Resolution No. 71/2006/QH11 (29 November 2006), online: the Ministry of Justice  
<[http://vbqpl.moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View\\_Detail.aspx?ItemID=4501](http://vbqpl.moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=4501)>.

Besides, Vietnam's 2005 *Law on Conclusion, Accession and Implementation of International Treaties* provides for the direct applicability, in whole or in part, of international treaties to which Vietnam is a party as decided by the National Assembly (Article 6.3).

Thus, administrative decisions on WTO-related matters could be challenged in administrative courts. This would be a major challenge facing Vietnamese administrators and judges, who must be capable to deal with WTO-related disputes.

- Although Vietnam's legal system complies mostly with the WTO commitments, the quality of some legal documents is not adequate (e.g. due to lack of precision and clarity; and multiple amendments).

#### ***D. The WTO's Accession Has Led to Administrative and Judicial Reforms***

##### **1. Administrative Reform**

The administrative reform was based on the Project 30 on Simplification of the Administrative Procedures for the Period 2007-2010; and Overall Programme of Administrative Reform for the Period 2011-2020. The objectives of the administrative reform are:

- To support and strengthen the economic reform process.
- To increase the transparency and efficiency of administrative procedures.
- To reduce sets of procedure in investment and business; tax; customs; labour; business registration; import-export; etc.
- To reduce the time consuming and costs.
- To increase the accountability of government officers; to prevent bureaucracy and corruption of government officers.
- To improve government structures.

##### **2. Judicial Reform**

Judicial reform was based on the Judicial Reform Strategy up to 2020. The objectives of the judicial reform are:

- ❖ To strengthen law enforcement capacity.
- ❖ To protect rights and legitimate interests of citizens and the state.
- ❖ To ensure the citizen's right to complain.
- ❖ To create the mechanism, based on the existing legal documents (Civil Procedure Code 2004; Law on Complaint and Denouncement; Ordinance on Procedure to Resolution of Administrative Cases), for the resolution of disputes between



private persons and public agencies through the jurisdictional way in the court system.

- ❖ To reform the court system and to strengthen the capacity of judges.

### ***E. Challenges and Vietnam's Long Term Aims***

#### **1. Challenges**

- The people have limited understanding of the WTO commitments – this leads to ineffective law enforcement in reality.
- Accession to the WTO and deeper international integration has led to an increase in international trade and business disputes. However, governmental agencies and courts are not yet well prepared to respond to these outcomes.
- Ineffective trade liberalization within the WTO in the recent years has reinforced the trend of the creation of free trade areas (FTAs) between Vietnam and other WTO's members.

#### **2. Vietnam's Long Term Aims from 2007 onwards**

- To develop human resources and to train experts who should be good at English, international business, international trade and business law. Therefore, Vietnam needs an education and training reform.
- To improve the legal system, judicial reform, administrative reform, transparency; to simplify the tax system, in order to develop Vietnam's market economy. Law-makers should set rules to protect people and national interests, monitor whether market players obey these rules. Most importantly, they should enforce these rules.
- To amend the 1992 Constitution and legal framework for the implementation of international treaties, including the WTO commitments; to strengthen the position of the courts within the legislative and executive branches; and to determine clearly the position and legal effect of the WTO commitments within the legal order of Vietnam.
- To improve the mechanism by which legislative, executive agencies and courts communicate and co-ordinate their activities in implementing the WTO's commitments.
- To adopt appropriate protectionism policies, including the need to implement "trade remedies", i.e. anti-dumping, countervailing measures, safeguards, in response to "offensive trade" policies of trading partners in a way that complies with the WTO's requirements.
- After the WTO accession, Vietnam should plan to negotiate with the WTO's members (especially the US and EU) to be recognized as a market economy.

- To integrate more fully into the global market within the WTO and FTAs in order to achieve higher economic growth.

## V. CONCLUSION

- ❖ The assessment of the WTO's impact on the policy and law of Vietnam is relative, since the WTO accession is just one of three integration levels of Vietnam.
- ❖ Vietnam, previously a "closed door" economy, has changed into an "open door" economy. It has turned from being a planned economy to a socialist-oriented market economy. It has also turned from being a low-income and highly indebted developing country to a country that is integrated into the global market. Vietnam's integration into the world economy will allow Vietnam to solidify the gains of its ongoing reforms.
- ❖ The WTO accession has helped integrate Vietnam's law into international "rules of the game", complying with the WTO's principles (such as non-discrimination, market access, fair competition, transparency). A huge legal system has been created within a relatively short period of time (before and after the WTO's accession), basically complying with the WTO's rules.
- ❖ After over six years of being a full member of the WTO, the society's awareness of the WTO commitments has deepened.
- ❖ Accession to the WTO has helped improve competition policies and laws to face the competitive pressure in the market economy.
- ❖ Until now, there is no formal complaint made by trading partner(s) relating to Vietnam's failures in the implementation of the WTO commitments. Therefore, it can show partly Vietnam's success in acceding to the WTO.
- ❖ Opportunities themselves do not transform into interests and market forces. Whether challenges are major or minor depends on the resistance of the whole eco-political system. The WTO accession offers only necessary facilities, but not all facilities for higher development. We have learnt much from the WTO accession in six years. European countries have international trade experiences of 500 years, while we have just experienced six years of WTO membership and 27 years of "open door" policy, therefore the confusion is unavoidable, and learning from the lessons of other WTO members would be extremely helpful.