

## **STATUS OF VIETNAM'S WTO ACCESSION**

- 1.1 Vietnam applied for WTO membership in January 1995 and is now among 25 countries (including Saudi Arabia, Russia, and Ukraine) seeking WTO accession. Vietnam has set a goal of acceding to the global trading body in 2005.

148 countries are currently members of the WTO. WTO accession for Vietnam involves agreement by Vietnam to accept the WTO rules through multilateral negotiations, and to conclude bilateral negotiations with interested Members on market access for goods and services. Through its Bilateral Trade Agreement (BTA) with the U.S., Vietnam has already accepted many core WTO principles such as Most-Favored Nation (MFN), national treatment, and transparency, thereby providing a solid basis for its accession.

Under the BTA, Vietnam has also committed to a substantial portion of multilateral WTO disciplines, including the WTO disciplines on trade in goods, *Trade-Related Investment Measures* (TRIMS), *Trade-Related Aspects of Intellectual Property Rights* (TRIPS), *General Agreement on Trade in Services* (GATS), and the WTO's *Basic Telecom Reference Paper*. These commitments are likely to be multilateralized as a requirement for accession, in addition to other commitments being added. For a comparison produced by the Council of BTA commitments to the commitments of other recently acceding country, click on:

<http://www.usvtc.org/Documents/USVTC%20TA/WTO%20Charts/trade%20commitments%20chart%203Feb04.pdf>

### **2.1 WTO Accession – Multilateral Negotiations:**

In October 2003, Vietnam submitted materials, including its applied tariff schedule, and a new services offer to its WTO Working Party. Action plans, including a general legislative action plan, were also submitted on the implementation of the *WTO Agreement on Customs Valuation (CVA)*, *WTO Agreement on Import Licensing*, *Agreement on Sanitary and Phytosanitary Measures (SPS)*, *Agreement on Technical Barriers to Trade (TBT)*, *Agreement on Trade Related Investment Measures (TRIMS)*, and *Agreement on Trade-Related Aspects of Intellectual Property (TRIPS)*.

On 10-11 December 2003 at its 7<sup>th</sup> Working Party Meeting in Geneva, Working Party Members continued to discuss issues relating to Vietnam's general application of MFN, phase-in periods relating to its CVA, SPS and TBT Action Plans, and whether or not to move towards drafting the *Elements of a Final Report*. While noting progress overall, Working Party Members reiterated the importance of improved goods and services offers, and commitments to achieve full implementation of WTO multilateral disciplines upon accession. Bilateral talks also took place with Argentina, Brazil, India, Japan, Canada, EU, Norway, Switzerland, Paraguay, New Zealand, Australia, Korea, and the United States.

In late April 2004, Vietnam submitted to its Working Party new paperwork including revised goods and services offers. Its new tariff offer binds close to 100% of its tariffs in agricultural and non-agricultural goods. Vietnam's new services offer now includes many commitments equal to what Vietnam has committed to in the U.S.-Vietnam Bilateral Trade Agreement (BTA), as well as commitments in service areas not committed to in the BTA. In addition,

revised action plans for implementing overall legislation, and the Agreements on Customs Valuation, SPS, TBT, and TRIPS were submitted.

On 15 June 2004, Vietnam had its 8<sup>th</sup> Working Party meeting in Geneva, with plurilateral discussions on Agriculture held the day prior. As next steps, Members agreed to produce a *Draft Working Party Report* and hold the 9<sup>th</sup> Working Party session in early-December 2004. Members were expected to submit new questions by the end of July, and Vietnam will circulate replies by the end of September. Bilateral negotiations were also conducted with the EU, Australia, the U.S., and other Working Party members during this time. Vietnam closed its first market access bilateral with Cuba.

In late August 2004 Vietnam received follow-up questions from the 8<sup>th</sup> Working Party and a new round of paperwork was submitted in response to the Working Party in October 2004.

A 9<sup>th</sup> Working Party meeting is expected to be held in Geneva on 15 December 2004 with a commitment to move Vietnam's accession to the creation of a *Draft Working Party Report*. Plurilaterals and bilaterals are expected then as well.

The WTO is expected to hold its next Ministerial in December 2005 in Hong Kong.

## **2.2 WTO Accession – U.S. Bilateral Negotiations:**

In March 2002, USTR issued a request for comment by interested U.S. parties on pending WTO accessions, including Vietnam's accession. This notice was published in the Federal Register, and is available at:

<http://www.usvtc.org/WTO/Fed%20Reg%20Notice%20-%20march%202002.pdf>

In July 2004, informal WTO bilateral negotiations with the U.S. were conducted during a visit to Hanoi led by Deputy USTR Josette Shiner July 21-23 to discuss issues relating to the implementation of the BTA.

A new offer was submitted to the U.S. in September 2004.

The next round of bilateral negotiations with the U.S. will be held in Washington DC on 25-28 October 2004.

## **2.3 WTO Accession - EU Bilateral Negotiations:**

**NEW!!**

Vietnam and the EU have recently concluded bilateral negotiations. On 9 October 2004, EU Trade Commissioner Pascal Lamy and Vietnam Trade Minister Truong Dinh Tuyen announced the successful conclusion of an agreement including agreement to reduce tariffs for agricultural, fisheries and industrial products to an average of 24%, 22%, and 16% respectively. Reportedly, the EU obtained fewer concessions from Vietnam than they had hoped for in sensitive areas such as telecommunications, banking, insurance and tourism. The agreement however is a significant step towards the conclusion of bilateral negotiations with Vietnam's other major trading partners.

## **2.4 WTO Approval of Vietnam's Accession:**

Once the Working Party process and the bilateral negotiations conclude, the Working Party will adopt Vietnam's accession package, which includes the *Working Party Report*, the *Draft Protocol of Accession* (incorporating Vietnam's commitments on market access, services, and agriculture), and a *Draft Decision* inviting Vietnam to accede as a member of the WTO. This package is ready to be adopted by WTO Members if a two-thirds majority agree either at a WTO Ministerial Conference or at a meeting of the WTO General Council.

## **2.5 Vietnam Ratification of WTO Accession – Necessary Action by Vietnam:**

To complete the process, as with the BTA, Vietnam's National Assembly will be expected to ratify the WTO accession package and enact requisite implementing legislation possibly in

an omnibus packet, before it formally joins the organization. The full National Assembly typically meets twice a year, with May and November sessions. Once Vietnam completes its domestic ratification procedures, it can become a WTO Member 30 days after depositing its "acceptance" with the WTO Director General.

Vietnam's Ministry of Foreign Affairs is currently drafting a *Law on Signing and Implementation of International Treaties*. The draft *Law* is scheduled to be submitted to the National Assembly at its November 2004 Session and is expected to be passed at the National Assembly's May 2005 Session. The provisions of this *Law* will govern the process of Vietnam's ratification of the WTO accession package and the enactment of implementing legislation, while clarifying the hierarchical order of treaties in the legal system of Vietnam.

## **2.6 U.S. Ratification of WTO Accession – Permanent NTR for Vietnam:**

As noted in *Section 1.3* above, Vietnam does not currently have unconditional normal trade relations (NTR) status (also known as permanent normal trade relations (PNTR) status) with the U.S. Unconditional NTR is enjoyed by virtually all U.S. trading partners. As a Member of the WTO, the U.S. is obligated to grant on a reciprocal basis immediate and unconditional most-favored-nation treatment to the products of all other WTO Members. Therefore, upon Vietnam's accession to the WTO, the U.S. must grant Vietnam unconditional NTR status, unless the U.S. invokes the "non-application" clause of *Article XIII* of the *WTO Agreement* before Vietnam's accession. If the "non-application" clause is invoked, however, Vietnam will have the right to withhold from the U.S. the benefits of its WTO accession commitments (i.e., those that go beyond the BTA), denying to the US market access gains which would otherwise have been afforded to U.S. goods and services and that all other WTO Members will enjoy.

Irrespective of Vietnam's accession to the WTO, if the U.S. does not invoke *WTO Article XIII*, the U.S. can extend PNTR status to Vietnam through the procedure that has been used for granting PNTR status to Albania, Bulgaria, China, Czech Republic, Estonia, Georgia, Hungary, Kyrgyzstan, Latvia, Lithuania, Mongolia, Romania and Slovakia. The procedure consists of the enactment of a statute authorizing the U.S. President to terminate the application of *Title IV of the Trade Act of 1974* with respect to Vietnam and to extend PNTR status to it. The legislation would move through Congress under normal procedures - there are no special or "fast track" procedures for a bill to terminate the application of *Title IV of the Trade Act of 1974*. Upon introduction in the House and the Senate, the bill is referred to the House Ways & Means Committee and Senate Finance Committee for consideration. The bill is open to amendments and Congressional rules that typically govern any ordinary bill would apply. Upon enactment of the statute, the U.S. President would implement the extension of PNTR status by a Presidential proclamation

## **3. Legislative Action Plans for Implementation of BTA and WTO Accession**

### **3.1 Overall Action Plan for Implementation of the BTA:** Resolution 48-2001-NQ-QH10 of the National Assembly on the Ratification of Vietnam-U.S. Bilateral Trade Agreement dated 28 November 2001 (clause 4) calls for the Standing Committee of the National Assembly, the Government and agencies to formulate concrete and comprehensive action plans to amend and supplement legal documents according to the BTA schedule, to strengthen the legal system, to finalize policies, to enhance human resources training and to create favorable conditions for businesses.

Decision 35-2002-QD-TTg of the Government dated 12 March 2002 outlines Vietnam's overall plan for implementing the BTA, including calling for: 1) public awareness through dissemination via public media, public education of ministries, universities and businesses; 2) legal review of Vietnamese law; 3) preparation for and evaluation of increased competition by government agencies and businesses, and plans for increasing foreign direct investment; 4) preparation for the protection of IP rights; 5) preparation for promoting

trade, investment and tourism in the U.S. market; 6) preparatory plans by relevant ministries in areas that affect national security in Vietnam; 7) training of the labor force; and 8) overall organizational issues by the joint bilateral committee, various ministries, agencies, and People's Committees.

As a useful starting point for identifying areas requiring changes and possible areas for further technical assistance, the U.S.-Vietnam Trade Council prepared at the conclusion of BTA negotiations a *Roadmap for BTA Implementation*, available at:

<http://www.usvtc.org/BTA/Roadmaps/Roadmap%20Descriptions.htm>.

### **3.2 Legislative Plan for Implementation of the BTA:**

In December 2001, the Prime Minister approved the initial review by the MoJ of legal instruments that need to be amended in order to comply with Vietnam's international undertakings, including under the BTA. *Official Letter 6172-VPCP-TCQT of the Office of Government dated 18 December 2001* instructs ministries, branches and people's committees to continue to check the legal instruments within the sectors for which they are responsible and the instruments issued by them.

The MoJ has the specific tasks of "commencing work with the National Assembly and the Government to prepare the program for drafting laws for the year 2002-2003, aimed at complying with Vietnam's international undertakings, including the BTA; [presiding] over drafting a Government program for submission to the National Assembly on amending the legal system for the whole period of the 10<sup>th</sup> Session National Assembly 2002-2003, giving priority to the need to implement the BTA and to be able to provide undertakings when Vietnam joins the WTO; [reviewing] and [providing] statistics on the number of international treaties in which Vietnam participates and the number of new ones that Vietnam must sign during the process of integration into the international economy; [taking] charge of co-ordination with ministries, branches and people's committees to strengthen step by step the legal systems of ministries, branches and enterprises; and [providing] legal training for staff of ministries, branches, localities and enterprises, in order to satisfy the requirements for providing undertakings during the process of integration into the international economy".

On 8 April 2002, the Minister of Justice reported that the first stage of review of all laws issued by ministries and central bodies had been completed and that amendments to 150 legal instruments are required. It then conducted the second stage of reviewing laws issued by administrative bodies, in particular for the major cities of Hanoi, Ho Chi Minh City, Da Nang and Hai Phong. The MoJ is currently reviewing the next round of laws in light of the third year of implementation of the BTA.

### **3.3 Legislative Action Plan for WTO Accession:**

In October 2003, the MoJ completed its review of 265 items of legislation and identified the legislative reforms required for WTO accession, including 94 items of legislation identified as requiring amendment or formulation. As instructed by *Official Letter 1273-CP-QHQQT of the Government dated 19 September 2003*, a legislative action plan was submitted to the WTO Working Party.

This action plan outlines timelines for the amendment and promulgation of laws including: the *Law on National Security*, *Law on Competition*, *Law on Signing and Implementing International Treaties*, *Law on Enterprises*, *Article 8 of the Law on Value Added Tax (Amended)*, *Article 7 and Article 16 of the Law on Excise Tax (Amended)*, *Ordinance on Foreign Exchange*, *Law on Foreign Investment in Vietnam (Amended)*, *Law on Domestic Investment Promotion (Amended)*, *Ordinance on Anti-Dumping Measures*, *Ordinance on Countervailing Measures*, *Commercial Law (Amended)*, *Ordinance on State Auditing*, *Law on Maritime (Amended)*, *Law on Civil Aviation (Amended)*, *Law on Construction*, *Law on Tourism*, *Law on Railways*, *Law on Credit Institutions (Amended)*, *Ordinance on E-Commerce*, *Law on Securities*, *Law on Lawyers*, *Article 7 of Law on Import-Export Duties*

*(Amended), Ordinance on Procedures for Settlement of Administrative Cases (Amended), Law on Claims and Accusation (Amended), Code on Civil Proceedings, Law on Customs (Amended), Ordinance on Standardization, Civil Code (Amended), Law on Implementation of Civil Judgments, and Law on Fisheries.* A number of these laws have since been promulgated, see *Section 4* on “*Legislative Developments 2002 – 2004*” below. The MoJ is expected to come up with a revised action plan in Summer/Fall 2004, which could consider an omnibus legislation package.