



13 August 2013

(13-4275)

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Trade Policy Review Body

TRADE POLICY REVIEW

REPORT BY THE SECRETARIAT

VIET NAM

This report, prepared for the first Trade Policy Review of Viet Nam, has been drawn up by the WTO Secretariat on its own responsibility. The Secretariat has, as required by the Agreement establishing the Trade Policy Review Mechanism (Annex 3 of the Marrakesh Agreement Establishing the World Trade Organization), sought clarification from Viet Nam on its trade policies and practices.

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Document WT/TPR/G/287 contains the policy statement submitted by Viet Nam.

Note: This report is subject to restricted circulation and press embargo until the end of the first session of the meeting of the Trade Policy Review Body on Viet Nam. This report was drafted in English.

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SUMMARY

Economic Environment

1. Political and economic reforms (*Doi Moi*) have transformed Viet Nam from one of the poorest countries in the world to a lower middle-income country, and from a centrally planned economy into a more market-oriented economy through gradual integration into the global trading and investment system. Trade and foreign direct investment liberalization have been integral parts of the structural reforms that contributed to improved competitiveness and thus export-led growth. Despite Viet Nam's extraordinarily rapid economic development, its international competitiveness seems to have come under threat in recent years. More specifically, notwithstanding rising labour productivity, the contribution of total factor productivity to the growth of Viet Nam's factor-driven economy appears to have collapsed.

2. Since the launch of *Doi Moi* and until its WTO accession Viet Nam's growth rates were high owing mainly to rising investment and vigorous exports. Viet Nam grew at an annual average rate of 6.3% (2007-12), albeit trending slowly downward for the last 5-6 years. Growth has been driven equally by the expansion of the export sector and strong domestic investment, and was supported by a generous economic stimulus package in 2009, while the recent slowdown has, *inter alia*, been the outcome of the slow pace of structural reforms that impeded TFP growth, the global financial crisis, and tighter macroeconomic policies adopted in 2011. Despite recent macroeconomic instability involving, *inter alia*, a sharp rise and subsequent drop in inflation whose latest bouts were in 2008 (23%) and 2011 (18.6%), official unemployment remains low.

3. Monetary policy is set on the basis of a balance between controlling inflation and supporting sustainable economic growth. As from 2011, controlling inflation and stabilizing the macroeconomy became the priority, and direct rather than indirect policy tools were used to ensure the attainment of macroeconomic objectives. In recent years, the central bank, under government oversight, has devalued the national currency at least seven times, improving export competitiveness, and narrowed its trading band. Following a peak fiscal deficit in 2009 (7.2% of GDP) reflecting the impact of the stimulus package, by 2011 the deficit had been gradually brought down to its 2007 level (2.5% of GDP) due largely to higher tax revenue collection, and a significant reduction in public investment spending.

4. Viet Nam has significantly narrowed its large merchandise trade and current account deficits, and achieved surpluses since 2011 (current account) and 2012 (trade account). Since 2008, foreign exchange reserves have dropped significantly, due to the impact of the global economic crisis, but in 2012 they rose and in February 2013 they stood at US\$28.6 billion (about 3 months of imports). Viet Nam's historically low external debt position rose from 29.8% of GDP (2008) to 41.5% (2011), due to increased demand for capital related to the country's industrialization and modernization.

5. The economy is strongly outward oriented, with trade in goods and services accounting for 171.5% of GDP. A considerable proportion of Viet Nam's foreign trade is increasingly intra-regional (Asia-Pacific); its labour-intensive and low value-added exports are relatively well diversified.

6. Following its WTO accession, Viet Nam experienced a surge in foreign direct investment. FDI inflows and the total value of licensed projects peaked in 2008 but the latter declined as a result of investors' worries, while FDI outflows grew five-fold between 2007 and 2011. Nevertheless, the country remains an attractive destination for foreign investors and has long-term growth potential. The contribution of foreign-invested enterprises to GDP, employment, and exports as well as product and market diversification have been noteworthy, although state involvement in the economy in certain activities remains relatively high, albeit declining.

7. Viet Nam went a long way in equalizing the treatment accorded to Vietnamese and foreign investors with the promulgation of its enterprise and investment laws in 2005. However, some differences remain and may lead to differing interpretations, particularly when a foreign investor acquires a locally owned business. The establishment of a one stop shop system for business registration and investment licensing is a long-standing issue, and could help to address occasional allegations of inconsistent and uncoordinated implementation of laws and regulations by the responsible government agencies. Private ownership of land is not permitted in Viet Nam, but land

may be leased on long-term agreements. Private-public partnership projects have been implemented on a pilot basis since early 2011 to stimulate private investment in infrastructure.

Trade Policy Framework

8. Viet Nam's hierarchy of legal documents comprises 12 levels, determined by the type of legislation and the issuing institution. Legislation issued by a lower state organ must be consistent with the legal documents of higher state organs. However, it is not always evident whether new legislation abrogates or supplements existing legislation. Ministries continue to rely on official letters, notices, or guidelines to set policy and clarify implementation issues, although the Law on promulgation of Legal Documents stipulates that such communications have no legal or binding effect.

9. The Ministry of Industry and Trade plays a leading role on international trade issues, although many other ministries and agencies also deal with trade-related matters. The National Committee for International Economic Co-operation serves as a coordinating body between the ministries and line agencies. Since Viet Nam became a WTO Member, some 130 notifications have been submitted to the Secretariat in a number of areas. Notable gaps include agricultural and industrial subsidies, for which data remain unavailable (since 2007), and state trading, where Viet Nam has provided no information despite the importance of the public sector in its economy. Concerns have been raised in the Committee on Import Licensing regarding the timeliness and completeness of information provided by Viet Nam.

10. Viet Nam joined ASEAN in 1995 and is thus part of its comprehensive framework for trade in goods, services, and investment. Viet Nam pursues trade liberalization in Asia and the Pacific together with its ASEAN partners complemented by additional bilateral initiatives. Viet Nam has taken advantage of these agreements to boost exports of competitive product lines, e.g. in agriculture, fisheries, textiles, footwear, and furniture. Viet Nam has been a full participant in the negotiations on a Trans-Pacific Partnership Agreement since November 2010, and is negotiating bilateral FTAs with the EU, the members of EFTA, the customs union of Belarus, Kazakhstan, and the Russian Federation, and Korea.

Trade Policy Developments

11. Viet Nam bound the entire tariff schedule in the context of its WTO accession, and mostly in the 0-40% range. The simple average MFN tariff has declined significantly, from 18.5% in 2007 to 10.4% in 2013, as Viet Nam has been phasing-in its tariff concessions. However, differences between bound and applied rates have left some scope for flexibility, and Viet Nam has made use of this, *inter alia*, to reduce fluctuations in domestic energy prices, and to provide additional protection to selected industries since 2008. Tariff rate quotas regulate imports of eggs, sugar, unmanufactured tobacco and tobacco refuse, and salt.

12. A special consumption tax is levied on certain goods and services including cigarettes, alcoholic beverages, motor vehicles, motor cycles, and golf and gambling services. Tax rates were equalized on imported and domestically produced alcoholic beverages as a result of Viet Nam's WTO accession. Nevertheless, valuation differences in the tax base may provide an advantage to local producers. Viet Nam introduced an environmental protection tax on five product categories with effect from 1 January 2012, in part replacing earlier surcharges on various fuels. Value-added tax, which is levied at a general rate of 10%, constitutes almost one third of the Government's total tax revenue, while trade taxes seem to account for one tenth.

13. As for non-tariff measures, Viet Nam prohibits the importation of goods generally considered harmful to human health and safety, or national security. Import restrictions may be applied to comply with international treaties and conventions to which Viet Nam is a party. "Line management", i.e. licences issued by the Ministry of Industry and Trade for imports regulated by other ministries, is applied to the importation of various goods. According to the authorities, the system includes automatic and non-automatic licensing procedures.

14. In 2008, Viet Nam introduced what it considers to be automatic licensing for a wide range of consumer products and agricultural items. The product coverage was extended in 2010, reduced somewhat in 2011, and temporarily suspended as from September 2012. However, certain steel

products are still affected by this measure. In April 2010, the Ministry of Industry and Trade issued a long list of "non-essential" imported commodities and consumer goods not encouraged for import, and the State Bank of Viet Nam discourages the granting of loans by credit institutions to finance imports of such items. A requirement to channel all imports of wines, spirits, cosmetics, and mobile phones through three seaports only was in effect from May 2011 until the end of 2012.

15. Although Viet Nam has legislation and institutions to conduct anti-dumping and countervailing investigations, no such action has been taken. An investigation into possible safeguard measures on imported float glass was terminated with no safeguards imposed in February 2010. In an ongoing investigation on certain imported vegetable oils, the imposition of a provisional safeguard measure (5% additional duty) was announced in May 2013.

16. Standards and technical regulations are drawn up by technical committees with support from the Directorate for Standards, Metrology and Quality (STAMEQ), under the Ministry of Science and Technology. STAMEQ, which is the WTO TBT enquiry point, also represents Viet Nam in a number of international and regional standards organizations and its subsidiary bodies are responsible for metrology, conformity assessment, quality assurance, and certification. Accreditation of laboratories is the responsibility of the Bureau of Accreditation, also under the Ministry but not part of STAMEQ. At the end of 2012, Viet Nam had 6,800 national standards, 40% of which were harmonized with international, regional, or foreign standards, and 116 technical committees with plans to complete 813 standards in 2013.

17. A number of government ministries are responsible for sanitary and phytosanitary measures. The Ministry of Agriculture and Rural Development is the WTO SPS enquiry point. As is the case for standards and technical regulations, the legislation for SPS measures comprises a number of ordinances, laws, decisions, decrees, and circulars. The measures generally correspond to standards established by the OIE, Codex Alimentarius, and the IPPC; the official objective is to harmonize them fully, although no date has been set.

18. Among measures affecting exports, Viet Nam levies export duties on certain products and royalties on certain natural resources. Export duties on scrap metal have been reduced by approximately 50% since 2006, in accordance with Viet Nam's WTO commitments. Numerous other changes since 2006, have added or deleted items, and increased or eliminated tax rates. Some goods are subject to export controls. The Ministry of Industry and Trade does not appear to have applied legal provisions to regulate or monitor exports through automatic licences. However, other measures imposed by the authorities include quality standards and bans on exports of certain minerals.

19. Viet Nam provides subsidies, mainly in the form of tax incentives, for example to encourage research and development; the development of infrastructure of special importance; to assist enterprises involved in education, training, and health care; and the establishment of businesses in geographically disadvantaged areas. The Viet Nam Development Bank (VDB), finances infrastructure as well as business development. An interest rate support programme is available. Support for trade promotion activities is modest and, according to the authorities, well below the level requested by Vietnamese businesses.

20. Nearly 300 industrial parks and export-processing zones account for a significant share of Viet Nam's industrial output, investment, exports, and employment. Although the performance of the industrial parks is highly uneven and the average occupancy rate has been falling in recent times, many new parks and zones are on the drawing board.

21. Although Viet Nam has made no formal commitment to join the Agreement on Government Procurement, it currently has observer status. Under existing legislation, preferences are available to local suppliers in international tenders, and imports are discouraged when machinery, equipment, and materials used in the procurement can be produced domestically.

22. Viet Nam began the process of reforming its state-owned enterprises more than 20 years ago. Many enterprises have been privatized and further divestment of state holdings is foreseen. Nevertheless, the state-owned sector continues to account for 38% of GDP, and the fundamental approach to state ownership is a mixture of renovation, preservation, and expansion. In 2005, Viet Nam began establishing pilot State Economic Groups, i.e. loose alliances of SOEs with similar

business interests. The financial difficulties of one of these groups, exposed in 2010, revealed a number of structural weaknesses in large Vietnamese SOEs including complex corporate structures, lack of effective oversight, and expansion well beyond the stated core business activities. A Steering Committee for the restructuring of SOEs was set up in 2011. Viet Nam has also begun the process of legally separating state ownership rights from the State's regulatory functions.

23. Intellectual property protection is the focus of attention of Viet Nam and many of its trading partners. Viet Nam is party to a number of WIPO-related treaties and continues to integrate the IP-innovation-trade triangle in international and regional fora. Viet Nam's legislation was reviewed by the Council for TRIPS in 2008. The enforcement system in Viet Nam is highly complex. Regulation is provided through various legal and administrative texts, and the responsibilities for IPR enforcement are shared among a considerable number of central and local authorities. Issues such as counterfeited and pirated goods, and cable and satellite signal theft, remain matters of concern.

Sectoral Policy Developments

24. Production and trade of agricultural products has increased over the past few years and Viet Nam is now an important producer and exporter of several agricultural products, including rice, coffee, and cashew nuts with a large surplus in trade in agricultural products. Imports have also increased considerably, particularly of inputs such as animal-feed and cotton. Although state-owned enterprises do not play a major role in production, several are involved in processing and trade, as well as supplying inputs to farmers. Total public spending on agriculture was about 5-6% of the total state budget in 2010, which would equate to roughly 6% to 7% of the total value of agricultural production. The focus of government policy is on increasing productivity and reducing risk exposure through investment in infrastructure, research and development, better extension services, and easier access to credit.

25. Viet Nam has a large trade surplus in fisheries products as both marine catch and aquaculture production and exports have increased over the past few years, particularly aquaculture, as the value of production nearly doubled from 2005 to 2011. The fisheries sector is dominated by small-scale production for both the aquaculture and catch subsectors. Public policy aims to complete a database on aquatic resources, to increase production of aquaculture, to improve sustainability through better resource management, and to enforce compliance with laws and regulations on sustainable fishing.

26. In mining, where foreign-invested enterprises account for the largest part of total output, efforts have been made to promote sustainable development and ensure that mined products are used in a cost-effective and efficient way. Legislative changes have affected, *inter alia*, the granting of mining licences and increased royalties. Overall tariff protection in the sector remains relatively low; average applied MFN tariff on mineral fuels and oils dropped considerably while the rate for ores, slag and ash increased slightly. Recently export prohibitions and controls on several mining products were reinforced and taxes raised on others to ensure adequate domestic supplies, increased value-added and/or vital tax revenue.

27. Efforts have been made to promote renewable energy sources as well as energy saving and efficiency. The energy sector remains dominated by cross-owned state enterprises, and characterized by the loose separation between operational, regulatory, and ownership functions. Efforts are being made to address the country's limited oil-refining capacity. Retail petrol and oil prices are adjusted in accordance with flexibly applied market-based mechanisms so that they are now closer to international market prices. Natural gas prices along with wholesale electricity prices are kept generally low. Despite the ongoing introduction of a competitive electricity market, low electricity purchase prices by the state-owned monopoly discourage investment in much needed new power-plant capacity. The current pricing structure does not allow utilities to cover the full cost of producing and distributing electricity, and electricity rates for low-income households and irrigation are cross-subsidized by higher rates for industry and commerce.

28. The contribution of manufacturing to GDP has dropped steadily since 2007, while its share in employment has risen. Average applied MFN tariff protection for industrial products has been cut by almost half. Nevertheless, tariffs on apparel and clothing, footwear, ceramic products,

automobiles and motorcycles remain relatively high compared to those on other manufactures. Domestic support to manufacturing activities is provided in the form of tax and non-tax incentives as well as government-procurement practices, and a buy-locally campaign entitled "Vietnamese people use Vietnamese products". In addition to border protection, industry-specific domestic support was adopted to boost "support industries", an important element in increasing local content in some key sectors, and the steel industry while assistance to the automotive sector was under consideration. Efforts were made to, *inter alia*, promote patient safety and sustainable access to pharmaceutical and biological products.

29. Services, the largest sector of the economy, have been further liberalized as a result of Viet Nam's comprehensive WTO accession undertakings. Consequently, its GATS+ commitments in recent regional trade agreements have been relatively limited. Labour productivity, although higher than the average in the rest of the economy, grew at a slower pace than in other sectors. Certain activities are subject to ceilings on foreign ownership. State involvement in major services subsectors with high market concentration is significant in certain cases. Despite successes, the banking sector has been exposed to unusually rapid growth in lending, but action is being taken to address safety and soundness issues. Great strides have been made in upgrading the telecommunications systems, improving access, and affordability of services; a pro-competition regulatory regime was passed although subject to certain limitations. Screen quotas were recently passed for projection of foreign movies in cinemas, while certain restrictive conditions tied to film imports were removed. Transport infrastructure deficiencies and increasingly higher fees and surcharges on foreign firms dominating Viet Nam's overseas shipping market, have seemingly affected export competitiveness. Moreover, the presence of foreign vessels operating in the domestic container-shipping market was temporarily restricted in June 2012. Efforts have been made to address ports competitiveness by reducing their fees. Reduced airport charges and fees were offered to encourage airlines to increase their flight frequencies. Despite Viet Nam's openness to fully foreign-owned businesses, an economic needs test is compulsory in order for any retail outlet to be established beyond the first one.

Outlook

30. Although many of Viet Nam's economic fundamentals remain strong and much progress has been made in its economic transformation, significant weaknesses persist. As these weaknesses pose downside risks to Viet Nam's immediate economic outlook, action is being taken to address them. Equitable (inclusive) and sustainable growth depends on the Government implementing far-reaching structural reforms in a timely manner, especially those aimed at addressing systemic risks faced by the financial sector, improving the operational framework of trade-related sectors (e.g. electricity supply, transport infrastructure), and intensifying SOE restructuring. These and related reforms, including regulatory reforms and trade liberalization in certain sectors, would improve resource allocation, thereby raising TFP and consequently competitiveness, as well as increasing the flexibility of the economy and its ability to attract foreign investment. Therefore, a key challenge for Viet Nam is to prioritize trade and trade-related policies conducive to the attainment of these objectives within a stable, transparent, and predictable policy framework.

1 ECONOMIC ENVIRONMENT

1.1 Overview

1.1. Viet Nam's political and economic reforms (*Doi Moi*, "renovation") launched in 1986 have transformed the country from one of the poorest in the world to a lower middle-income country with a more than ten-fold increase in income per capita and a major decline in the poverty rate (see below).¹ While capitalizing on its gradual integration into the global trading and investment system, Viet Nam, one of Asia's success stories, has also been transforming from a centrally planned economy into a more market-oriented economy though it appears that the transition to an industrialized economy has barely begun.² State intervention, including direct control of production through state-owned enterprises (SOEs)³ in certain sectors, remains relatively high, albeit declining (sections 1.4.2.2, 3.4.8, 4.4, 4.5, and 4.6, and Table 1.5).⁴

1.2. Liberalization of trade and foreign direct investment (FDI) has been an integral part of the structural reforms that have contributed to improved competitiveness and export-led growth. Since the launch of *Doi Moi* and upon WTO accession Viet Nam experienced high rates of economic growth, rising investment, vigorous exports, and a sharp rise and subsequent drop in inflation. The economy had already entered a period of macroeconomic instability before it was affected by the 2008 global financial crisis⁵, which caused a progressive slowdown in economic growth and a subsequent rebound in 2010 due to, *inter alia*, a timely policy response to the crisis, involving a stimulus package in 2009. This policy response involved the adoption of a series of measures to stabilize the economy and to ensure social stability as from 2011. Underpinned by tight macroeconomic policies, inflation, which peaked in 2008 and 2011, receded in 2012, while official unemployment remained largely under control.⁶ In recent years Viet Nam's competitiveness seems to have been under threat⁷, with power generation not keeping pace with demand, rising logistical costs and real estate prices, and skill shortages becoming more widespread.⁸ Despite rising labour productivity (sections 4.4, 4.5, and 4.6), the contribution of total factor productivity (TFP) to the growth of Viet Nam's factor-driven economy⁹ has been declining; indeed, TFP growth collapsed during 2005-10 and the entire growth came from factor accumulation.¹⁰ Viet Nam's economic

¹ World Bank online information. Viewed at: <http://www.worldbank.org/en/country/vietnam/overview> [4 February 2013].

² Viet Nam was ranked as the 140th freest economy (out of 177 countries) in the 2013 *Index of Economic Freedom*, compared to 135th in 2008 and 138th in 2007 (out of 157 countries); slight declines were noted in monetary, labour, and trade freedom overshadowing improvements in control of government spending, business freedom, and freedom from corruption. Viet Nam is ranked 30th out of 41 countries in the Asia-Pacific region, and its overall score is lower than the world and regional averages. Heritage Foundation online information, "2012 Index of Economic Freedom – Vietnam". Viewed at: <http://www.heritage.org/index/pdf/2012/countries/vietnam.pdf>; "2013 Index of Economic Freedom- Vietnam". Viewed at: <http://www.heritage.org/index/country/vietnam>; VDR (2012); and *Việt Nam News*, "Many challenges still to come in industrialisation", 26 October 2012. Viewed at: <http://vietnamnews.vn/social-issues/231936/many-challenges-still-to-come-in-industrialisation.html> [30 January 2013].

³ State-owned enterprises (sections 1.4.2.2 and 3.4.8) are: enterprises with 100% of state capital operating according to the provisions of the Enterprise Law and under the control of central or local governmental agencies; limited companies under management of central or local government; and joint-stock companies with domestic capital, of which the government holds more than 50% of the charter capital (General Statistics Office of Vietnam, 2011, pp. 189-190).

⁴ VDR (2012).

⁵ Viet Nam's domestic economic turbulence was compounded by heightened volatility in the global economy. Nevertheless, China is the only Asian economy to have grown faster than Viet Nam since 2000 (McKinsey Global Institute, 2012; and Le, Thi Thuy Van, 2009).

⁶ IMF (2012).

⁷ In 2012, Viet Nam, one of the 38 World Economic Forum (WEF) factor-driven economies, ranked 75th (out of 144 countries) in the *Global Competitiveness Index* (same as in 2011); nevertheless, since 2010 Viet Nam has lost 16 places and in 2012 was the second-lowest among eight members of the Association of Southeast Asian Nations (ASEAN). According to the WEF, among Viet Nam's few competitive strengths are its fairly efficient labour market (51st, 2012), its large market size (32nd), and a satisfactory performance in the public health and basic education pillar (64th) (World Economic Forum, 2012).

⁸ VDR (2012).

⁹ In factor-driven economies, economic development is primarily driven by basic requirements such as development of institutions, infrastructure, macroeconomic stability, and health and primary education. *Global Entrepreneurship Monitor* online information (<http://www.gemconsortium.org/Model>); World Economic Forum (2002); and VDR (2012).

¹⁰ Excessive reliance on factor accumulation to support rapid growth is bound to be unsustainable. The government's 2011 decision to slash the target investment rate from the 40% to 35% of GDP while

transition process has transformed the country and the lives of its people, and its historically high decentralization has, *inter alia*, contributed to more inclusive development.¹¹ Impressive progress was made at reducing poverty and improving human development performance¹², albeit at a slower pace than in the previous decade¹³; income inequality, as measured by the Gini coefficient, was the same in 2010 as in 2008, at 0.43.¹⁴ Viet Nam ranks 5th (out of 11 countries) in South-East Asia in terms of exports and imports of goods, and 6th in terms of services¹⁵; a considerable proportion of its foreign trade is increasingly intra-regional (Asia-Pacific), and its overall low value-added exports are relatively well diversified. Viet Nam experienced a surge in foreign direct investment but recent investors' worries have dampened new projects, which rose slightly in 2012 (section 1.6).

1.3. After 25 years of strong and stable growth, the economy has entered a more challenging phase. Although many of Viet Nam's economic fundamentals remain strong, and progress has been made in its economic transformation, significant weaknesses seem to persist and pose downside risks to its immediate economic outlook, though action is being taken to address them. They relate, *inter alia*, to the relatively incomplete transition to a market economy, the quality and sustainability of growth, persistent macroeconomic instability, the speed in resolving problems in a number of small weak banks, addressing systemic risks facing the financial sector (i.e. level of non-performing loans, liquidity crises, stability of foreign reserves), and delays in SOE reforms (sections 1.4.2.2, 3.4.8, 4.4, 4.5, and 4.6).¹⁶ Furthermore, Viet Nam's population is expected to grow by 1% a year from 2009 until the end of 2013, thus increasing from 86.1 million people in 2008 to 90.4 million in 2013. To sustain growth, key sectors of the economy need to be reformed to improve resource allocation and raise TFP growth.¹⁷

1.2 Recent Economic Performance

1.4. Viet Nam's economic performance has been affected by large swings in economic and financial conditions.¹⁸ The economy grew at an annual average rate of 6.3% in 2007-12 (Table 1.1) trending slowly downward for the last 5-6 years, largely on account of the slow pace of structural reforms and TFP slowdown. Growth has been driven equally by the expansion of the export sector and strong domestic investment, with private consumption playing a somewhat lesser role. Recently growth deceleration has been the outcome of tighter macroeconomic policies (Box 1.1, section 1.4.1) resulting in weak domestic demand and slow growth in public and private investment, as the Government prepares to move the economy away from factor accumulation to increased TFP as the key source of growth.¹⁹ According to the authorities, the framework of action for this shift is found in the Decision approving the overall scheme of "Economic restructuring associated with transformation of growth model towards improving the quality, efficiency and competitiveness in the 2013-2020 period", which, *inter alia*, promotes: the re-structuring of

maintaining the growth rate of the economy at 6% to 6.5% for the next five years makes productivity increase an imperative (VDR, 2012; and Asian Productivity Organization, 2012, Table 12).

¹¹ VDR (2012).

¹² Viet Nam has already attained five of its ten original Millennium Development Goal targets and is well on the way to attaining two more by 2015. World Bank online information. Viewed at: <http://www.worldbank.org/en/country/vietnam/overview> [4 February 2013].

¹³ The share of people living below the national poverty line (₫653,000 person/month or US\$2.24 person/day 2005 PPP) dropped from 58% in 1993 to 16% in 2006 and 14.2% in 2010 (<http://data.worldbank.org/country/vietnam>). In 2012, Viet Nam ranked 127th (out of 186 countries) in the UN Human Development Index (HDI) (<http://hdr.undp.org/en/statistics/>) compared to 116th out of 182 in 2007 (http://hdr.undp.org/en/media/HDR_2009_EN_Complete.pdf); and World Bank (2011).

¹⁴ According to the General Statistics Office of Vietnam a Gini-coefficient of 0.4 is generally regarded as the international warning level for dangerous levels of inequality. China's Gini coefficient was estimated at 0.6 in 2010 (*VietNamNet Bridge*, "Vietnam's rich-poor gap widens - at 9.2 times", 30 June 2011. Viewed at: <http://english.vietnamnet.vn/en/society/10055/vietnam-s-rich-poor-gap-widens---at-9-2-times.html> [15 January 2013]; and EIU online information, "China: Quick View - Income-redistribution reforms still hazy", 21 December 2012. Viewed at: http://viewswire.eiu.com/index.asp?layout=ib3Article&article_id=369982621).

¹⁵ United Nations Economic and Social Commission for Asia and the Pacific (2011).

¹⁶ VDR (2012); McKinsey Global Institute (2012); and IMF (2012).

¹⁷ Viet Nam needs to boost its overall labour productivity growth by more than 50%, from 4.1% annually to 6.4%, if the economy is to meet the Government's target of 7% to 8% annual growth by 2020. Without such a boost, Viet Nam's growth is likely to decline to between 4.5% and 5% annually; if so, by 2020, Viet Nam's annual GDP would be 30% lower than if the economy continued to grow at 7% (McKinsey Global Institute, 2012; and IMF, 2012).

¹⁸ Chan (2012).

¹⁹ World Bank (2011); and IMF (2012).

manufacturing; the diversification of services; the adjustment of marketing strategies; and the increase of local content, value-added, and competitiveness. For 2013, the authorities target GDP growth of around 5.5%.

Table 1.1 Selected macroeconomic indicators, 2007-12

	2007	2008	2009	2010	2011	2012
National accounts	<i>(%age change, unless otherwise indicated)</i>					
Real GDP	8.5	6.3	5.3	6.8	6.0	5.0
Consumption	10.6	9.2	3.5	10.2	4.7	3.7
Private consumption	10.8	9.3	3.1	10.0	4.5	3.3
Government consumption	8.9	7.5	7.6	12.3	6.1	8.3
Gross capital formation	26.8	6.3	4.3	10.4	-9.2	2.2
Exports of goods and non-factor services	11.3	5.0	11.1	14.7	12.2	14.8
Imports of goods and non-factor services	27.6	7.6	6.7	13.7	3.8	10.9
XGS/GDP (%) (at current market price)	76.9	77.9	68.3	77.0	87.0	87.9
MGS/GDP (%) (at current market price)	92.7	93.1	78.7	87.8	91.2	84.2
Unemployment rate (%)	2.9	2.4	2.9	2.9	2.2	2.0
Urban (%)	4.6	4.7	4.6	4.3	3.6	3.2
Prices and interest rates	<i>(%)</i>					
Inflation (CPI, %age change)	6.5	23.0	6.9	9.2	18.6	9.2
Loans and discounts rate	11.18	15.78	10.07	13.14	16.95	..
Savings deposit rate	7.49	12.73	7.91	11.19	13.99	..
Exchange rate						
₫/US\$ (annual average)	16,110.0	16,583.0	18,123.0	19,495.0	20,982.0	21,020.0
(%age change)	0.6	2.9	9.3	7.6	7.6	0.2
Real effective exchange rate (%age change)	..	18.6	-7.9	1.0	3.7	..
	<i>(% of GDP, unless otherwise indicated)</i>					
Fiscal balance	-2.5	-0.5	-7.2	-5.3	-2.5	..
Revenue including grants	28.7	28.9	27.3	27.8	27.8	..
Tax revenue	..	24.5	22.5	24.1	24.2	..
Expenditure	31.2	29.4	34.5	33.1	30.3	..
Central government total debt	..	..	..	..	..	..
Saving and investment						
Gross national savings	33.3	27.8	31.6	34.9	29.3	..
Gross investment	43.1	39.7	38.1	39.0	29.9	..
Savings-investment gap	-9.8	-11.9	-6.5	-4.1	-0.6	..
External sector						
Current account balance	-10.0	-12.1	-7.2	-4.2	0.2	6.5
Net merchandise trade	-14.7	-14.3	-8.3	-5.1	-0.4	7.0
Merchandise exports	68.4	70.0	62.4	71.1	80.2	81.6
Merchandise imports	83.1	84.3	70.7	76.1	80.5	74.6
Services balance	-1.3	-1.1	-2.6	-2.4	-2.6	-2.1
Financial account	25.4	13.8	7.4	6.1	5.4	5.9
Direct investment	9.6	10.4	7.5	7.0	5.4	5.1
Balance-of-payments	14.4	0.5	-9.7	-1.7	1.0	8.5
Terms of trade	83.9	84.1	88.4	92.6	98.3	..
Merchandise exports (%age change in US\$)	21.9	29.1	-8.9	26.5	34.2	18.2
Merchandise imports (%age change in US\$)	38.5	27.9	-14.3	19.6	25.8	7.5
Service exports (%age change in US\$)	18.2	16.2	-17.7	29.4	16.5	10.4
Service imports (%age change in US\$)	35.5	14.9	2.9	21.2	19.5	5.6

	2007	2008	2009	2010	2011	2012
Foreign reserves (US\$ billion)	21.0	23.0	14.1	12.4	13.5	25.4
in months of imports of goods and services	..	4.3	..	..	1.8	3.0
Total external debt	32.5	29.8	39.0	42.2	41.5	..
Foreign debt obligations ^a	3.8	3.3	4.2	3.4	3.5	..

.. Not available.

a Per cent of exports of goods and services.

Source: IMF online information. Viewed at: <https://elibrary-data.imf.org/>; IMF (2012), *Vietnam 2012 Article IV Consultation*, IMF Country Report No.12/165, July. Viewed at: <http://www.imf.org/external/pubs/ft/scr/2012/cr12165.pdf>; General Statistics Office of Vietnam online information. Viewed at: http://www.qso.gov.vn/default_en.aspx?tabid=491; and data provided by the authorities.

Box 1.1 Economic stimulus and stabilization action

In response to endogenous and exogenous factors affecting the economy, since 2007 the authorities intervened to provide economic stimulus and stabilize the economy.

In January 2009, the Government announced a ₫17 trillion (US\$1 billion) stimulus, involving a 4% interest rate subsidy for businesses and individuals. In May 2009, the Government officially announced a comprehensive ₫145.6 trillion (US\$8 billion or 8.3% GDP) stimulus package, including the January 2009 measure, in order to enhance growth in the scenario of deeper global economic recession. The stimulus package consisted of: supporting credit loans with low interest rates, involving the 4% interest rate subsidy (down to 2% from January 2010) for businesses and individuals, theoretically until 31 December 2009 (₫17 trillion); deferring settlements of advance construction capital in work-in-progress before 2009 (₫3.4 trillion); advancing funds to carry out some urgent projects likely to be completed in 2009-10 (₫37.2 trillion); transferring planned capital investment from 2008 to 2009 (₫30.2 trillion); issuing more Government bonds (₫20 trillion); implementing a tax exemption policy (worth ₫28 trillion); and other stimulus spending to prevent economic recession and ensure social security (₫9.8 trillion). This stimulus package, considered very large by international standards, has, *inter alia*, helped boost exports by assisting exporters in general (e.g. via the reduction of corporate tax rates and interest rate subsidies), and by promoting the export of specific commodities and services (e.g. via the reduction of export duties); the depreciation of the dong (section 1.4.1.1) has also improved export competitiveness.

In response to increasing pressures on prices and the exchange rate in late 2010, a stabilization package was adopted in February 2011. Macroeconomic policies were tightened significantly by implementing Resolution 11, which contained a wide range of mutually reinforcing and consistent monetary and fiscal policy targets, and committed the Government to undertake several structural measures, including reform of SOEs, improving responsiveness to market signals, and protecting the poor from macroeconomic instability. Policy interest rates were raised, a credit growth ceiling was imposed, and investment by the Government and SOEs was contained. According to the IMF, these policies had the desired effect, but with the sharper-than-expected slowdown of the economy and the rapid fall in inflation in early 2012, the SBV reduced policy interest rates and the government began to encourage more bank credit to strategic sectors. At the same time, action was taken to address vulnerabilities at a number of small weak banks, and a comprehensive medium-term strategy was adopted to strengthen the financial sector as a whole. According to the World Bank, regaining macroeconomic stability has been costly, but not stabilizing the economy would have led to even bigger losses.

Source: IMF (2012), *Vietnam 2012 Article IV Consultation*, IMF Country Report No.12/165, July. Viewed at: <http://www.imf.org/external/pubs/ft/scr/2012/cr12165.pdf> [28 August 2012]; World Bank (2011), *Taking Stock - An Update on Vietnam's Recent Economic Developments*, prepared for the Annual Consultative Group Meeting for Vietnam Ha Tinh, 8-9 June 2011. Viewed at: <http://siteresources.worldbank.org/INTVIETNAM/Resources/TakingStockEng.pdf> [30 August 2012]; Nguyen Manh Hung and Pham Sy An (2011), *Impacts of the global economic crisis on foreign trade in lower-income economies in the Greater Mekong Sub-region and policy responses: the case of Vietnam and its implications for Lao PDR and Cambodia*, Asia-Pacific Research and Training Network on Trade Working Paper Series, No. 102, May. Viewed at: <http://www.unescap.org/tid/artnet/pub/wp10211.pdf> [17 December 2012]; and Le, Thi Thuy Van (2009), *Vietnam's policy responses to the financial crisis*, East Asian Institute Background Brief No. 447, 14 April. Viewed at: <http://www.eai.nus.edu.sg/BB447.pdf> [17 December 2012].

1.5. Since 2007, changes in the overall sectoral pattern of Viet Nam's GDP and employment have been relatively minor with services remaining the largest sector of the economy (37.2% in 2012) (Table 1.2, section 4.6.1); the GDP shares of agriculture and mining (including oil) have been on the rise, while the share of manufacturing has dropped progressively. Oil production increased steadily until 2004 when it started to decline slowly (section 4.4.2.2); oil production is estimated to rise as several smaller fields are expected to come online by 2015.²⁰ In the global value chain, Vietnamese enterprises seem to undertake only production phases with relatively low value added (section 4.5), while the most profitable phases (processing products, increasing brand value and commercializing products) are undertaken by foreign invested enterprises.²¹

Table 1.2 Basic economic and social indicators, 2007-12

	2007	2008	2009	2010	2011	2012
Real GDP at market prices (đ billion, 1994 prices)	461,344.0	490,458.0	516,566.0	551,609.0	584,496.0	613,884.0
Real GDP at market price (US\$ billion, 1994 prices)	28.6	29.6	28.5	28.3	27.9	29.2
Current GDP at market price (đ billion)	1,143,715.0	1,485,038.0	1,658,389.0	1,980,914.0	2,536,631.0	2,950,684.0
Current GDP at market price (US\$ billion)	71.0	89.6	91.5	101.6	120.9	140.4
GDP per capita at current market price (đ '000)	13,580.3	17,446.7	19,278.0	22,786.8	28,877.9	33,237.6
GDP per capita at current market price (US\$)	843.0	1,052.1	1,063.7	1,168.9	1,376.3	1,581.2
(Annual %age change)						
GDP by economic activity at constant 1994 prices						
Agriculture, forestry, and fishing	3.8	4.7	1.8	2.8	4.5	2.7
Agriculture	2.7	4.7	1.3	2.4	4.2	2.3
Forestry	1.4	1.9	3.5	3.9	5.2	5.8
Fishery	10.6	5.4	4.3	4.4	5.6	4.2
Mining and quarrying	-2.2	-3.8	7.6	-3.7	-0.1	3.5
Manufacturing	12.4	9.8	2.8	8.4	8.3	4.5
Electricity, gas and water supply	8.9	9.4	8.5	10.5	9.3	11.3
Construction	12.1	-0.4	11.4	10.1	-1.0	2.1
Services	8.9	7.4	6.6	7.5	7.0	6.4
Wholesale and retail trade; repair of motor vehicles/cycles	8.8	6.8	7.7	8.1	7.8	6.9
Transportation and storage	11.4	11.9	8.5	8.7	7.1	6.8
Accommodation and food service activities	12.8	8.7	2.3	8.7	7.4	7.0
Information and communication	10.6	10.5	7.2	8.2	6.9	6.0
Finance, banking and insurance	8.8	10.2	8.7	8.3	7.3	7.1
Real estate	4.1	2.5	2.6	2.6	1.8	-1.2
Professional, scientific and technical activities	5.6	4.1	4.3	4.5	3.9	2.9
Education and training	8.8	8.0	6.6	6.9	7.2	7.4
Health care & social relief	8.0	7.8	6.7	7.0	7.3	8.7
Public administration and defence	8.1	6.5	7.3	7.5	7.1	7.3
Other services	8.0	7.0	6.6	6.9	6.4	5.6
(%)						
Share of main sectors in GDP, current prices						
Agriculture, forestry, and fishery	20.3	22.2	20.9	20.6	22.0	21.6
Agriculture	15.6	17.6	16.4	16.1	17.4	16.8
Forestry	0.7	0.7	0.8	0.7	0.7	0.7
Fishery	4.0	3.9	3.7	3.7	3.9	4.2
Mining and quarrying	9.8	9.9	10.0	10.9	11.0	12.6

²⁰ U.S. Energy Information Administration (2012).

²¹ VietNamNet Bridge "Where are Vietnamese goods in the global value chain?", 3 January 2011.

Viewed at: <http://english.vietnamnet.vn/en/business/3357/where-are-vietnamese-goods-in-the-global-value-chain-.html> [5 February 2013].

	2007	2008	2009	2010	2011	2012
Manufacturing	21.1	20.2	20.0	19.6	19.3	18.4
Electricity, gas, and water supply	4.1	3.8	4.2	4.2	4.1	4.1
Construction	7.0	6.4	6.6	7.0	6.4	6.1
Services	37.7	37.4	38.3	37.8	37.2	37.2
Wholesale and retail trade; repair of motor vehicles/cycles	13.4	14.0	14.5	14.3	14.3	14.4
Transportation and storage	3.4	3.4	3.3	3.3	3.1	3.9
Accommodation and food service activities	3.9	3.8	4.1	4.1	4.2	4.1
Information and communication	1.2	1.2	1.2	1.1	1.1	1.0
Finance, banking and insurance	1.4	1.4	1.5	1.5	1.5	1.5
Real estate	2.6	2.4	2.4	2.4	2.3	2.1
Professional, scientific and technical activities	1.5	1.4	1.5	1.4	1.4	1.3
Education and training	3.0	2.6	2.6	2.5	2.6	2.9
Health care & social relief	1.4	1.3	1.3	1.2	1.1	1.1
Public administration and defence	2.7	2.8	2.8	2.8	2.8	2.8
Other services	3.1	3.0	3.1	3.1	3.0	2.1
Share of sector in total employment						
Agriculture, forestry, and fishery	52.9	52.3	51.5	49.5	48.4	47.4
Mining and quarrying	0.7	0.6	0.6	0.6	0.6	0.6
Manufacturing	12.5	12.9	13.5	13.5	13.8	13.8
Electricity, gas, and water	0.5	0.5	0.5	0.5	0.5	0.5
Construction	5.2	5.3	5.4	6.3	6.4	6.4
Services	27.7	28.0	28.0	29.1	30.0	31.1
Wholesale and retail trade; repair of motor vehicles and motorcycles	10.9	11.0	10.8	11.3	11.6	12.3
Accommodation and food service activities	2.4	2.8	3.3	3.5	4.0	4.2
Transport and storage	3.0	3.1	3.0	2.9	2.8	2.9
Information and communication	0.4	0.4	0.5	0.5	0.5	0.6
Financial, banking and insurance activities	0.4	0.4	0.5	0.5	0.6	0.6
Real estate	0.1	0.1	0.1	0.2	0.2	0.3
Professional, scientific and technical activities	0.4	0.4	0.5	0.4	0.4	0.5
Administrative and support service activities	0.3	0.3	0.4	0.4	0.4	0.4
State management & national defense; compulsory social security	3.7	3.6	3.3	3.2	3.1	3.1
Education and training	3.3	3.2	3.3	3.4	3.4	3.4
Human health	0.9	0.8	0.8	0.9	1.0	0.9
Other services	1.9	1.8	1.6	1.9	2.0	1.9
Other	0.4	0.4	0.4	0.4	0.4	0.3

Source: Data provided by the authorities.

1.6. Despite macroeconomic instability, official unemployment remains low, but does not reflect employment trends in the unofficial economy, which seems to comprise almost 70% of the total workforce.²² Overall official unemployment has dropped since 2008, despite a slight surge in 2009 and 2010 (Table 1.1).

²² According to Ministry of Labour data, in 2011 persons in informal employment represented 69.7% (60.4%, 2010) of total employment; reportedly, they were employed mainly in manufacturing (27.3%), trade (27%), and services (other than trade and transportation) activities (National Centre for Labour Market Forecast and Information, 2012; and Michigan State University online information, "Global insights - Vietnam: Economy". Viewed at: <https://globaledge.msu.edu/Countries/Vietnam/economy/>).

1.7. Two bouts of high inflation, in 2008 (23%) and 2011 (18.6%)²³, appear to have originated from external shocks, but were exacerbated by loose macroeconomic policies.²⁴ While the 2008 episode was related to large, insufficiently sterilized capital inflows following WTO accession, reflecting investor optimism, the 2011 bout followed the large 2009 stimulus package (Box 1.1). It was a result of high commodity prices, delayed withdrawal of stimulus measures, and failure to raise interest rates in a timely manner. Sound macroeconomic management and easing of food prices contributed the most to an overall drop in inflation in 2012. The authorities' target inflation rate for 2013 is 6%-6.5%.

1.3 Balance of Payments

1.8. Following its chronic trade deficit in 2008 due to the global economic crisis, Viet Nam has significantly narrowed its large merchandise trade and current account deficits, and shifted them to a surplus since 2011 (current account) and 2012 (trade account). A current account surplus of more than US\$9 billion in 2012 reflected the significant improvement of the trade balance. Between 2008 and 2012, the trade and current account balances as a share of GDP moved from a 14.3% deficit to a 7% surplus, and from a 12.1% deficit to a 6.5% surplus, respectively (Tables 1.1 and 1.3).²⁵

Table 1.3 Balance of payments, 2007-12

(US\$ million)

	2007	2008	2009	2010	2011	2012
Current account	-7,092	-10,823	-6,608	-4,276	233	9,061
Goods and services balance	-11,332	-13,733	-10,028	-7,597	-3,618	6,964
Trade balance	-10,438	-12,783	-7,607	-5,136	-450	9,884
Exports	48,561	62,685	57,096	72,237	96,906	114,573
Imports	58,999	75,468	64,703	77,373	97,356	104,689
Services balance	-894	-950	-2,421	-2,461	-3,168	-2,920
Receipts	6,030	7,006	5,766	7,460	8,692	9,600
Transportation	1,879	2,356	2,062	2,306	2,227	..
Travel	3,750	3,930	3,050	4,450	5,710	..
Other	401	720	654	704	755	..
Payments	6,924	7,956	8,187	9,921	11,860	12,520
Transportation	4,079	4,974	5,508	6,596	8,226	..
Travel	1,220	1,300	1,100	1,470	1,710	..
Other	1,625	1,682	1,579	1,855	1,924	..
Income balance	-2,190	-4,401	-3,028	-4,564	-4,834	-6,115
Credit	1,166	1,357	753	456	395	295
Debit	3,356	5,758	3,781	5,020	5,229	6,410
Current transfers	6,430	7,311	6,448	7,885	8,685	8,212
Private transfers	6,180	6,804	6,018	7,569	8,326	7,912
Official transfers	250	507	430	316	359	300
Financial account	18,011	12,341	6,755	6,201	6,490	8,330
Direct investment	6,797	9,279	6,900	7,100	6,569	7,168
Viet Nam's direct investment abroad	-184	-300	-700	-900	-950	-1,200
Foreign direct investment in Viet Nam	6,981	9,579	7,600	8,000	7,519	8,368
Medium and long term loans	79	1,971	256	1,043	1,615	1,306
Disbursements	1,404	11,414	5,588	8,386	14,568	16,011
Scheduled amortization	-1,325	-9,443	-5,332	-7,343	-12,953	-14,705
Short term loans	2,269	992	4,473	2,751	3,285	3,908
Disbursements	3,640	2,441	6,140	4,671	5,706	7,410
Scheduled amortization	-1,371	-1,449	-1,667	-1,920	-2,421	-3,502

²³ For four years in a row, Viet Nam has had one of the highest inflation rates in Asia (VDR, 2012).

²⁴ IMF (2012); and World Bank (2011).

²⁵ World Bank (2011).

	2007	2008	2009	2010	2011	2012
Portfolio investment	6,243	-578	-71	2,370	1,460	1,990
Assets	..	..	-199	-13	349	-103
Liabilities	..	..	128	2,383	1,111	1,887
Money and deposits	2,623	677	-4,857	-7,063	-6,439	-6,042
Banks	..	677	-160	-503	445	107
Other sectors	..	0	-4,697	-6,560	-6,884	-6,149
Net errors and omission	-720	-1,045	-9,022	-3,690	-5,574	-5,524
Overall balance	10,199	473	-8,875	-1,765	1,149	11,867

.. Not available.

Source: Data provided by the authorities.

1.9. According to the IMF, standard measures of reserve adequacy indicate that Viet Nam's international reserves remain low.²⁶ Its foreign exchange reserves dropped significantly between 2008 (a peak year) and 2011 (Table 1.1), due to the impact of the global economic crisis, although reserves were higher than their 2010 level, underpinned by domestic and foreign investors' acquisitions of dong assets. In 2012, foreign exchange reserves rose significantly, as a result of monetary policy measures to stabilize the economy (section 1.4.1.1), and had risen further by February 2013.

1.10. Viet Nam's external debt position has historically been low, but rose from 29.8% of GDP in 2008 to 41.5% in 2011 (Table 1.1) due to increased demand for capital development related to the country's industrialization and modernization in recent years.²⁷ Its debt service-to-exports ratio deteriorated somewhat in 2009 (Table 1.1); on the other hand, according to the IMF, coverage of external short-term debt, at well over 100%, seems adequate. Most of the public and publicly guaranteed external debt is concessional with long maturities and a fairly diversified currency composition; large foreign direct investment inflows have provided significant non-debt-creating financing.²⁸

1.4 Key Policy Developments

1.4.1 Macroeconomic policies

1.4.1.1 Monetary and exchange rate policies

1.11. According to the authorities, monetary policy is set on the basis of a balance between controlling inflation and supporting sustainable economic growth. As from 2011, controlling inflation and stabilizing the macro-economy became the priority; until then Government policy favoured rapid economic growth, and this was behind the bouts of high inflation in 2008 and 2011 (section 1.2).²⁹ Despite the tightening of 2011 monetary-policy (Box 1.1), which meant that policy interest rates were raised, a credit growth ceiling was imposed (section 4.6.4.1), and investment by government and SOEs was contained. The SBV responded to pressure to support economic growth by cutting interest rates in five successive rounds by a cumulative 5% in 2012, despite the risk of another inflationary surge. According to the IMF, the interest rates reduction and a modest fiscal support were expected to cushion adverse effects from slowing domestic demand and the projected slowdown in Europe and Asia.

1.12. According to the IMF, Viet Nam operates a "soft" peg exchange-rate system anchored to the U.S. dollar. Its exchange-rate arrangement is classified as "stabilized", and the *de jure* arrangement is floating "under management".³⁰ The dong (₫) has faced continuous downward pressure due to a persistent trade imbalance. On 11 February 2011, the SBV announced a

²⁶ IMF (2012).

²⁷ According to IMF estimates these indicators are 32.4% (2008) and 40.9% (2011).

²⁸ IMF (2012).

²⁹ EIU (2012c); and IMF (2012).

³⁰ Pursuant to the Decree No. 160/2006/ND-CP of 28 December 2006, Viet Nam operates a floating exchange rate mechanism administered by the State Bank of Viet Nam on the basis of the monetary baskets of the countries having trade, borrowing, debt-payment and investment relations with Viet Nam according to specific macro-economic objectives in each period (Article 39) (IMF, 2012; and IMF, 2011, Appendix Table II.9).

devaluation of 9.3% of the inter-bank average exchange rate (or 8.5% of nominal exchange rate) of the dong, the seventh and by far the biggest in nearly three years, and narrowed the trading band from $\pm 3\%$ to $\pm 1\%$; it has indicated that the official rate would be set more flexibly to align with market rates.³¹ In 2011, the nominal exchange rate of the dong was devalued by an overall 10.2% (annual average rate, Table 1.1), or 1.1 percentage point more than in 2010, while its real effective exchange rate (REER) appreciated by 3.7% (2011), largely reflecting high inflation. Following the February 2011 devaluation and subsequent tightening of monetary policy, the exchange rate gradually stabilized, the parallel market almost disappeared³², "dollarization" was pushed back, confidence in the dong steadily improved, and for the first time in three years, the dong was trading on the interbank market within the allowed range.³³ According to the IMF, the dong is broadly in line with fundamentals. Viet Nam's exchange system is free of restrictions on the making of payments and transfers for current international transactions, except for those exchange restrictions imposed for security reasons.

1.4.1.2 Fiscal policies

1.13. Following a peak fiscal deficit of 7.2% of GDP in 2009, reflecting the impact of the stimulus package (Box 1.1), by 2011 the deficit had been gradually brought to its 2007 level of 2.5% of GDP (Table 1.1) due largely to revenue collection exceeding expectations, and significant public investment spending reduction, both by the budget and by SOEs.³⁴ According to government data, between 2008 and 2012 virtually all fiscal deficit targets were met (except for 2009). The 2012 State Budget highlighted six priorities: fiscal discipline; increasing the relative share of social expenditure and enhancing public investment efficiency; "equitization" and oversight of SOEs (section 1.4.2.2); accountability of decentralized service delivery units; reducing price volatility; and improving efficiency of public administration. Tax collection is a challenge as overdue taxes in the first nine months of 2012 reached 6.8% of total tax collection, with SOEs accounting for over 13% of the total owed, much less than their contribution to GDP (section 1.4.2.2).³⁵ Despite continued high spending on infrastructure and social welfare programmes the fiscal deficit is expected to be kept in the targeted range during 2013-16, due to a forecast of strong growth in nominal GDP and high global prices for crude oil, which provides substantial tax and royalty revenue.³⁶ Viet Nam's 10-year Financial Strategy to 2020 envisages an overall decline in revenues from tax and charges from an average of 22%-23% of GDP during 2011-15 to 21%-22% of GDP in 2016-20, led by a drop in oil and trade tax revenues, as large offshore oil fields mature, and as tariffs are reduced under WTO commitments, regional and bilateral trade agreements (sections 2.3.2, 2.3.3 and 3.2.2), and unilateral tariff reductions aimed, *inter alia*, at rendering the tariff more uniform for groups of similar products. Domestic revenues (excluding revenues from crude oil) would account for over 70% of total State budget revenue by 2015 and for over 80% by 2020.³⁷ To compensate partially for this revenue loss, the plan envisages a significant rise in revenues from business taxes (corporate income tax, royalties, and value-added tax) and to a lesser extent, personal income taxes (section 1.4.2.1).³⁸

1.4.2 Structural policies

1.14. In early 2012, Viet Nam unveiled a broad "three pillar" economic reform programme, proposing the restructuring of public investment, SOEs, and the banking sector (sections 3.4.8 and

³¹ The authorities indicated that during 2007-10 the volatility of $\text{đ}/\text{US\$}$ exchange rate was complicated mainly due to the shift of indirect investment cash flows into Viet Nam and the impact of the global economic crisis. Since 2007, the SBV has adjusted the exchange rate 12 times (10 upwards, 2 downwards).

³² The Government last attempted to close down the foreign currency parallel market in 2008, when inflation hit 28% as the economy overheated amid inflows of hot money, but the trade resumed shortly afterwards. In 2011, people were only allowed to buy U.S. dollars for specified purposes such as paying for imports and remitting money overseas so many turned to the parallel market, where the dong has often been traded well below the official exchange rate (*Financial Times*, "Crackdown fears chill Vietnam's dollar black market", 8 March 2011. Viewed at: <http://www.ft.com/cms/s/0/ee427a5e-4957-11e0-b051-00144feab49a.html#axzz2LR6N1yBX> [20 February 2013]; and World Bank, 2011).

³³ World Bank (2011).

³⁴ IMF (2012).

³⁵ *Việt Nam News*, "Tax collection below target makes balancing the budget a challenge", 12 October 2012. Viewed at: <http://en.vietnamplus.vn/Home/Tax-collection-below-target-challenges-budget-balance/201210/29160.vnplus> [30 January 2013].

³⁶ EIU (2012c).

³⁷ Prime Minister Decision No. 450/2012/QĐ-TTg, 18 April 2012.

³⁸ IMF (2012).

4.6.4.1).³⁹ Especially in the context of continued global economic uncertainty, the aim is to shift to a higher growth path and, at the same time, avoid recurring macroeconomic imbalances, such as those seen since 2006/07.⁴⁰

1.4.2.1 Tax reform

1.15. Several tax reforms have been undertaken with the objective of: building a "synchronous", consistent, fair, and effective tax system suitable for "socialist-oriented market economy" institutions; setting reasonable incentives to facilitate domestic production and serving as an effective tool for macroeconomic management; and ensuring consistent and transparent management of taxes, fees and charges, and simple tax administration procedures, in accordance with international practice. New taxation laws were introduced in 2009, including the Corporate Income Tax (CIT) Law and the Value Added Tax (VAT) Law, effective 1 January 2009, and the Special Sales Tax Law, effective 1 April 2009, except for the provisions on spirits and beer, which entered into effect on 1 January 2010. The 2009 income tax structure applied the same CIT rate (25%) to Vietnamese and foreign workers, although certain preferential CIT rates remain, in the form of tax incentives; it also broadened the tax base significantly (sections 3.2.6 and 3.4.1).⁴¹ A reformed Law on personal income tax (PIT), issued in 2007, entered into effect on 1 January 2009. The 2010 Environmental Protection Tax and Non-Agricultural Land Use Tax, comprising tax reductions and exemptions for, *inter alia*, land investment incentives, entered in force in January 2012 (section 3.2.6). Furthermore, in February 2012, an export duty exemption was introduced for construction materials brought from the domestic market into the tariff-free zones (section 3.4.5) for construction, repair, and maintenance of common technical and social infrastructure in these areas.⁴² Import tariffs on gas and energy were adjusted according to the fluctuations of world fuel prices (section 4.4.2.2). In 2012, the share of trade taxes to GDP and total tax revenue was 2.5% (3.4% in 2007) and 10.1% (12% in 2007), respectively.⁴³ Despite its stated objective of reducing tax incentives (section 3.4.1), the Government maintained certain tax holidays, including extension of the declaration time for and reduction of corporate income tax, extension of the payment deadline for VAT, and similar extension and reduction of land rent and land use fees in 2011 and 2012; in 2013, further tax incentives for enterprises were passed.⁴⁴ Forgone tax revenue was estimated at \$5.4 trillion in 2012.

1.16. To compensate for the fiscal revenue loss expected under the 10-year Financial Strategy (budget) plan (section 1.4.1.2), the Government proposed a five-stage tax reform plan to reduce tax incentives in order to create a shift in resource allocation, and encourage and attract investment focused on the development of areas with extremely difficult socio-economic conditions and on a few important sectors under its overall development policy (section 3.4.1). However, according to the IMF, some changes in this plan, such as cutting the CIT rate from 25% to 22%, and eliminating the top rate of the PIT and raising its threshold, which already seems high by international standards, threaten to undermine domestic tax revenue.⁴⁵ Three significant tax policy reform measures are seemingly envisaged for 2013 and 2014: revision of the 2008 VAT Law

³⁹ Central Intelligence Agency online information, "The World Factbook". Viewed at: <https://www.cia.gov/library/publications/the-world-factbook/geos/vn.html> [23 January 2013]; and Michigan State University online information, "Global insights - Vietnam: Economy". Viewed at: <https://globaleledge.msu.edu/Countries/Vietnam/economy>.

⁴⁰ World Bank (2011).

⁴¹ Between 1999 and 2009, the CIT rate was reduced three times: 32% for domestic enterprises, 25% for foreign invested enterprises in 1999 (Law on CIT 1997); 28% for both domestic foreign-capital invested enterprises in 2004 (Law on CIT 2003); and 25% since 2009. This CIT rate is applied uniformly, irrespective of private or public ownership. Tax incentives are applied to newly established enterprises from investment projects in geographical areas with difficult or extremely difficult socio-economic conditions, economic zones, high-tech zones, investment projects in the fields of high technology, scientific research, and technology development, investment in developing particularly important infrastructure of the State, producing software products; enterprises operating in the fields of education, health, culture, sports, and the environment, which meet the socialization criteria prescribed in the regulations by the Prime Minister, the People's credit funds, microfinance organizations, and agricultural service cooperatives. CIT incentives for investment expansions, a major element for achieving cost reductions associated with economies of scale and growth in TFP, were eliminated (section 4.5.2) (EIU, 2012b).

⁴² Ministry of Finance Circular No. 11/2012/TT-BTC, 2 April 2012.

⁴³ GFS and IMF estimates, as no comprehensive data series were available from the authorities.

⁴⁴ Government Resolution No. 13/NQ-CP, 10 May 2012; National Assembly Resolution No. 29/2012/QH13, 21 June 2012; Resolution No. 02/NQ-CP, 7 January 2013; and World Bank (2011).

⁴⁵ IMF (2012).

(possibly in 2013); revision of the 2008 CIT Law (*idem*); and preparatory work aimed at modernizing the 2005 Law on Export and Import Taxes, with implementation expected in 2015.

1.4.2.2 Privatization

1.17. Twenty-seven years after the launch of *Doi Moi*, state ownership remains an important feature of Viet Nam's economy of state capitalism; a few SOEs, apparently taking advantage of weak oversight and transparency, have expanded their operations into areas beyond their core competency (sections 3.4.8, 4.4.1, 4.4.2, 4.6.4, 4.6.5 and 4.6.6).⁴⁶ The state sector remains relatively large, accounting for 33% of GDP in 2011 (35.9% in 2007) (Table 1.5). While it has become smaller, the trend towards "equitization"⁴⁷, divestment, mergers, acquisitions, and liquidation, was reversed in 2009 and 128 new wholly state-owned enterprises were added, a pattern that persisted during 2010 and 2011.⁴⁸ In 2012, Viet Nam was estimated to have 1,309 wholly state-owned enterprises managed by up to 101 state bodies. According to the report of the Steering Committee for Enterprise Renovation and Development, the total pre-tax profit of state-owned corporations and groups was ₫127.5 trillion in 2012 (down 5% on 2011); the total paid to the budget was ₫294 trillion (down 12% on 2011), and losses were ₫2.2 trillion (accumulated losses in the financial statements, totalling ₫17.7 trillion).⁴⁹ SOEs seem largely domestically oriented and not major exporters possibly due, *inter alia*, to lack of international competitiveness resulting from their relative inefficiency and their dominant position in several activities (Table 1.5, section 3.4.8). SOE reform seems to have comprised simultaneous renovation and preservation. There is strong popular support for restructuring SOEs, and it is a top priority in the 2011-2015 Socio-Economic Development Plan. A 2012 Master Plan to restructure SOEs during 2011-15, set targets, duties, solutions, and implementation measures focused on core businesses, development strategies, production rearrangement schemes, restructuring subsidiary enterprises, financing, and reforming corporate governance, and technology.⁵⁰ According to a 2011 classification and restructuring plan, the 1,309 SOEs with 100% state capital are to be: maintained under state-ownership (692 enterprises); "equitized", with the state holding the majority of shares (573 enterprises); dissolved (13 enterprises); or transformed into limited liability companies (31 enterprises).⁵¹ The Prime Minister has approved the overall plans for restructuring of SOEs under the supervision of ministries; sectors and localities; economic groups; and 91 corporations for 2011-15. The corporations will try to withdraw their capital from non-core business areas.⁵² According to the IMF, reform of SOEs is essential to reduce risks to the economy and raise productivity, and is critical for longer-term growth prospects. The World Bank and other donors are urging Viet Nam to advance the reorganization and restructuring of SOEs, and to improve corporate governance (section 1.4.2.4).⁵³

1.4.2.3 Competition policy

1.18. Distortions to competition can be the consequence of government intervention policies and of weak policies to address anti-competitive practices of large business groups, including those of SOEs. Viet Nam's challenge is to establish an enabling environment at the level of individual industries and sectors by enhancing domestic competition (section 3.4.9), and to increase its

⁴⁶ The authorities indicated that SOEs have the right to conduct business autonomously as all other types of enterprises, and expanding business operations into sectors outside their core-competency does not infringe any law (VDR, 2012; and IMF, 2012).

⁴⁷ As of July 2012, around 5,900 state-owned companies had been restructured; 68% of these companies were equitized, while the rest became limited companies.

⁴⁸ According to the report of the Steering Committee for Enterprise Renovation and Development most of these new SOEs have been transformed from public service units, dependant-accounting enterprises, or project management boards. Among them 72 enterprises are under the supervision of ministries and localities mainly providing public services, and 56 enterprises are subsidiaries of economic groups, corporations, or state-owned enterprises operating in the holding company model.

⁴⁹ *VietnamNet*, "When SOEs are governed by 101 agencies", 11 July 2012. Viewed at: <http://english.vietnamnet.vn/fms/special-reports/53660/when-soes-are-governed-by-101-agencies.html>; and "State-owned groups report losses of nearly \$62 billion to the PM, 16 January 2013 [30 January 2013].

⁵⁰ Prime Minister Decision No. 929/QĐ-TTg, 17 July 2012; and World Bank (2011).

⁵¹ Prime Minister Decision No. 14/2011/QĐ-TTg, 3 April 2011, and Prime Minister Decision No. 929/QĐ-TTg, 17 July 2012.

⁵² *Việt Nam News*, "State-owned groups submit restructuring plans", 8 October 2012. Viewed at: <http://vietnamnews.vn/Domestic-Press-Highlights/231090/tan-rai-bauxite-plant-set-to-open-next-month.html> [30 January 2013].

⁵³ IMF (2012).

exposure to foreign competition in order to achieve more productivity-led growth.⁵⁴ Its 2004 Law on Competition aims to create an equitable and non-discriminatory competition environment, and protect and encourage fair competition. Since 2008, a few competition-related regulatory developments have involved, *inter alia*, telecommunications services (ownership, unfair competitive practices), the freedom to sell (e.g. distributorship), and price controls (registration of 17 prices and services, electricity pricing) (sections 3.4.9, 4.6.5.1, and 4.6.7).⁵⁵ Since accession to the WTO, a gradual opening to foreign services providers in numerous sectors has begun, as has a curtailing of subsidies that distort market access and competition (section 3.4.1).⁵⁶ Nevertheless, in some industries (i.e. electricity, aviation, and telecommunications), SOEs have a *de facto* monopoly, with a market share of at least 80% (sections 4.4.2.1, 4.6.5.1, and 4.6.6.2). Other heavily regulated industries tend to have some foreign and private-sector participation, but are dominated by state-owned oligopolies, e.g. several large enterprises with a market share of 10% to 40% each.⁵⁷ The authorities remain concerned about potential job losses and corporate insolvencies after free rein is given to market forces in sensitive activities dominated by SOEs.

1.4.2.4 Corporate governance and anti-corruption action

1.19. Corporate governance in Viet Nam seems to be at an early stage of development, with opportunities for improvement.⁵⁸ Regulations were issued in 2007 based on the OECD Principles of Corporate Governance; in 2011, Corporate Governance Guidelines were being updated to implement the "best international practice on corporate management suitable to the conditions of Viet Nam to ensure a stable development of stock market and a transparent economy". Improved corporate governance, including transparency, usually reduces the cost of capital.

1.20. Lack of transparency, and thus lack of public accountability, creates scope for administrative discretion and therefore corruption. Viet Nam has shown its resolve and determination to prevent and fight corruption, which may have an adverse impact on growth.⁵⁹ The fight against corruption has moved up the political agenda as changing social norms and growing public anger about corruption and the system's perceived unfairness seem to be increasing pressure for change.⁶⁰ Viet Nam's legal framework for curbing corruption is now well developed and considered to be among the most comprehensive in Asia. It was further strengthened in 2013.⁶¹ Viet Nam ratified the United Nations Convention against Corruption (UNCAC) in August 2009.⁶² Nevertheless, weak implementation and the lack of independent anti-corruption agencies still present hurdles to the fight against corruption, which seemingly remains rampant and systemic; as a result, Viet Nam ranks relatively low in international comparisons.⁶³

⁵⁴ McKinsey Global Institute (2012).

⁵⁵ U.S. Commercial Service (2011); and EIU (2012a).

⁵⁶ EIU (2012a).

⁵⁷ These include cement, sugar refining and sales, minerals, banking and petroleum (sections 4.4.1, 4.4.2.2, and 4.6.4.1), where prices tend to be high and most enterprises seem neither efficient nor competitive (EIU, 2012a).

⁵⁸ Among the CG (corporate governance) Scorecard findings for 2011 was that developments in Viet Nam continued to be led by regulatory and legislative developments. The public-listed companies performed poorly regarding: responsibilities of the board, and disclosure and transparency. Financial information was observed as often being incomplete, late, and unreliable. Shareholders had not been fully exercising their rights as established in law and regulations (International Finance Corporation and Global Corporate Governance Forum in collaboration with the State Securities Commission of Vietnam, 2011).

⁵⁹ Corruption, *inter alia*, lowers investment, slows economic growth, through a wide range of channels; it, *inter alia*, reduces the effectiveness of aid flows, and brings about loss of tax revenue (Mauro, 1997).

⁶⁰ Global Integrity Report online information "Vietnam Highlights 2011". Viewed at: <http://www.globalintegrity.org/report/Vietnam/2011> [4 December 2012].

⁶¹ For example, the Law amending and supplementing a number of articles of the 2005 Law on anti-corruption became effective on 1 February 2013. It provides more stringent provisions on preventing and combating corruption and the creation of independent anti-corruption steering committees at the central and local levels is an important step in the fight against corruption.

⁶² However, Viet Nam has announced that it will not hold to Item 2, Article 66 of the UNCAC, under which members have the right to bring disputes concerning the interpretation or application of the UNCAC to international arbitration courts. It has also chosen not to adhere to some of UNCAC's optional measures as these are not yet covered by national law. For more information on the fight against corruption in Viet Nam, see Business Anti-Corruption Portals, "Vietnam Country Profile". Viewed at: <http://www.business-anti-corruption.com/country-profiles/east-asia-the-pacific/vietnam/snapshot/>.

⁶³ In 2012, Viet Nam ranked 123rd (out of 174 countries) in the *Corruption Perceptions Index 2011*. This result represents a significant slide from the 112th position (out of 182 of countries) in 2011. Nevertheless, the authorities indicated that change in ranking cannot be used to compare performance between the years.

1.4.2.5 Labour market policies

1.21. Viet Nam's recent labour market liberalization efforts included reducing restrictions on labour mobility of underemployed people in rural areas moving to new jobs in urban and "peri"-urban areas, as well as successive modifications to the Labour Code that, *inter alia*, formalized labour-hiring practices.⁶⁴ In March 2008, Viet Nam abolished caps on the number of foreign workers that foreign-invested enterprises may hire and introduced procedures for obtaining work permits for these employees.⁶⁵ To address labour unrest, the Government has raised minimum wages annually since 2008. In 2011, a year of high inflation that led to an effective wage decrease, some companies had to increase salaries on four occasions to appease workers and stave off strikes, and the government raised the minimum wage by up to 49% in key industrial areas to ₫2 million (US\$95).⁶⁶ As of October 2011, Viet Nam eliminated the regionally based minimum-wage differences between employees of domestic companies and foreign-invested enterprises whose minimum wages were higher in the past.⁶⁷ A 2012 Labour Code, which entered to force in May 2013, deals, *inter alia*, with working time, overtime, temporary labour-supply companies and business closure to prevent losses during a strike, and introduces new provisions to govern manpower outsourcing services, industrial labour collective agreements, and employment of housemaids. There seems to be private-sector concern over some elements of the 2012 Code (e.g. overtime, working time, probationary period) that may affect directly or indirectly labour costs, therefore Viet Nam's competitiveness.⁶⁸

1.5 Composition and Pattern of Trade

1.22. The openness of Viet Nam's economy is such that since 2007 its dependence on foreign trade has remained high and has been characterized by a rising trend in exports and a drop in imports, depending on endogenous and exogenous economic developments.⁶⁹ The ratios of exports and imports of goods and services to GDP were 88% and 83.5% in 2012, compared with 76.9% and 92.7% in 2007 (Table 1.1). Trade in services remains a minor component of Viet Nam's foreign trade (Tables 1.1 and 1.3, section 4.6.1).

1.23. In recent years, the composition of merchandise trade has changed, reflecting domestic economic developments. Labour-intensive and low-valued-added manufacturing (textiles and clothing, machinery, section 4.5) and food items remain Viet Nam's main exports, while the country is steadily making inroads into high value-added products.⁷⁰ The share of manufactured products rose from 54.4% (2007) to 64.2% (2011) (Chart 1.1), while the share of mining (mainly fuels) dropped from 21.5% in 2007 to 12.2% in 2011. Agriculture's share of imports rose, while the share of mining products dropped (Chart 1.1, Tables A1.1 and A1.2).

Furthermore, in 2011 the Global Integrity performance indicators for Viet Nam were considered very weak (overall rating 44%) (Transparency International online reports. Viewed at: <http://cpi.transparency.org/cpi2011/results/> and <http://www.transparency.org/cpi2012/results> [24 January 2013]; Global Integrity Report online information "Vietnam Highlights 2011". Viewed at: <http://www.globalintegrity.org/report/Vietnam/2011> [4 December 2012]; and U.S. Commercial Service, 2011).

⁶⁴ VDR (2012).

⁶⁵ Decree 34/2008/ND-CP and Circular 8, both issued by the Ministry of Labour, Invalids and Social Affairs (MoLISA) in March 2008 (EIU, 2012a).

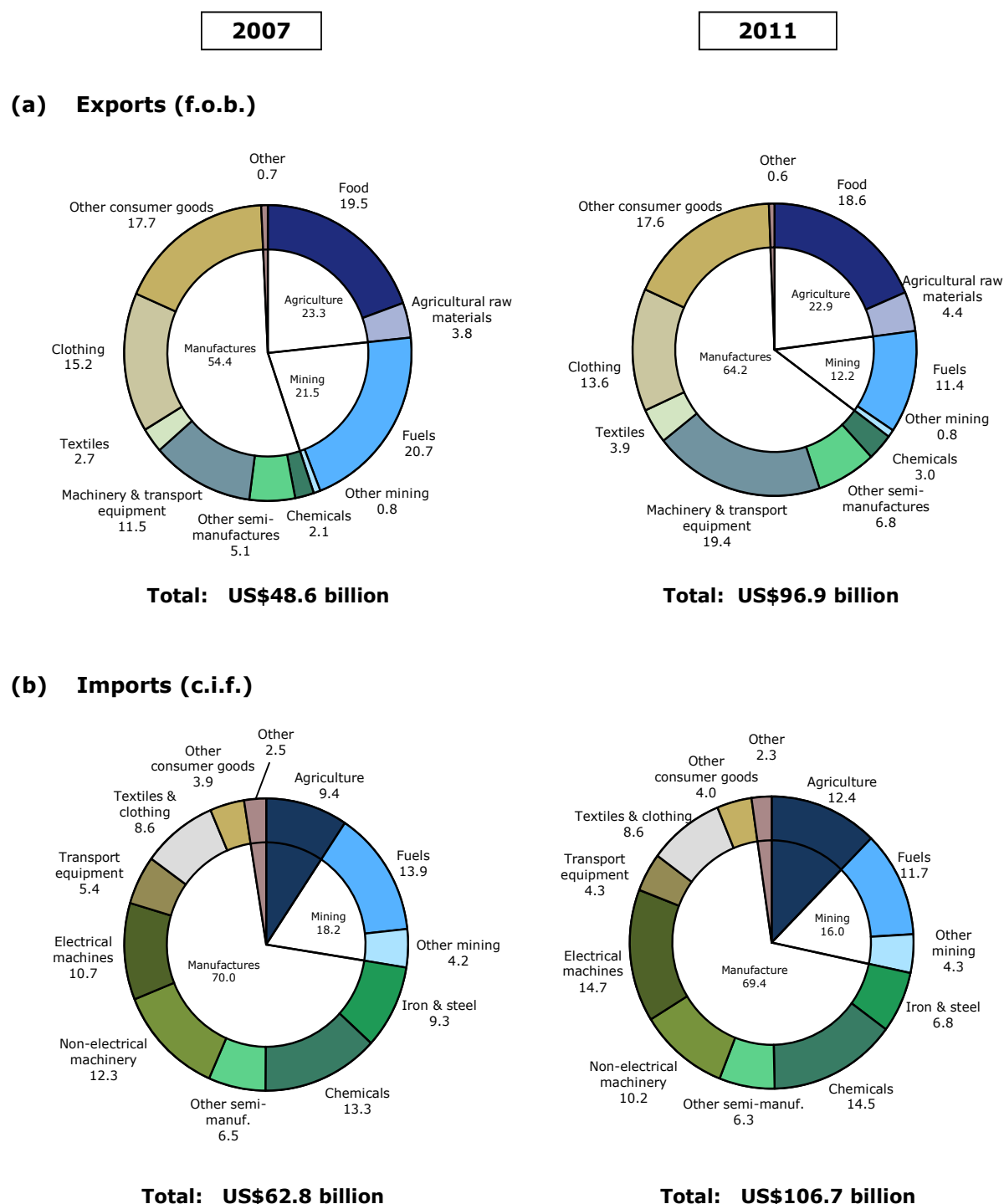
⁶⁶ There were 857 strikes in the first 11 months of 2011, more than double the number in 2010 and in 2008, the previous record year, when inflation peaked. Wages for unskilled factory workers in Viet Nam remain considerably lower than in China, at around US\$100 a month (compared to US\$300) (*Financial Times*, "Vietnam's factories grapple with growing unrest, 19 January 2012. Viewed at: <http://www.ft.com/cms/s/0/67380b5c-427e-11e1-97b1-00144feab49a.html#axzz2VLqDI3Zf>).

⁶⁷ As a result the same region-based minimum wage level has been applied for individuals working for Vietnamese companies, enterprises, cooperatives, cooperative groups, farms, households, and individuals as well as for other employing organizations (Decree 70/2011/ND-CP issued in August 2011 and implemented on 5 October 2011; and EIU, 2012a).

⁶⁸ Labour Code No 10/2012/QH13, 18 June 2012. Viewed at: <http://www.dfdl.com/easyblog/entry/vietnam-new-labour-code-2012> [15 May 2013]; *Việt Nam News*, "Employers complain amended Labour Code is 'heavy burden'", 9 May 2013; and European Chamber of Commerce in Vietnam (2013).

⁶⁹ For example, the 2008 global financial crisis impacted exports via the slowdown in foreign economies, the slowdown of the domestic economy, the reduction in commodity prices, and protectionist measures in overseas markets.

⁷⁰ World Bank (2011).

Chart 1.1 Product composition of merchandise trade, 2007 and 2011**Per cent**

Source: UNSD, Comtrade database (SITC Rev.3).

1.24. The direction of merchandise trade, which remains relatively diversified, is oriented towards Asia, Viet Nam's main supplier and significant market. There has been a minor shift away from the markets of the EU and the United States, which remain the main individual export destinations for Vietnamese products. According to the authorities, this shift resulted from the implementation of trade-related commitments (possibly involving trade diversion effects), the application of unfavourable trade measures in Viet Nam's main export markets (EU, United States, Japan),

especially for agricultural and fisheries products, and the global economic crisis, which has affected bilateral trade relations with major trading partners. Whereas exports to these and other trading partners (e.g., Australia, Japan)⁷¹ fell between 2007 and 2011, exports to other Asian partners increased, with China's share rising from 7.5% to 11.5% (Chart 1.2, Table A1.3). During the same period, the shares of China, Viet Nam's major merchandise supplier, and Korea (Rep. of) in total imports rose; Korea (Rep. of) became Viet Nam's second major individual supplier (Chart 1.2 and Table A1.4). UNESCAP estimates that Viet Nam's regional trade agreements cover 69% of its international trade, possibly in both goods and services.⁷² It remains to be seen whether the signing and implementation of the Trans-Pacific Partnership (TPP) Agreement will provide a fresh boost to Vietnamese exports, especially through access to new markets in Latin America (section 2.3.3).

1.6 Trends and Patterns in Foreign Direct Investment

1.25. Following its WTO accession, Viet Nam's foreign direct investment (FDI), surged together with a boom in the stock exchange and the real estate sector.⁷³ FDI inflows peaked in 2008, then dropped to a low in 2011 (Table 1.3) as a result of investors' worries about high inflation, currency depreciation, and strained public finances; FDI inflows rose again in 2012.⁷⁴ Furthermore, between 2008 and 2011, the total value of licensed projects fell by almost 75%, then rose slightly in 2012 (Chart 1.3). Nevertheless, according to the authorities, disbursed FDI remained stable over the years (US\$10 billion to US\$11 billion) and a number of measures were undertaken to attract FDI.⁷⁵ In 2012, inward FDI in the form of licensed projects originated mainly from Japan, Chinese Taipei, Singapore, and the EU; 71.6% of the projects were in manufacturing, while services attracted another 26.2% (Chart 1.3). During 2009-11, Viet Nam attracted 11.5% of all Asia-Pacific "Greenfield" FDI, mainly in the coal, oil, and natural gas industry.⁷⁶ Viet Nam aims to attract US\$15 billion in FDI in 2013.

1.26. Up to 2010, foreign investment took two major forms: 64.5% (62% in 2007) was made by 100% foreign-owned companies, and 35.5% (38% in 2007) through joint-ventures.⁷⁷ In 2011, Foreign Invested Enterprises (FIEs)⁷⁸ were estimated by the authorities to account for 19% of GDP, 56.9% of exports (they seem more efficient and therefore more competitive than SOEs), and for 23% of employment (Table 1.4). Although they account for less than 3% of all enterprises in Viet Nam, because of their large size, they account for more than a third of the Government's collection of taxes and fees. FIEs have not only been the basis for the surge in exports, but they have also driven product and market diversification.⁷⁹ Overall, Viet Nam's economy remains an attractive destination for foreign investors and has potential for long-term growth. However, the risk of macroeconomic instability may curtail economic growth and adversely affect the confidence of foreign investors.⁸⁰

⁷¹ Furthermore, in the first quarter of 2012, exports to Japan rose by nearly 55% on account of crude oil, transportation parts, and seafood, as Japan's domestic production has been affected by the earthquake and tsunami (World Bank, 2011).

⁷² Nevertheless, according to WTO Secretariat calculations, based on UNSD Comtrade data, the share of merchandise trade (imports, exports) with partners that are signatories of preferential trade agreements with Viet Nam was 23.1% in 2011 (UNESCAP, 2011; and World Bank, 2011).

⁷³ FDI brings with it technological and management know-how, which contribute to improved TFP. A deterrent to FDI is lack of protection for IPRs (Nguyen Manh Hung and Pham Sy An, 2011).

⁷⁴ UNESCAP (2012).

⁷⁵ These measures include: reviewing the master plan; projects raising funds for investment; reforming administrative procedures to shorten time for licensing; and public information on regulations and incentives for investors.

⁷⁶ UNESCAP (2012).

⁷⁷ Foreign investment measured as value of fixed asset and long-term investment of enterprises (General Statistics Office of Vietnam, 2011, Table 48).

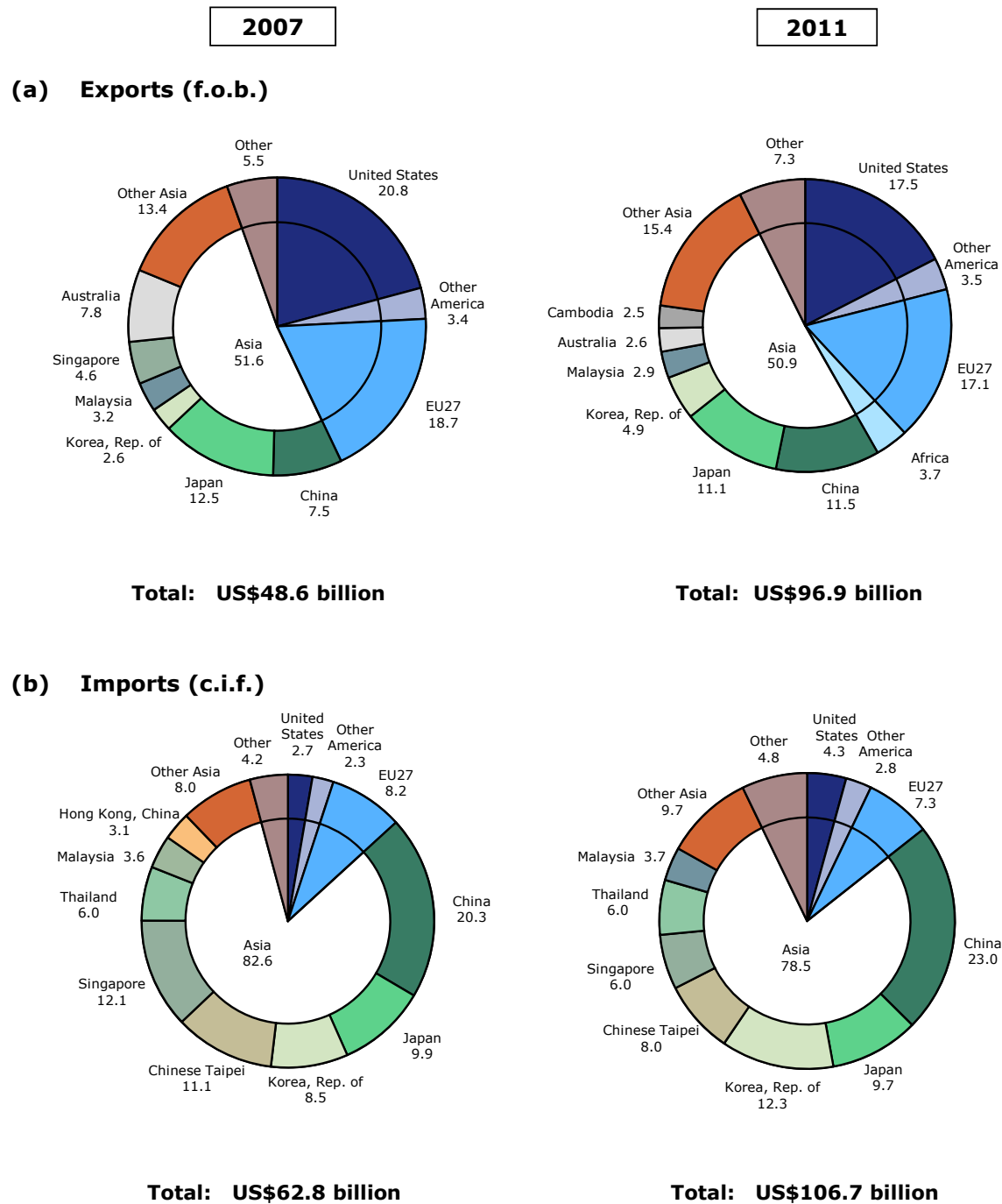
⁷⁸ Foreign direct invested enterprises are enterprises with capital directly invested by foreigners, entirely or partly (joint ventures) (General Statistics Office of Vietnam, 2011, pp. 189-190).

⁷⁹ UNCTAD (2008).

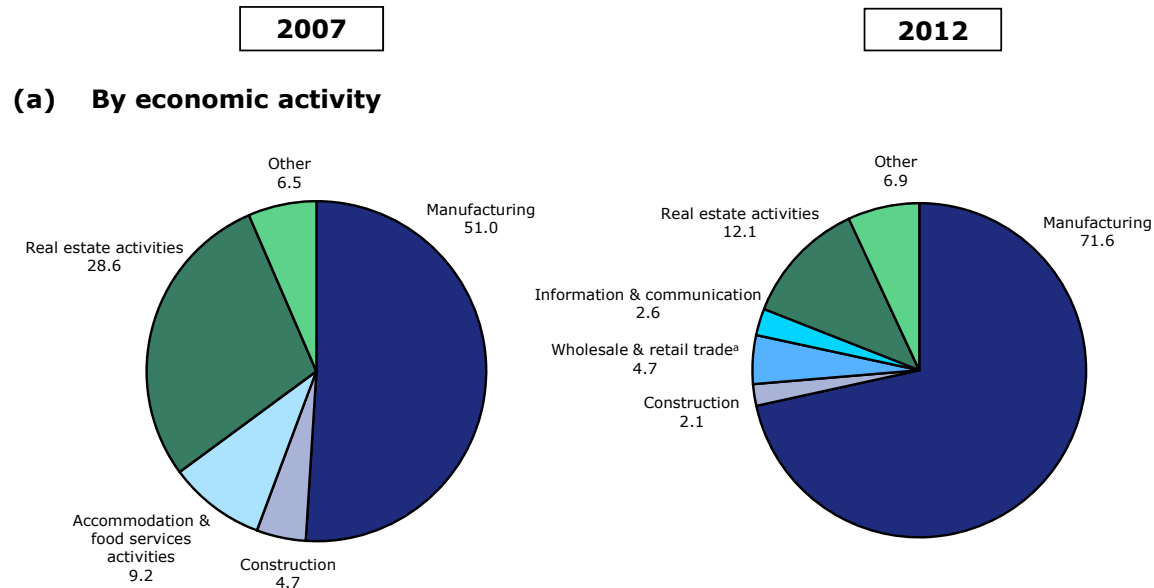
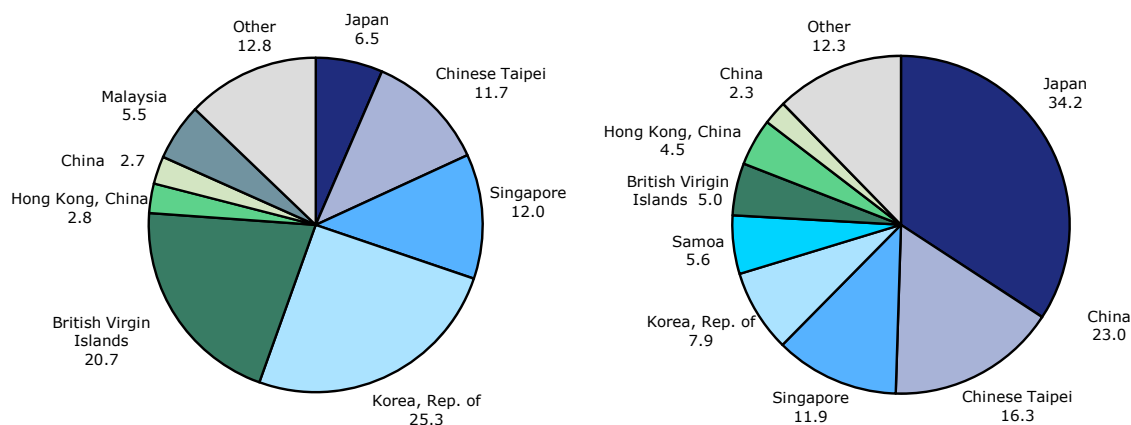
⁸⁰ UNESCAP (2011).

Chart 1.2 Direction of merchandise trade, 2007 and 2011

Per cent



Source: UNSD, Comtrade database.

Chart 1.3 Foreign direct investment projects licensed, 2007 and 2012**Per cent****(b) By country****Total: US\$21.3 billion****Total: US\$16.3 billion**

a Wholesale and retail trade, including repair of motor vehicles and motorcycles.

Note: Total refers to total registered capital, including supplementary capital of licensed projects in previous years.

Source: General Statistics Office of Viet Nam. Viewed at: http://www.gso.gov.vn/default_en.aspx?tabid=503&time=&kw=foreign%20direct%20investment [25 January 2013]; and data provided by the authorities.

Table 1.4 Indicators of FDI impact in Viet Nam, 2007-11

	2007	2008	2009	2010	2011
% of total number of enterprises					
FIEs	3.2	2.7	2.6	2.5	3.0
State-owned enterprises	2.2	1.6	1.4	1.1	1.0
Non-state enterprises	94.6	95.6	96.0	96.4	96.0
% of total employment					
FIEs	22.8	22.2	21.5	21.4	23.0
State-owned enterprises	23.9	20.9	19.5	16.8	14.3
Non-state enterprises	53.3	56.9	59.0	61.9	62.6
% of GDP					
FIEs	18.0	18.4	18.3	18.7	19.0
State-owned enterprises	35.9	35.5	35.1	33.7	33.0
Non-state enterprises	46.1	46.0	46.5	47.5	48.0
% of exports					
FIEs	57.2	55.1	53.2	54.2	56.9
Other (domestic economic sector)	42.8	44.9	46.8	45.8	43.1
% Net turnover from business of enterprises					
FIEs	21.3	17.8	18.5	18.8	19.3
State-owned enterprises	31.5	28.9	24.9	25.4	26.9
Non-state enterprises	47.3	53.3	56.6	55.8	53.8

Source: General Statistics Office Viet Nam, *Statistical Handbook 2011* (tables 42, 44 and 52), and *Statistical Yearbook 2011* (tables 59 and 222); and data provided by the authorities.

1.27. Between 2007 and 2011, FDI outflows grew five-fold, to US\$950 million (Table 1.3, section 4.4.2.1). By December 2012, Viet Nam had invested US\$12.4 billion in 712 projects across 60 countries and territories; most of these investments are in processing, manufacturing, mining, agriculture and forestry, mainly in Lao (PDR), Cambodia, the United States, and Singapore.⁸¹

⁸¹ *Việt Nam News*, "Viet Nam invests \$15b in foreign projects", 5 November 2012. Viewed at: <http://vietnamnews.vn/Domestic-Press-Highlights/232326/thailand-considers-hiring-vietnamese-workers.html>; and *Việt Nam News*, "Vietnam to attract US\$14 bln FDI capital in 2013", 8 January 2013. Viewed at: <http://english.vietnamnet.vn/fms/business/56392/business-in-brief-8-1.html> [30 January 2013].

2 TRADE POLICY REGIME: FRAMEWORK AND OBJECTIVES

2.1 General Framework

2.1. According to the 1992 Constitution of the Socialist Republic of Viet Nam (as amended and supplemented in 2001), the people exercises State power through the National Assembly and the People's Councils.¹ These and other State bodies are organized according to the principle of democratic centralism. Pursuant to Article 15 of the Constitution, the State promotes "a multi-component commodity economy functioning in accordance with market mechanisms under the management of the State and following a socialist orientation".

2.2. The unicameral National Assembly is the only body vested with constitutional and legislative powers. Its members serve five-year terms.² The National Assembly supervises all state activities, and the State President of Viet Nam is elected from its membership and is responsible to the Assembly. The National Assembly also elects the Prime Minister, the Chief Justice of the Supreme People's Court, and the Chief of the Supreme People's Procuracy. It approves the Prime Minister's proposed appointments, and may dismiss or remove from office the deputy prime ministers, ministers, and other members of the Government.

2.3. The Standing Committee of the National Assembly, *inter alia*, supervises the enforcement of the Constitution, and laws and resolutions adopted by the National Assembly.³ The Standing Committee may also issue legal documents (ordinances and resolutions), and has the power to suspend the implementation of legal documents issued by the Government, the Prime Minister, the Supreme People's Court, or the Supreme People's Procuracy if these are considered contrary to the Constitution or to laws and resolutions adopted by the National Assembly.

2.4. The Government is the executive organ of the National Assembly. The present Government comprises the Prime Minister, 4 deputy prime ministers, 18 ministers, and 4 other members with the rank of minister.⁴ International trade issues are generally within the portfolio of the Ministry of Industry and Trade, but trade-related matters are also dealt with by other Ministries and agencies such as the Ministry of Finance (customs, tax and pricing policies); Ministry of Planning and Investment, including the Public Procurement Agency and the General Statistics Office; Ministry of Agriculture and Rural Development (including fisheries and forestry); Ministry of Natural Resources and Environment; Ministry of Health; Ministry of Transport; Ministry of Information and Communication, Ministry of Science and Technology, including the National Office of Intellectual Property of Viet Nam; the Copyright Office of Viet Nam (under the Ministry of Culture, Sports, and Tourism); the State Bank of Viet Nam; and the Viet Nam Competition Authority (under the Ministry of Industry and Trade).⁵

2.5. The Government established a National Committee for International Economic Cooperation (NCIEC) in 1998, *inter alia*, to strengthen inter-sectoral coordination in policy formulation and economic cooperation, and retained this Committee as a coordinating agency for the ministries and agencies after Viet Nam became a WTO Member.⁶ The Committee, which includes participation by all ministries and selected agencies, is chaired by the Deputy Prime Minister. The NCIEC is

¹ The Constitution was amended on 25 December 2001 through Resolution 51-2001-QH10 of Legislature X of the National Assembly. The amendments emphasized the importance of promoting a socialist market economy that is innovative, uniform, and suitable to the country's endogenous economic and political conditions. A new Constitution is currently being drafted and foreseen to be adopted in late 2013.

² The last elections were held in May 2011.

³ The number of members of the Standing Committee is decided by the National Assembly. Members of the Standing Committee may not simultaneously hold cabinet posts.

⁴ The four additional cabinet members are the Chairmen of the Government Inspectorate; the Office of the Government; and the State Ethnic Minorities Committee; and the Governor of the State Bank of Viet Nam.

⁵ Under Decision No. 207/QĐ-TTg of the Prime Minister of 17 February 2012, the Ministry of Justice is the lead agency in the drafting of normative legal acts for the National Assembly during its current term (2011-16).

⁶ Prime Minister's Decision No. 31/1998/QĐ-TTg of 10 February 1998, as amended by Decisions Nos. 70/2002/QĐ-TTg of 6 June 2002 and 174/2007/QĐ-TTg of 19 November 2007.

attached to the Prime Minister, but located in the Ministry of Industry and Trade, and funded from the Ministry's budget.⁷

2.6. The structure of the national government is also mirrored at the local level (province, district, and commune).⁸ Each level has a People's Council, elected by the inhabitants. The People's Council chooses its Chairman and his/her deputies, who form a Standing Council. The People's Council also elects the Chairman, Vice Chairman, and other members of the People's Committee, which is the executive body of the People's Council as well as the local state administration agency. Other committees are formed to deal with specific issues, i.e. economic and budgetary matters, social and cultural issues, and legal affairs. The People's Committees are responsible for implementing the Constitution, laws, and documents issued by higher state organs and resolutions of the local People's Council and may, within their areas of competence, also issue and implement decisions and directives (Box 2.1).

Box 2.1 System of legal documents issued in Viet Nam

Constitution, laws, and resolutions of the National Assembly
 Ordinances and resolutions of the Standing Committee of the National Assembly
 Orders and decisions of the State President
 Decrees of the Government
 Decisions of the Prime Minister
 Resolutions of the Justices' Council of the Supreme People's Court and circulars of the Chief Justice of the Supreme People's Court
 Circulars of the President of the Supreme People's Procuracy
 Circulars of Ministers or Heads of ministry-equivalent agencies
 Decisions of the State Auditor General
 Joint resolutions of the Standing Committee of the National Assembly or the Government and the central offices of socio-political organizations
 Joint circulars of (i) the Chief Justice of the Supreme People's Court and the President of the Supreme People's Procuracy; of (ii) Ministers or Heads of ministry-equivalent agencies and the Chief Justice of the Supreme People's Court or the President of the Supreme People's Procuracy; of (iii) Ministers or Heads of ministry-equivalent agencies
 Resolutions of the People's Councils, decisions and directives of the People's Committees

2.7. The Constitution has the highest legal status. Legal normative documents issued by a lower state organ must be consistent with those issued by higher state organs. In case of conflicting provisions in legislation issued by the same state organ, the most recently promulgated provisions prevail. The applicability of international treaties is governed by Law No. 41/2005/QH on Conclusion, Accession and Implementation of Treaties. Treaties acceded to by Viet Nam are ratified by the National Assembly and the State President, and approved by the Government.

2.8. The Supreme People's Court is the highest court of appeal. Specialized courts include the Criminal Court, the Civil Court, the Central Military Court, and the Appeal Court. The National Assembly may also set up special tribunals in certain circumstances. People's courts exist at the provincial level as well as at the lower local level (rural and urban districts, provincial capitals and cities). Administrative decisions may be challenged at the Administrative Court, a judicial tribunal in the system of People's Courts. The role of the Supreme People's Court is to guide courts in the uniform application of laws, supervise trials at tribunals and other courts at different levels, and to submit bills to the National Assembly and draft ordinances to the National Assembly's Standing

⁷ The Minister of Industry and Trade is Vice Chairman of the Committee and, as Head of the Government's delegation for international economic/trade negotiations, the Vice Minister of Industry and Trade has been assigned as Secretary-General of the NCIEC. Other ministries are represented at the level of Vice Minister.

⁸ Viet Nam is divided into 58 provinces and 5 municipalities (Hanoi, Haiphong, Da Nang, Ho Chi Minh City, and Can Tho).

Committee. The Supreme People's Procuracy observes the implementation by state organs and ensures that Vietnamese citizens follow the law.

2.9. Laws, regulations, and administrative procedures of general application issued by the central state agencies are normally published in the *Official Gazette* before they become effective.⁹ The effective date of a legal document is stipulated in the document itself, but may not be less than 45 days from the date of promulgation or signature. In addition, the full texts of draft legal acts are posted on the Government's website and/or the lead drafting agency's website at least 60 days prior to approval.¹⁰ Agencies, organizations, and individuals may comment on these draft texts.

2.10. Viet Nam's legal and regulatory system applies a "positive approach" towards government agencies and public servants (i.e. prescribing their behaviour), while a "negative approach" (i.e. stipulating what is not allowed) is applied to the general public, including businesses and entrepreneurs. The extent to which new legislation abrogates or supplements existing legislation is not always evident. Thus, although not recognized as legal normative documents by law, many ministries have relied on "official letters", notices, or guidelines to set policy and clarify implementation issues. In 2005, the Prime Minister and the Government Office issued legal documents to make the use of "official letters" more transparent and consistent with WTO rules.¹¹ Furthermore, the Law on Promulgation of Legal Documents (No. 17/2008/QH12) of 3 June 2008 stipulates that official letters, notices, or guidelines have no legal normative or binding content.

2.11. Commercial and economic disputes are settled by the courts pursuant to the 2004 Civil Procedure Code and the Law on Enforcement of Civil Judgements (No. 26/2008/QH12) of 14 November 2008. The time-limit for initiating a lawsuit is two years from the date of infringement of the lawful rights. The first instance court's decision may be appealed to the next level within 15 days of the publication of the judgement. The settlement of economic disputes by arbitration is governed by the Law on Commercial Arbitration (No. 54/2010/QH12) of 17 June 2010.

2.2 Trade Policy Objectives

2.12. Since its economic reforms began in the mid-1980s, Viet Nam has been seeking closer ties with the rest of the world through increasing trade. In the process of economic restructuring and comprehensive international integration, the Vietnamese Government is strongly committed to the multilateral trading system and considers it the main focus of Viet Nam's economic integration policies. The WTO's binding and transparent rules are considered the most efficient mechanism to guard against protectionism and to address global trade issues.

2.13. In the Doha Round, Viet Nam has been stressing the importance of the development dimension of the Round, and supports an outcome that fully addresses the development interests and concerns of developing and least developed Members. In the rules area, anti-dumping and countervailing measures in the fisheries sector are of particular interest.

2.14. Since its accession to the WTO, Viet Nam has continued to complete its market economy institutions and engage with trading partners to recognize Viet Nam as a market economy. In early 2013, nearly 40 countries had recognized Viet Nam's market economy status, including the members of ASEAN, China, Japan, Korea, Australia, EFTA member States, Argentina, and South Africa. Viet Nam has also been engaging in technical consultations with other major partners regarding their early recognition of Viet Nam's status.

⁹ Legal documents issued in response to emergency situations (e.g. a natural disaster or epidemics outbreak) may take effect on the date of promulgation or signature, provided they are posted immediately on the website of the issuing agency and announced in the mass media, and published in the *Official Gazette* no later than 20 days after promulgation or signature. Except for these situations and for legal documents containing state secrets, no legal document may take effect without prior publication in the *Official Gazette*.

¹⁰ The websites are listed in Table 23 of the report of the working party on the accession of Viet Nam (document WT/ACC/VNM/48). Following the merger of the Ministries of Industry and Trade in 2007, the website is: www.moit.gov.vn. Likewise, the Ministry of Information and Communication (merger of the Ministry of Post and Telecommunication with some departments of the Ministry of Culture and Information) website is: www.mic.gov.vn.

¹¹ Directive No. 08/2005/CT-TTg and Circular No. 04/2005/TT-VPCP.

2.3 Trade Agreements and Arrangements

2.3.1 WTO

2.15. Viet Nam became the WTO's 150th Member on 11 January 2007. Viet Nam agreed to comply with key WTO Agreements such as the Agreements on Trade-Related Aspects of Intellectual Property Rights, Technical Barriers to Trade, the Application of Sanitary and Phytosanitary Measures, and customs valuation from the date of accession without recourse to any transitional period. Viet Nam undertook specific commitments under the GATS in 11 services sectors and 110 subsectors. It did not commit to initiate negotiations to join the plurilateral WTO Agreements on Government Procurement or Trade in Civil Aircraft, but agreed to full participation in the Information Technology Agreement with zero tariffs to be applied on the covered products either immediately or within transitions ending in 2010-14 for some tariff line items. Viet Nam's tariff commitments on agricultural and non-agricultural products are detailed in Chapter 3.

2.16. In the area of trade-related investment measures (TRIMs), Viet Nam eliminated programmes linking incentives to local content prior to accession, while investment incentives contingent upon export performance were curtailed for new investments, and would be phased out over a five-year period, starting from the date of accession, for existing beneficiaries. As for trading rights, except for specific goods reserved for "state trading", Vietnamese traders have held full trading rights since Viet Nam's WTO accession. Rights for foreign individuals and enterprises were implemented as per Viet Nam's WTO commitments with effect from 1 January 2009 for the importation of certain products.¹² Agricultural export subsidies, which Viet Nam had introduced in the form of export bonuses for certain commodities during the accession process, were eliminated from the date of accession.

2.17. Since Viet Nam became a WTO Member (and until end-May 2013), it has submitted 130 notifications relevant to its WTO obligations; the majority of the communications concern SPS (47) and TBT (35) matters (Table 2.1). Notable gaps exist for agricultural and industrial subsidies, where Viet Nam has yet to submit data on support provided since 2007 pursuant to its obligations under the Agreement on Agriculture and Article 25 of the Agreement on Subsidies and Countervailing Measures. Moreover, despite the importance of the public sector in its economy, Viet Nam has not provided updated information or notifications pertaining to state trading. In the area of customs valuation, it has reported no changes in laws and regulations.

2.18. Viet Nam has been involved in two cases under the WTO Dispute Settlement Mechanism, in both cases as a complainant. In United States – Anti-dumping measures on certain shrimp from Viet Nam (DS404), the Panel found certain practices of the US Department of Commerce, particularly in relation to the use of zeroing in the calculation of dumping margins and the application of a "Viet Nam-wide entity" rate, to be inconsistent with several provisions of the Anti-Dumping Agreement of the WTO and Article VI:2 of the GATT 1994. The panel report, recommending that the United States bring its measures into conformity with its obligations, was adopted on 2 September 2011. The mutually agreed reasonable period of time to implement the ruling expired on 2 July 2012. The second complaint also concerns a number of US anti-dumping measures on certain frozen warmwater shrimp. The DSB established a panel (DS429) at its meeting on 27 February 2013. Viet Nam has reserved its rights as third a party in 16 disputes involving other WTO Members.¹³

¹² Decision No. 10/2007/QĐ-BTM of 21 May 2007.

¹³ The cases are (i) United States – measures relating to shrimp from Thailand (DS343); (ii) India – additional and extra additional duties on imports from the United States (DS360); (iii) EU – tariff treatment of certain information technology products (DS375, DS376, DS377); (iv) United States – measures affecting imports of certain passenger vehicle and light truck tyres from China (DS399); (v) United States – use of zeroing in anti-dumping measures involving products from Korea (DS402); (vi) EU – anti-dumping measures on certain footwear from China (DS405); (vii) China – countervailing and anti-dumping duties on grain oriented flat-rolled electrical steel from the United States (DS414); (viii) United States – anti-dumping measures on shrimp and diamond sawblades from China (DS422); (ix) India – measures concerning the importation of certain agricultural products from the United States (DS430); (x) China – measures related to the exportation of rare earths, tungsten and molybdenum (DS431, DS432, DS433); (xi) United States – countervailing duty measures on certain products from China (DS437); and (xii) United States – countervailing and anti-dumping measures on certain products from China (DS449).

Table 2.1 Most recent WTO notifications, end-May 2013

Agreement	Requirement/content	Periodicity	WTO document and date (latest document if recurrent)
Agreement on Agriculture			
Article 18.2	Table MA.1 – Administration of tariff quotas	Annual	G/AG/N/VNM/1, 3 November 2011
Article 18.2	Table MA.2 – Imports under tariff quotas	Annual	G/AG/N/VNM/2, 3 November 2011
Agreement on Implementation of Article VI of the GATT 1994 (Anti-dumping)			
Article 16.4	Reports concerning anti-dumping actions	Ad hoc	
	Semi-annual reports of anti-dumping actions (taken within the preceding six months)	Semi-annual	G/ADP/N/223/Add.1, 20 April 2012
Article 18.5	Laws and regulations	Once, then changes	G/ADP/N/1/VNM/1, 9 October 2009
Articles 16.5	Competent authority to initiate anti-dumping investigations	Once, then changes	G/ADP/N/14/Add.28 G/SCM/N/18/Add.28, 14 October 2009
Enabling clause			
Enabling clause – paragraph 4(a)	Notification of regional trade agreement ASEAN-India Free Trade Area ASEAN-Korea FTA		WT/COMTD/N/35/Add.1, 31 May 2012 WT/COMTD/N/35, 23 August 2010 S/C/N/560-WT/COMTD/N/33, 8 July 2010
Agreement Implementation of Article XXIV:7(a) of the GATT 1994 (Free-trade areas)			
Article XXIV of the GATT 1994	Free-trade area for trade in goods ASEAN-Korea ASEAN-Australia/New Zealand ASEAN-Japan Viet Nam-Japan	Ad hoc	WT/REG287/N/1, 8 July 2010 WT/REG284/N/2, 9 May 2012 and WT/REG284/N/1, 9 April 2010 WT/REG277/N/1, 14 December 2009 WT/REG275/N/1, 2 October 2009
General Agreement on Trade in Services			
Article V:7 (a) of GATS	Free-trade agreements ASEAN-Australia/New Zealand ASEAN-Korea, Rep. of Viet Nam-Japan ASEAN-China		S/C/N/545/Add.1, 9 May 2012 and S/C/N/545, 9 April 2010 S/C/N/559/Add.1, 3 May 2011, S/C/N/560/Add.1, 3 May 2011, and S/C/N/560, 8 July 2010 S/C/N/513, 2 October 2009 S/C/N/463, 2 July 2008
Agreement on Import Licensing Procedures			
Article 1.4(a) and/or 8.2(b)	Laws and regulations		G/LIC/N/1/VNM/2, 29 January 2013 G/LIC/N/1/VNM/1, 30 April 2012
Articles 5.1, 5.2, 5.3	Notification of an automatic import licensing programme	Ad hoc	G/LIC/N/2/VNM/1, 30 April 2012
Article 7.3	Replies to questionnaire on import licensing procedures		G/LIC/N/3/VNM/1, 12 May 2011
Agreement on Rules of Origin			
Articles 5.1 and 5.2	Judicial decisions and administrative rulings and modifications of rules of origin	Ad hoc	G/RO/N/79, 1 June 2012 G/RO/N/68, 22 February 2011
Agreement on Safeguards			
Article 12.1(a) – (c), and Article 9.1, footnote 2	Investigations, findings, and decisions related to safeguard measures	Ad hoc	G/SG/N/7/VNM/1, 15 May 2013 G/SG/N/6/VNM/2, 11 January 2013 G/SG/N/9/VNM/1, 7 April 2010 G/SG/N/8/VNM/1, 12 January 2010 G/SG/N/6/VNM/1, 31 July 2009
Article 12.6	Laws and regulations	Once, then changes	G/SG/N/1/VNM/1, 30 September 2009

Agreement on the Application of Sanitary and Phytosanitary Measures			
Article 7 and Annex B	Laws, regulations and emergency measures Enquiry points	Ad hoc Ad hoc	G/SPS/N/VNM/35, 22 November 2012 G/SPS/N/VNM/36, 29 November 2012
Agreement on Subsidies and Countervailing Measures			
Article 25.11	Semi-annual report on countervailing duty actions	Semi-annual	G/SCM/N/219/Add.1/Rev.1 20 October 2011 G/SCM/N/228/Add.1, 19 October 2011
Article 25.12	Competent authority to initiate countervailing investigations	Ad hoc	G/ADP/N/14/Add.28 G/SCM/N/18/Add.28, 14 October 2009
Article 25 (and Article XVI.1 of the GATT 1994)	Notification of support programmes	2005-07	G/SCM/N/155/VNM, 13 March 2013
Agreement on Technical Barriers to Trade			
Article 10.6	Proposed and adopted technical regulations/conformity assessment procedures		
Articles 2.9 and 5.6			G/TBT/N/VNM/26, 31 January 2013 and Corr.1 of 12 February 2013
Articles 2.10 and 5.7			G/TBT/N/VNM/22, 3 December 2012
Article 15.2			G/TBT/2/Add.98/Rev.2, 12 September 2012
Annex 3C	Acceptance of code of good practice	Ad hoc	G/TBT/CS/N/175, 20 February 2009
Agreement on Trade-Related Aspects of Intellectual Property Rights			
Article 63.2	Laws and regulations Checklist of issues	Once, then changes	IP/N/1/VNM/E/5, 28 May 2010 IP/N/1/VNM/O/1, 28 May 2010 IP/N/1/VNM/4, 26 May 2010 IP/N/6/VNM/1, 1 February 2008
Article 69	Contact points	Once, then changes	IP/N/3/Rev.11/Add.2, 23 June 2010

Source: WTO Secretariat.

2.3.2 Association of Southeast Asian Nations (ASEAN)

2.19. Viet Nam became the seventh member of ASEAN on 28 July 1995, an important first step towards closer regional economic integration. In 2003, ASEAN leaders decided to establish an ASEAN Community. The decision was affirmed at the 12th ASEAN Summit in 2007, where the leaders signed the Cebu Declaration on the Acceleration of the Establishment of an ASEAN Community by 2015. The ASEAN Community has three pillars: the ASEAN Political-Security Community; the ASEAN Economic Community; and the ASEAN Socio-Cultural Community. Each pillar has a blueprint which, together with the Initiative for ASEAN Integration (IAI) Strategic Framework and IAI Work Plan Phase II (2009-2015), form a Roadmap for and ASEAN Community 2009-15.

2.20. Viet Nam began granting preferential treatment for goods to its ASEAN partners under the Common Effective Preferential Tariffs (CEPT) in 1996. The process was foreseen to be completed by 2006 for goods on the Inclusion and Temporary Exclusion lists, and for Viet Nam's list of sensitive agricultural products by 2013. The CEPT was subsequently incorporated into the ASEAN Free Trade Area (AFTA) in 2002. Building on CEPT/AFTA, ASEAN members signed the ASEAN Trade in Goods Agreement (ATIGA) in February 2009, consolidating all existing ASEAN initiatives, obligations, and commitments on trade in goods into a single document. ATIGA entered into force on 17 May 2010.

2.21. Regarding tariff liberalization, Viet Nam (together with Cambodia, Lao PDR, and Myanmar) is committed to the elimination of tariffs in intra-ASEAN trade by 2015, with additional flexibilities for up to 7% of the tariff lines on the covered list applicable until 2018.¹⁴

2.22. ATIGA includes provisions on the elimination of non-tariff barriers further to WTO requirements and the 2006 ASEAN Work Programme on the Elimination of NTBs. Viet Nam and Thailand, who continue to apply tariff-rate quotas, are to remove them under three commitment packages. For Viet Nam, these commitments will be implemented during 2013-15, with flexibility allowed until 2018, when it will decide whether to continue to apply tariff-rate quotas.

2.23. An ATIGA work programme on trade facilitation covers customs procedures, trade regulations and procedures, standards and conformity assessment, SPS, an ASEAN single-window customs mechanism, etc. According to the Vietnamese authorities, ATIGA embraces nine principles for trade facilitation similar to the principles under the Asia-Pacific Economic Co-operation (APEC). Compared with the CEPT-AFTA framework, ATIGA also introduces more flexible rules of origin such as the substantial transformation criterion (HS 4-digit level) and product specific rules, simplified "operational certification procedures", and harmonization of national procedures to the extent possible.¹⁵

2.24. The ASEAN Framework Agreement on Services (AFAS) involves a gradual increase in liberalization, implemented under ten packages of commitments, the last to be completed by 2015. According to the Vietnamese authorities, the 7th AFAS package was similar to the level of market opening established through Viet Nam's WTO commitments, with the addition of commitments on production management consulting services; specialty photography services, except aerial photography; packaging services; and printing and publishing for packaging.¹⁶ The 8th AFAS package provides further liberalization of mode 3 for leasing and rental services concerning other machinery and equipment without operator (CPC83109), and packaging services (CPC876); as well as reduced limitations on market access in mode 3 for publishing and printing on a fee or contract basis (CPC88442), social services (CPC933), rental services of sea-going vessels with operator (CPC7213), repair services of other transport equipment on a fee or contract basis (CPC8868*), and passenger and freight transportation CPC 7111 and 7112).

2.25. The ASEAN Comprehensive Investment Agreement (ACIA), signed by ASEAN economic ministers in February 2009, is set to replace existing provisions contained in the ASEAN Investment Agreement (AIA) and the ASEAN Investment Guarantee Agreement (IGA). The ACIA encompasses, in a single document, provisions on investment liberalization; investment protection, promotion and facilitation; automatic MFN treatment; arbitration; etc. The ACIA includes a reservation list for each member, to be reviewed for gradual elimination of reservations to the minimum level by 2015. The ACIA entered into force on 29 March 2012.

2.3.3 Other regional and bilateral agreements

2.26. Viet Nam has been pursuing trade liberalization in Asia and the Pacific together with its ASEAN partners, complemented by additional bilateral initiatives. Following the conclusion of a framework on comprehensive economic cooperation in November 2002, ASEAN and China launched negotiations resulting in the signature of a trade in goods agreement in November 2004,

¹⁴ The other members of ASEAN (Brunei Darussalam, Indonesia, Malaysia, Philippines, Singapore, and Thailand) committed to the full elimination of tariffs in intra-ASEAN trade by 2010. According to ASEAN, import duties on 99.65% of all tariff lines under the CEPT-AFTA had been eliminated by 1 January 2010. For the newer ASEAN members (Viet Nam, Cambodia, Lao PDR, and Myanmar), 98.96% of their tariff lines had been brought within the 0-5% range (Joint media statement of the 42nd ASEAN economic ministers' meeting in Da Nang (Viet Nam), 24-25 August 2010. Viewed at: <http://www.asean.org/news/asean-statement-communicues/item/joint-media-statement-of-the-42nd-asean-economic-ministers-aem-meeting-da-nang-viet-nam-24-25-august-2010-2>).

¹⁵ Electronic processing of certificates of origin remains under discussion.

¹⁶ The 7th AFAS package also implied further commitments in mode 1 for leasing or rental services concerning other machinery and equipment without operator (CPC 83109), and in mode 3 for veterinary services, removal of limitations on market access (MA) in mode 3 for taxation, architectural, engineering, and integrated engineering services, removal of limitations on national treatment (NT) in mode 3 for management consulting services, and in mode 1 for sewage services, cleaning services of exhaust gases and noise abatement services. For urban planning and landscape services (CPC 8674), the package involved liberalization in mode 3 (MA) and in mode 1 (NT).

and an agreement on trade in services in 2007. Since then, Korea, Japan, Australia/New Zealand, and India have completed the negotiations to establish free-trade areas with ASEAN (Table A2.1).

2.27. Having initially participated as an "associate member", Viet Nam announced its decision to be a full participant in the negotiations on a Trans-Pacific Partnership (TPP) Agreement at an APEC Ministerial Meeting in November 2010.¹⁷ The TPP is aimed at enhancing trade and investment flows among participants. Negotiations to establish a free-trade agreement between Viet Nam and the EU were launched officially on 26 June 2012. The parties have thus far (May 2013) completed three rounds of negotiations. Somewhat in parallel, Viet Nam and the member states of EFTA (i.e. Iceland, Liechtenstein, Norway, and Switzerland) have also begun the process to establish an FTA. Three rounds of negotiations have been completed.¹⁸ Negotiations have also been initiated for the conclusion of bilateral FTAs with Korea and the customs union of Belarus, Kazakhstan, and the Russian Federation.

2.28. According to the Vietnamese authorities, Viet Nam's participation in the ASEAN FTAs has contributed to the continuous growth of bilateral trade. Viet Nam has taken advantage of the agreements to boost exports of competitive product lines in agriculture, fisheries, textiles, footwear, and furniture. The agreements have facilitated the introduction of Vietnamese products into some markets, while Vietnamese exporters have been pushed to improve product quality and design to meet high standards and consumer expectations. Utilization ratios differ among the FTAs, but have generally been on the rise.¹⁹ The FTAs have also boosted foreign direct investments in Viet Nam. The economic partnership agreement between Viet Nam and Japan has highlighted the complementarities of the two economies, allowing Vietnamese exports of commodities and basic consumer goods to expand rapidly, while imports of Japanese machinery and equipment and other manufacturing inputs have grown at a similar pace.

2.29. The effects of the FTAs on the institutional framework in Viet Nam have so far been more limited. Except for the issuance of circulars to implement tariff concessions and rules of origin, commitments have been implemented within the existing legal and administrative framework. However, the introduction of new instruments such as the single-window customs mechanism and self-certification of origin will involve modification of laws and ordinances.

2.30. Viet Nam has concluded agreements for the avoidance of double taxation and the prevention of fiscal evasion with 62 countries and territories.

2.3.4 Other trade agreements

2.31. Prior to WTO accession, Viet Nam had concluded bilateral trade agreements with 40 partners. The principal aim of these agreements was to establish trade relations based on reciprocal most-favoured-nation treatment.²⁰ The agreements were typically short documents with fairly standard text. Only one was much more elaborate, i.e. the Agreement Between the United States of America and the Socialist Republic of Viet Nam on Trade Relations, which entered into force in December 2001. This agreement provided substantially better access for Vietnamese exports to the United States as average tariffs fell from 40% to less than 3%. In return, Viet Nam agreed to open up some of its services sectors (banking, insurance, and telecommunications), enhanced protection of intellectual property rights, and improvements in its foreign investment regime.²¹ Most of Viet Nam's commitments were phased in over three to five years. The agreement also included tariff reductions by Viet Nam on some 250 products, 80% of which were

¹⁷ At present, the TPP negotiations encompass Australia, Brunei Darussalam, Chile, Malaysia, New Zealand, Peru, Singapore, Viet Nam, and the United States.

¹⁸ EFTA Secretariat online information. Viewed at: <http://www.efta.int/free-trade/free-trade-news/2012-10-19-efta-vietnam-2nd-rnd-fta-neg.aspx>.

¹⁹ Based on the use of the preferential certificates of origin, the Vietnamese authorities estimate that 31.3% of Viet Nam's exports to its FTA partners benefited from the trade preferences by the end of 2011.

²⁰ Since its WTO accession, Viet Nam has concluded only one further bilateral agreement in the same format, i.e. with Angola (2008).

²¹ U.S. labour unions were critical of the agreement as it did not include provisions on minimum labour standards or environmental protection.

in the agriculture sector.²² However, the two parties agreed on more extensive reductions in Viet Nam's MFN tariff regime through the WTO accession process.

2.32. Following Viet Nam's accession to the WTO, Viet Nam and the United States signed a Trade and Investment Framework Agreement (TIFA) on 21 June 2007. The TIFA did not introduce additional specific concessions or commitments, but established a joint framework (United States-Viet Nam Council on Trade and Investment), *inter alia*, for the monitoring of implementation of obligations under the WTO Agreement and the bilateral trade agreement. Negotiations to conclude a bilateral investment treaty were launched in June 2008.

2.4 Investment regime

2.33. Viet Nam's investment regime is based on the Enterprise Law (No. 60/2005/QH-11) and the Investment Law (No. 59/2005/QH-11), both adopted in November 2005 and in force since 1 July 2006. The Enterprise Law provides for enterprises to be established in the form of limited liability companies, shareholding companies, partnerships, or sole proprietorships. The law classifies sectors in which business establishment is (i) prohibited; (ii) conditional; (iii) requires minimum legal capital; (iv) requires a professional licence; (v) is reserved for partnerships or private enterprises; and (vi) other sectors. The prohibited and conditional business sectors are listed in Decree No. 59-2006-ND-CP of 12 June 2006 (currently under revision).²³

2.34. The Investment Law also prohibits investments considered detrimental to national defence and security, historical and cultural ethics, Vietnamese traditions and fine customs, and the environment. Investment is conditional in (i) sectors having an impact on national defence and security, social order and safety, and public health; (ii) banking and finance; (iii) recreational services; (iv) education and training; (v) real estate, (vi) culture, information, press, and publication; and (vii) surveying, prospecting, exploration and mining of natural resources. In financial services and legal services, investment is also regulated under specific laws, i.e. the Law on Credit Institutions, the Law on Insurance Business, the Law on Securities, and the Law on Lawyers (as amended in 2012).²⁴

2.35. Vietnamese investors may obtain a business registration certificate under the Enterprise Law. For investment projects valued at less than ₫15 billion and not in a conditional investment sector, no further formalities are necessary. Foreign investors may apply for an investment certificate, which will also serve as a business registration certificate. This certificate should normally be granted within 15 days.²⁵ In addition, "investment registration" applies to foreign investment projects valued at less than ₫300 billion and to domestic investment projects valued between ₫15 billion and ₫300 billion. All investment projects (domestic and foreign) worth more than ₫300 billion as well as all projects in the conditional sectors are subject to an "investment evaluation", focusing on compliance with master plans for technical infrastructure, land use, construction, and the use of natural resources and minerals; compliance with land use requirements; the implementation schedule for the project; and environmental conditions. The investment evaluation should be completed within 30 days but the deadline may be extended up to 45 days. According to the Investment Law (Article 47), the National Assembly will determine the evaluation process and criteria on a case-by-case basis for "important national investment projects", e.g. particularly large investments, in specific locations, or projects having a major environmental impact.

²² The agreement with Viet Nam marked the first time that the United States negotiated and obtained tariff reductions in return for MFN treatment in the U.S. market vis-à-vis a "Title IV" country, i.e. subject to trade restrictions under the Trade Act of 1974, Title IV (Manyin, 2002).

²³ The lists are reproduced in the report of the working party on the accession of Viet Nam (WTO document WT/ACC/48), Annex 2, Tables 1 and 2.

²⁴ The Law on amending and supplementing a number of articles of the Law on Lawyers No. 20/2012/QH13 of 20 November 2012.

²⁵ Investment certificates are generally delivered by the People's Committee where the project is located or by the Management Board of the respective zone for investment projects in industrial zones, export processing zones, high-tech zones, and economic zones. Investment certificates for oil and gas projects are granted by the Ministry of Industry and Trade, and the Ministry of Finance approves insurance projects. The Ministry of Planning and Investment grants investment certificates for build-operate-transfer projects of national importance etc., whereas provincial-level People's Committees may grant certificates for BOT projects of local significance. In late 2012, the Vietnamese authorities had approved more than 14,400 foreign investment projects with total registered capital of US\$208 billion.

2.36. With the promulgation of the enterprise and investment laws, Viet Nam went a long way towards equalizing the treatment accorded to Vietnamese and foreign investors. Moreover, Decree No. 102/2010/ND-CP of 1 October 2010 guiding certain provisions of the Enterprise Law clarifies that an enterprise with up to 49% foreign ownership is subject to the same conditions as a Vietnamese-owned company, whereas the foreign investment rules apply to enterprises with more than 49% foreign ownership.²⁶ However, current regulations do not specify the treatment of Vietnamese-owned businesses acquired by foreign-owned (49% or more) enterprises. Thus, while some local licensing authorities may require the business registration certificate of an acquired business to be replaced by an investment certificate, others may demand an investment certificate in addition to the registration certificate, or only amendment of the business registration certificate.²⁷

2.37. The foreign business community appears to view the approval process for investment and establishment of businesses as difficult and time-consuming, involving complex administrative procedures, and at times inconsistent and un-coordinated implementation of laws and regulations by the responsible government agencies.²⁸ Changes in business activities, such as the opening of a new branch, or minor alterations, such as changes in name or address of establishments and company representatives, all require an investment certificate to be amended. The establishment of a one-stop shop system for business registration and investment licensing, e.g. leaving the local authority fully in charge of all necessary approvals, has been suggested as a way to simplify the present system.²⁹ Concerns have also been raised about Government Decree No 46/2011/ND-CP of 17 June 2011, which links the extension of work permits for foreign employees to the simultaneous establishment of a contract to train a Vietnamese employee to replace the foreign worker. According to the Vietnamese authorities, an amendment to the Labour Code, effective 1 May 2013, does not contain any such provision, nor will it be contained in the decree implementing some articles of the Labour Code.

2.38. Private ownership of land is not permitted in Viet Nam, which relies on public ownership and state management of land resources. However, the Land Law of 26 November 2003 (as amended) allows land to be leased, and assets associated with the land and the value of land-use rights may be mortgaged. Procedures for the establishment of land-use rights are under the Provincial Committees. Although the duration of a land-lease agreement should not exceed 50 years, leases may be extended upon expiry of the initial term(s). For certain projects (e.g. large investments or those benefiting socio-economic difficult areas) the Government may grant land leases with an initial duration of up to 70 years.

2.39. In order to stimulate private investment in infrastructure, Decision No. 71/2010/QĐ-TTg, effective since January 2011, permits public private partnerships (PPPs) on a pilot basis, notably for road transport infrastructure, rail and urban transport, airports, seaports and river ports, fresh water supply and waste treatment, power plants, and hospitals. Further infrastructure or public services supply projects may also be opened for PPP by decision of the Prime Minister.³⁰ According to Decision No. 71, the Government intends to fund no more than 30% of the required investments in PPP projects.

2.40. Investment abroad by Vietnamese-based enterprises is governed by the Investment Law and Decree No. 78/2006/ND-CP of 9 August 2006, providing for offshore direct investment. Applications for approval of investment projects abroad are addressed to the Ministry of Planning and Investment. For approved projects, the Ministry issues an investment certificate. Investments above a certain size also require the approval of the Prime Minister. In such cases, the Ministry of

²⁶ Decree No. 102 replaced Decree No. 139 of 5 September 2007.

²⁷ An amendment to Decree No. 108/2006/ND-CP of 22 September 2006 is currently in preparation to provide more specific procedures for capital contributions, share purchases, and acquisitions of domestic enterprises by foreign investors.

²⁸ European Chamber of Commerce in Vietnam (2011). According to the World Bank's *Doing Business 2013* report, Viet Nam ranks 99th overall among 185 economies on the ease of doing business. Viet Nam obtains its best relative score on "dealing with construction permits" (28th), while falling well below its overall ranking on "resolving insolvency" (149th), "getting electricity" (155th), and "protecting investors" (169th). In 2006, Viet Nam ranked 98th amongst the 175 economies in the survey.

²⁹ The establishment of a one-stop shop system is a long-standing issue; it was raised by some WTO Members during Viet Nam's accession process (document WT/ACC/VNM/48).

³⁰ Until then, Viet Nam's legislation had focused on build-transfer (BT)/build-transfer-operate (BTO) or build-operate-transfer (BOT) models for private-sector participation in infrastructure projects.

Planning and Investment commences the procedure to grant the investment certificate following the Prime Minister's approval.³¹

2.41. At the end of 2012, the Ministry of Planning and Investment had granted investment certificates for 712 projects overseas with total capital of US\$12.4 billion. Petro Vietnam Exploration and Production Corporation and Viettel have been among the most prominent Vietnamese investors. Privately owned Vietnamese companies have mainly invested in food and beverage industries, retailing, and environmental businesses.

³¹ The Prime Minister's approval is necessary for private investments exceeding ₫600 billion, or ₫300 billion for projects in financial services, media, or telecommunications. If the project involves the commitment of state capital (i.e. outward investments by state-owned enterprises), the threshold for PM approval is reduced by 50%.

3 TRADE POLICIES AND PRACTICES BY MEASURE

3.1 Introduction

3.1. In January 2007, the Prime Minister of Viet Nam approved an ambitious plan for administrative reform – the National Administrative Reform Project, also known as "Project 30". The aim has been to design a simpler, more efficient, and more transparent administrative system, thereby reducing the compliance costs of enterprises and individuals by 30%.¹ During the first phase of the project (January 2008-June 2009), an inventory of some 5,700 administrative procedures was entered into a database, allowing users to download and print any administrative form. In the second phase (June 2009-May 2010), government officials and private sector experts constituting a "special task force" engaged in a review with various stakeholder groups in the Advisory Committee for Administrative Procedure Reform to identify unnecessary and cumbersome administrative procedures. The final phase of Project 30, starting in June 2010, began with the launch of 258 administrative reforms to be implemented within five months, and a second reform package to be implemented by the end of 2010.²

3.2. Decree No. 63/2010/ND-CP was issued in June 2010 to maintain the effect of Project 30 after its termination. Administrative procedures are to be controlled strictly from the drafting stage of legislation through the various steps of implementation on a regular and continuous basis. Control agencies have been formed at the central and local levels with the transformation of 88 former task forces under Project 30.

3.3. At the invitation of Viet Nam, the OECD undertook an evaluation of Project 30, indicating possible future directions, including a ten-year programme for regulatory reform based on international best practice.³ The OECD notes that much work remains to actually implement the simplified administrative procedures. Its recommendations included that Viet Nam link the programme for administrative simplification with its legal development programme, including the obligation to present impact assessments for new legislation, mandatory consultation with stakeholders, the development of one-stop shops, and pilot projects to test new regulatory models. The recently created Agency for the Control of Administrative Procedures (APCA) could take the lead in the central management of a government-wide regulatory policy.⁴ The database of administrative procedures should be expanded to incorporate all legal normative documents, i.e. also those that do not involve specific procedures but create information obligations on individuals and enterprises. In addition to providing the raw legal texts, the Vietnamese authorities could also consider establishing information websites or hotlines that assist users to understand the legislation and help them towards compliance.

3.4. A master plan for the reform of public administration during 2011-20, issued in November 2011, outlines six broad areas of work.⁵ For the sub-periods 2011-15 and 2016-20, the plan sets specific targets and outcomes for the reforms of institutions, administrative procedures, the structure of public administration, and public finance; enhanced qualifications of civil servants; and the general modernization of public administration.

3.5. The General Department of Vietnam Customs is implementing a modernization project with support from the World Bank. Vietnam Customs introduced electronic customs clearance procedures on a trial basis in 2005, in Ho Chi Minh City and Hai Phong. The project was expanded to customs offices in Ha Noi, Da Nang, Dong Nai, and Binh Duong, and covered a total of 20 provincial customs departments by the end of 2012. Nationwide, e-customs procedures were launched in early January 2013. The system covers electronic submission of customs declarations, as well as the processing by Customs, including automatic processing of declared tests and analyses. In the future, online exchange of information between government agencies through a national OSS (one-stop-shop mechanism) should eliminate the current need for licences to be issued in hard-copy.

¹ Viet Nam's legal and administrative framework is comprehensive and complicated as the legislature tends to focus on what is permitted, rather than on what is not.

² Government Resolution No. 25/NQ-CP of 2 June 2010.

³ OECD (2011).

⁴ The agency was set up through Decree No. 63/2010/ND-CP of 8 June 2010.

⁵ The master plan was adopted through Resolution No. 30c/NQ-CP of 8 November 2011.

3.6. An authorized economic operators (AEOs) programme has been in place since 2011. In all, 14 enterprises had been qualified by the General Department of Viet Nam Customs as AEOs by the end of March 2013. Among other initiatives, the customs administration plans to introduce an automated cargo clearance system and a customs intelligent database system by 2014. By 2020, Viet Nam expects electronic customs clearance to be effected at all customs offices. As a consequence, the incidence of physical inspection of cargoes should decline from the present level of 15%-20% to less than 7% by 2020.

3.2 Measures Directly Affecting Imports

3.2.1 Import procedures and requirements

3.7. According to the World Bank, the process of establishing a business in Viet Nam involves ten steps, including obtaining a business and tax registration certificate, payment of a business licence tax (₫1 million annually), registration with the local labour office, registration of the employees with the Social Insurance Fund, and registration with the local trade union or industry trade union within the first six months of operation. A company's initial registration process may be completed within 27 days.⁶

3.8. The Vietnamese authorities note that action has been taken to streamline the process. Several steps were integrated when a one-stop shop for business registration was set up in 2007. In 2010, Decree No. 43/2020/ND-CP of 15 April and Circular No. 14/2010/TT-BKH of 4 June introduced a unique company identification number granted as businesses register. This number may also be used for filing and paying taxes. The Ministry of Planning and Investment has developed a National Business Registration Database containing information on 689,000 registered enterprises. The legal basis for an online registration system with information available to the public entered into force in early 2013.⁷

3.9. Domestic investors must hold a valid Business Registration Certificate, whereas foreign investors require an investment certificate, which serves as a licence for their investment projects and a "business registration certificate". The Ministry of Planning and Investment has apparently developed an agenda to revise the Law on Investment to separate the investment and business registration certificates; the aim is to distinguish the registration of a legal entity from the registration of project execution procedures.

3.10. Viet Nam's legislation distinguishes between import trading rights and the right to distribute imported goods within Viet Nam. In the context of its accession to the WTO, Viet Nam agreed to grant full import trading rights on par with Vietnamese traders to foreign individuals and enterprises from 1 January 2007 except for certain pharmaceuticals and medicines, cinematographic films, printing machinery, various printed matters, radio and television transmitters, radars, etc. where full trading rights were granted to foreigners as from 1 January 2009.

3.11. Some restrictions remain; goods identified as subject to "state trading" may only be imported by designated enterprises. Thus, cigars and cigarettes; crude oil and petroleum products; newspapers, journals and periodicals; recorded media for sound or pictures; and aircraft and spacecraft, may only be brought into Viet Nam by designated importers.⁸ The Viet Nam Tobacco Import Export Company (Vinataba IMEX), a subsidiary of the Vietnam National Tobacco Corporation (Vinataba), is the leading importer of machinery, tobacco and materials for the tobacco industry in Viet Nam, and is an exporter of tobacco leaf, cut rag, and cigarettes. Audiovisual products are traded, for example, by the Vietnam National Film Distribution and Screening Company (FAFIM Vietnam), based in Ho Chi Minh City, and the Viet Nam Film Export Import and Distribution Co. headquartered in Hanoi (see also section 4.6.5.3).

⁶ World Bank Group online information, "Starting a Business in Viet Nam". Viewed at: <http://www.doingbusiness.org/data/exploreeconomies/vietnam/starting-a-business/>.

⁷ Circular No. 01/2013/TT-BKHDT of 21 January 2013, in effect since 15 April 2013 (replaces Circular No. 14/2010/TT-BKH).

⁸ The products affected by temporary or long-term limitations on trading rights are detailed in the accession working party report (WTO document WT/ACC/VNM/48, Tables 8(a), 8(b), and 8(c)).

3.12. The Viet Nam National Petroleum Group (Petrolimex) is the main company importing (and distributing) petroleum products. However, adapting a more market-based mechanism, Government Decree No. 84/2009/ND-CP of 15 October 2009 expands trade in petroleum products beyond state-owned enterprises to other enterprises that meet certain conditions. According to Article 23 of Decree No. 84, the Ministry of Planning and Investment coordinates with the Ministry of Industry and Trade to set annual "import orientations", i.e. the projected demand for imported crude oil and petrol in a given year. On this basis, the Ministry of Industry and Trade assigns minimum import quotas to be fulfilled by the licenced traders.

3.13. Among its accession commitments, the Government of Viet Nam agreed to issue a decree codifying the trading rights of firms and individuals without physical presence in Viet Nam.⁹ For a foreign investor physically present in Viet Nam, the right to import goods does not extend to the distribution of these goods, unless it is stipulated in the investment licence of the enterprise. Without the right to distribute goods, the foreign enterprise must appoint a Vietnamese agent or distributor.¹⁰ A circular issued by the Ministry of Industry and Trade in mid-2007, initially limited the distribution of imported goods to single distributors with a pre-existing right to trade or distribute the said goods. Importers were also required to register their single authorized distributors with the relevant authorities.¹¹ However, the circular was amended by Circular No. 05/2008/TT-BCT on 14 April 2008, and sole distributorships are no longer mandatory.

3.14. On 6 May 2011, the Ministry of Industry and Trade issued Notice No. 197, allowing imports of wines, spirits, cosmetics, and mobile phones through only three seaports (Hai Phong, Da Nang, and Ho Chi Minh City), and stipulating additional documentation to be notarized by Viet Nam's diplomatic missions abroad. According to the authorities, this measure was required to protect against counterfeits and, by deterring trade fraud, to protect consumers. However, Notice No. 197 was abrogated with effect from 1 January 2013 through Notice No. 301/TB-BCT of 28 December 2012. The new Notice, aimed at streamlined administrative procedures, stipulates that the affected goods may now be imported through the ordinary channels of commerce in accordance with current legislation.

3.15. Passenger cars (9 seats and less) became subject to additional import requirements in May 2011.¹² Viet Nam now requires such vehicles to be accompanied by a certificate or an assignment from the manufacturer, dealer or contracted agency, stating that the importer is the authorized importer or distributor. A warranty and maintenance certificate issued by the Ministry of Transportation of Viet Nam is also required.¹³

3.16. Customs clearance documentation, and procedures for imports and exports generally, are in essence unchanged since 2009 and implemented on the basis of a circular of the Ministry of Finance.¹⁴

3.2.2 Ordinary customs duties

3.17. The Standing Committee of the National Assembly establishes "statutory rates" at the four-digit HS level which constitute duty bands within which the Government fixes the applied rates of duty. The customs tariff is generally issued annually in the form of a circular from the Ministry of Finance. As Viet Nam bound the entire tariff schedule in the context of its WTO accession (Table 3.1), the bound rates effectively constitute the upper limits in the duty bands set by the Standing Committee.

⁹ Government Decree No. 90/2007/ND-CP of 31 May 2007.

¹⁰ Since 1 January 2009, 100% foreign-owned enterprises have been permitted to engage in importing, exporting, and distribution services, including wholesale and retail trade. The licence to engage in retail trade allows the establishment of a single sales outlet. Additional outlets require permission from the district Department of Planning and Investment, and the evaluation involves an economic needs test.

¹¹ Circular No. 09/2007/TT-BTM guiding the implementation of Decree No. 23/2007/ND-CP on foreign firms' trading and distribution rights in Viet Nam.

¹² Ministry of Industry and Trade, Circular No. 20/2011/TT-BCT of 12 May 2011.

¹³ In Notice No. 4640/BCT-XNK of 27 May 2011 the Ministry of Industry and Trade detailed the specific information to be provided to conform to Notice No. 197 and Circular No. 20/2011/TT-BCT.

¹⁴ Decree No. 154/2005/ND-CP of 15 December 2005 and Circular No. 79/2009/TT-BTC of 24 September 2009 remained valid until 21 January 2011, when they were replaced by Circular No. 194/2009/TT-BTC of 6 December 2010 in accordance with the Government's regulation.

3.18. At the time of Viet Nam's accession in 2007, the simple average of its bound rates for all products was 17.5%; 22.4% for agricultural products and 13.1% for non-agricultural goods. Once all tariff concessions have been phased-in fully (by 2019), Viet Nam's bound rates should average 11.4% for all goods.¹⁵ Most tariff lines were bound in the 0-40% range, with peaks in the initial bound rates for "sensitive" items such as sugar (100%), wines and spirits (65%), tobacco (80%-150%), and motor vehicles (100%). Agreed reductions in the bound rates for "sensitive" products are mostly to be completed by 2014. Viet Nam agreed to join the plurilateral Information Technology Agreement, with zero duty on such goods to be applied either immediately upon accession or within transitions ending in 2010 to 2014. Otherwise, Viet Nam's participation in WTO sectoral initiatives is limited, with full participation only in respect of medical equipment. Moreover, Viet Nam's bound rates on chemicals largely conform (i.e. 80%) to the chemical harmonization initiative.

Table 3.1 Viet Nam's tariff structure, 2007 and 2013

(%, unless otherwise indicated)

	MFN applied		Final bound ^a
	2007	2013	
Bound tariff lines (% of all tariff lines)	100.0	100.0	100.0
Simple average rate	18.5	10.4	13.4
Agricultural products (HS01-24)	29.4	17.4	21.7
Industrial products (HS25-97)	17.0	9	12.3
WTO agricultural products	27.0	17.4	20.9
WTO non-agricultural products	17.4	9.3	12.4
Duty-free tariff lines (% of all tariff lines)	28.8	32.9	14.5
Simple average rate of dutiable lines only	26.0	15.6	15.8
Tariff quotas (% of all tariff lines)	0.0	0.0	0.0
Non- <i>ad valorem</i> tariffs (% of all tariff lines)	0.0	0.9	0.1
Domestic tariff "peaks" (% of all tariff lines) ^b	3.1	4.1	3.6
International tariff "peaks" (% of all tariff lines) ^c	41.7	25.6	31.3
Overall standard deviation of tariff rates	22.4	12.5	14.3
Coefficient of variation of tariff rates	1.2	1.2	1.1
Nuisance applied rates (% of all tariff lines) ^d	1.8	0.6	0.8
Total number of tariff lines	10,689	9,558	10,689
<i>Ad valorem</i> rates	7,611	6,337	8,924
Duty free	3,078	3,142	1,545
Alternate rates	0	0	12
Other ^e	0	87	0

a Final bound rates are based on the 2007 tariff schedule in HS02 nomenclature. Implementation period up to 2019. For 208 tariff lines falling under Chapter 87 no bound rates are provided.

b Domestic tariff peaks are defined as those exceeding three times the overall average applied rate.

c International tariff peaks are defined as those exceeding 15%.

d Nuisance rates are those greater than zero, but less than or equal to 2%.

e Other duties: duties based on special instruction as provided under Chapter 98; all tariff lines concerned are under Chapter 87 (motor vehicles).

Note: 2007 tariff is based on HS02 nomenclature, 2013 tariff is based on HS12. Calculations for averages are based on national tariff line level (8-digit).

Source: WTO Secretariat calculations, based on data provided by the authorities of Viet Nam, and Ministry of Finance, Circular No. 193/2012/TT-BTC.

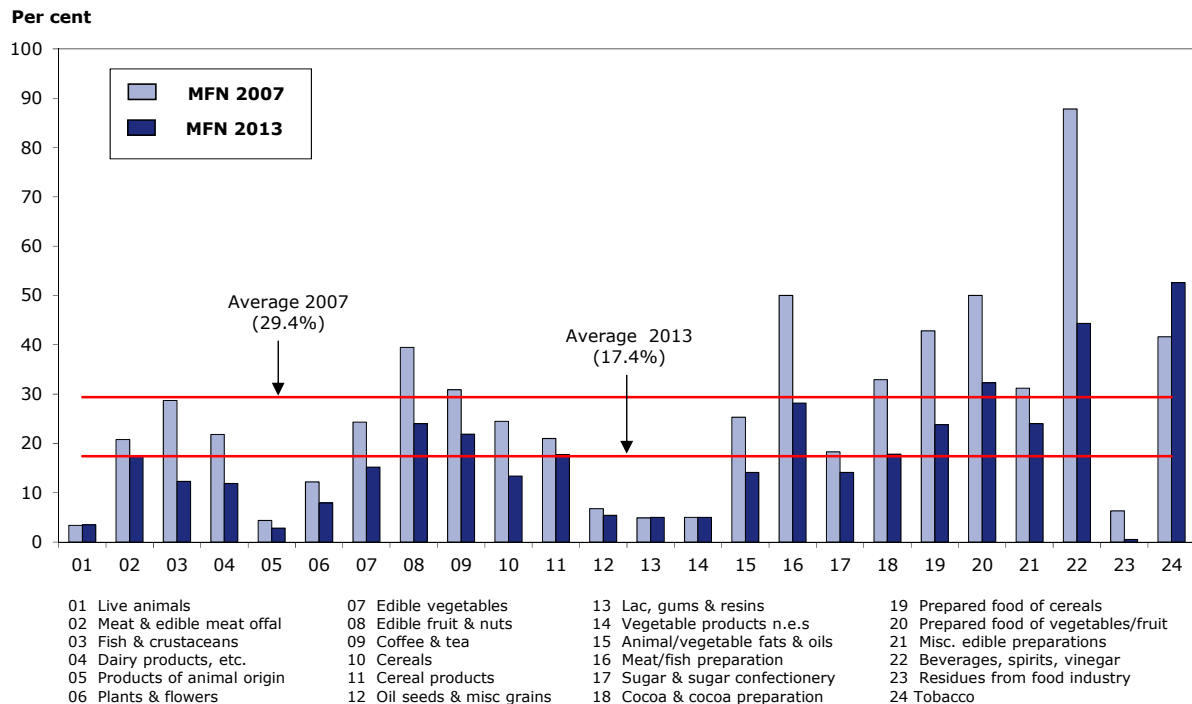
3.19. Viet Nam bound all its tariff lines at *ad valorem* rates with the exception of second-hand motor vehicles, which are bound at the lower of a compound rate or 200% *ad valorem*. However, Viet Nam reserved the right to apply specific or compound import duties on certain "sensitive"

¹⁵ WTO (2008). Nomenclature changes and methodological differences explain why these figures are not directly comparable to the tariff averages in the charts and tables of this report.

goods to address customs fraud. So far, this has not proven necessary, and only second-hand motor vehicles are subject to (applied) non-*ad valorem* rates at present.¹⁶

3.20. The Viet Nam Customs Tariff applied in 2013 follows the ASEAN Harmonized Tariff Nomenclature, based on the 2012 version of the Harmonized System.¹⁷ The Customs Tariff contains 9,558 tariff lines at the eight-digit level.¹⁸ The simple average applied MFN rate for all goods is 10.4% (Table 3.1); 17.4% for agricultural goods and 9.3% for non-agricultural products (WTO definition). Among the agricultural product categories attracting the highest MFN rates of import duty are alcoholic beverages and tobacco, coffee and tea, fruit and nuts, and cereals and preparations (Table A3.1 and Chart 3.1). Industrial goods with above-average MFN tariff protection include transport equipment, clothing, fish and fishery products, and footwear (Table A3.1 and Chart 3.2).

Chart 3.1 Average applied MFN rates, by HS chapters 1 to 24, 2007 and 2013



Source: WTO Secretariat calculations, based on data provided by the authorities of Viet Nam, and Ministry of Finance, Circular No. 193/2012/TT-BTC.

3.21. The difference between bound and currently applied MFN rates leaves some scope for flexibility in Viet Nam's tariff policy.¹⁹ In some instances, Viet Nam has implemented tariff reductions ahead of the committed timetable. Tariff cuts may also have been employed on occasion to reduce inflationary pressures in the domestic economy or to mitigate fluctuations in domestic energy prices (Table A3.2). However, a number of tariff increases since 2008 seem primarily motivated by a willingness to afford higher protection to certain domestic sectors, e.g. to manufacturers of motor vehicles, meat producers, and the local steel industry. Although all tariff increases appear to have been within the limits set by Viet Nam's tariff commitments in the WTO,

¹⁶ Should such changes occur in the applied customs duty in the future, Viet Nam is committed to provide a list of the affected goods to the WTO and ensure that the new rates do not exceed the bound (*ad valorem*) levels.

¹⁷ Viet Nam's Customs Tariff establishes three categories of import duty rates; (i) the "preferential rate", i.e. the MFN rate of duty generally applicable to WTO Members, (ii) "special preferential rates" applicable according to Viet Nam's preferential trade regimes; and (iii) the "ordinary" rate of customs duty. The ordinary duty, which is 1.5 times the MFN rate, is applied on trade with non-WTO Members (unless MFN treatment has been agreed bilaterally).

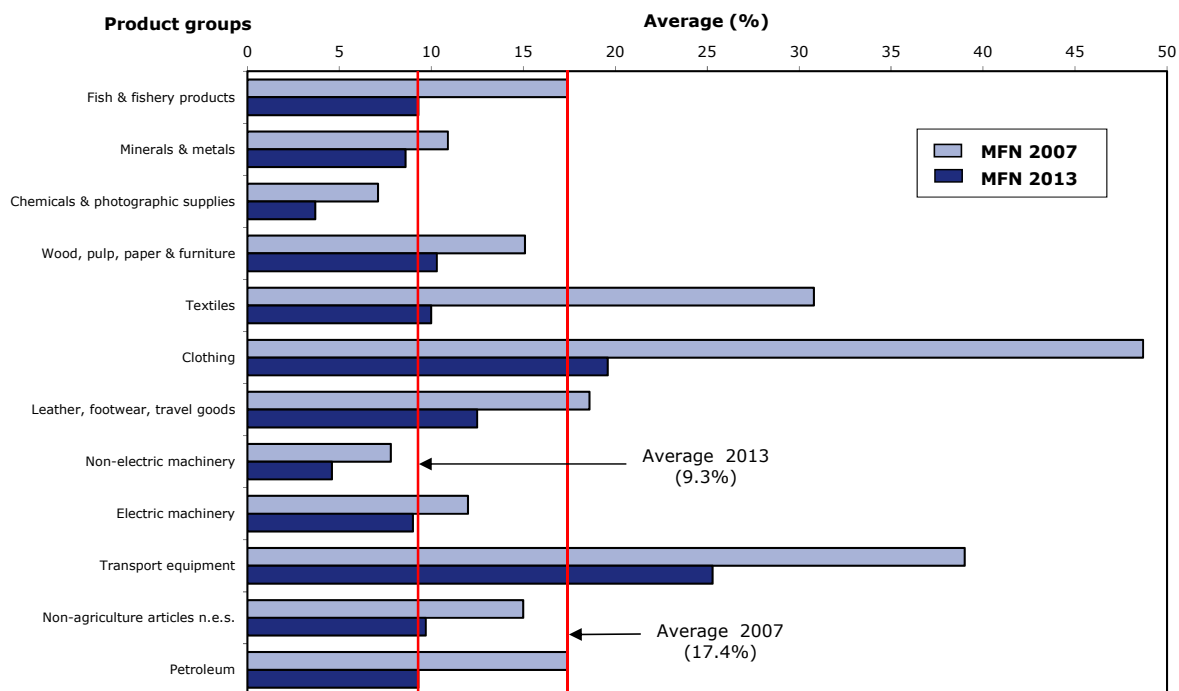
¹⁸ The national customs tariff on which Viet Nam concluded its WTO accession comprised 10,689 ten-digit tariff lines.

¹⁹ The difference between the initial bound and applied MFN rate was 5 percentage points or more, for some 2,600 tariff lines in 2007.

frequent changes in the applied tariff introduce uncertainty and may undermine the predictability of WTO Members' access to the Vietnamese market.

3.22. Viet Nam accords tariff preferences under regional and bilateral preferential trade agreements, i.e. to its ASEAN partners, Korea, China, Australia and New Zealand, India, and Japan. The preferential tariff treatment in Viet Nam's market is generally substantial for ASEAN and China, and somewhat less pronounced for Viet Nam's other FTA partners (Table A3.3). Although reductions apply in all cases, the average preferential rates remain above 10% for transport equipment, beverages, and tobacco.

Chart 3.2 MFN applied tariff averages by WTO non-agricultural product groups, 2007 and 2013



Source: WTO Secretariat calculations, based on data provided by the authorities of Viet Nam, and Ministry of Finance, Circular No. 193/2012/TT-BTC.

3.2.3 Other duties and charges

3.23. Viet Nam has bound other duties and charges (pursuant to Article II:1(b) of the GATT 1994) at zero in its Goods Schedule.

3.2.4 Tariff-rate quotas, tariff exemptions

3.24. Viet Nam has established tariff-rate quotas for imports of eggs, sugar, unmanufactured tobacco and tobacco refuse, and salt. According to Viet Nam's Goods Schedule, quota volumes must increase by 5% annually for the goods subject to TRQs (Table 3.2).²⁰ The size of the annual import quotas is fixed by the Ministry of Industry and Trade, whereas the tariff rates for out-of-quota imports are determined by the Ministry of Finance.²¹

²⁰ Viet Nam notified the implementation of its TRQ regime for agricultural goods, covering 2010 in WTO documents G/AG/N/VNM/1 and 2, of 3 November 2011. It has not yet notified details of the application of its TRQ regime for salt.

²¹ The Ministry of Industry and Trade stipulated the quotas for 2011 in Circular No. 45/2010/TT-BCT of 31 December 2010. The quotas for 2012 were laid down for tobacco in Circular No. 02/2012/TT-BCT on 18 January 2012, and for eggs, sugar, and salt in Circular No. 22/2012/TT-BCT on 6 August 2012. The Ministry of Finance determined the applicable duty rates for out-of-quota imports in 2012 on 4 July 2012 (Circular No. 111/2012/TT-BCT).

3.25. For tobacco, the quota is distributed among end-users permitted to produce cigarettes. Auctioning is not used to allocate the quotas. According to the authorities no imports of eggs is due to a lack of demand.

Table 3.2 Tariff-rate quotas, 2010-12

Product/HS code	Initial quota	TRQ in 2010	TRQ in 2011	TRQ in 2012	In-quota tariff rate (%)	Out-of quota tariff rate (%)	Import volume 2012	Administration method
Eggs 04070091 04070092 04070099	30,000 dozen	36,000 dozen	38,000 dozen	40,000 dozen	40	80	0	Past performance
Cane sugar 17011100	55,000 tonnes	200,000 tonnes	250,000 tonnes	70,000 tonnes	25	80	65,000 tonnes	Allocated to end-users based on past performance; portion of TRQ allocated to new importers
Beet sugar 17011200					50	80		
Other sugar 17019100 17019911 17019919 17019990					60	100 85 85 85		
Unmanufactured tobacco, tobacco refuse 24011010 24011020 24011030 24011090 24012010 24012020 24012030 24012050 24012090 24013010 24013090	31,000 tonnes	47,500 tonnes	38,000 tonnes	40,000 tonnes	30	80 90 90 80 90 90 80 90 80 15 30	22,000 tonnes	Past performance; quotas allocated to end-users who have cigarette-producing permits
Salt 25010010 25010021 25010029 25010031 25010032 25010033 25010090	150,000 tonnes	260,000 tonnes	102,000 tonnes	102,000 tonnes	30 10 15 50	60	52,000 tonnes	

Note: Annual growth rate for the quota volume is 5%.

Source: Schedule CLX-Socialist Republic of Viet Nam; WTO documents G/AG/N/VNM/1 and G/AG/N/VNM/2, 3 November 2011; Ministry of Finance, Circular No. 111/2012/TT-BTC, 4 July 2012; and information provided by the Vietnamese authorities.

3.26. Viet Nam has also opened tariff-rate quotas for preferential imports of rice and dried tobacco leaves from Cambodia and Lao PDR (Table 3.3). The regime is regulated in accordance with bilateral memoranda concluded in 2005 (Lao PDR) and 2007 (Cambodia).²² In-quota volumes are subject to 0% import duty. The tariff-rate quotas, which are announced by the Ministry of Industry and Trade, may be stipulated for one or two years at a time.

3.27. Viet Nam exempts various goods from customs duties pursuant to the Law on Import Tax and Export Tax (Law No. 45/2005/QH11 of 14 June 2005). In addition to humanitarian aid and non-refundable aid, goods in transit, and goods imported into free zones (Article 3), Article 16 enumerates other import duty exemptions, including for movable assets, goods imported temporarily for re-export, imports by organizations and individuals with diplomatic immunity, and fixed assets imported for projects entitled to investment incentives, specially encouraged, or funded through official development assistance programmes. Notably, the tax exemption for

²² The memorandum between the trade ministries of Viet Nam and Lao PDR currently in force was signed on 1 December 2011. Viet Nam and Cambodia signed a new memorandum on bilateral trade promotion on 17 February 2012.

investment projects extends to equipment and machinery, including specialized transportation means, raw materials and components, as well as construction materials that cannot (yet) be produced in Viet Nam. Various imports for the oil and gas industry (e.g. materials that are not produced in Viet Nam) as well as imported goods for research and development purposes, are also exempt from import duty.

Table 3.3 Tariff-rate quotas for Cambodia and Lao PDR, 2008-12

(Tonnes)

Product/HS code	2008	2009	2010	2011	2012
Cambodia					
Rice: 1006100090, 1006301900, 1006303000	150,000	150,000	250,000	250,00	300,000
Dried tobacco leaves: 2401101000, 2401102000, 2401103000, 2401109000	n.a.	n.a.	3,000	3,000	3,000
Lao PDR					
Rice: 100610090, 1006301900, 1006303000, 1006309000	40,000	40,000	40,000	40,000	70,000
Dried tobacco leaves: 2401101000, 2401102000, 2401103000, 2401109000, 2401201000, 2401204000, 2401301000	3,000	3,000	3,000	3,000	3,000

n.a. Not applicable.

Source: Ministry of Industry and Trade online information. Viewed at: <http://www.moit.gov.vn>.

3.28. Border trade by local residents up to ₫2 million (US\$100) per passage per day is exempt from customs duty, according to Decision No. 254/2006/QĐ-TTg of 7 November 2006, amended by Decision No. 139/2009/QĐ-TTg of 23 December 2009. The duty-free goods, which are listed by the Ministry of Industry and Trade in consultations with the authorities concerned, must originate in the neighbouring countries. Commercial cargoes from the border areas of China, Cambodia, and Lao PDR are cleared through Customs and subject to normal customs duty.

3.2.5 Fees and charges for services rendered

3.29. Circular No. 172/2010/TT-BTC of 2 November 2010, establishes a single fee for customs clearance of ₫20,000 per declaration form. Payments are held in "fee custody accounts" at the customs office collecting a fee, and used to finance certain customs expenditures and operations, including overtime and night-hour compensation for officials effecting customs clearance outside of the normal opening hours.

3.30. Charges for customs warehousing depend on the weight of the stored item. Rates are determined separately for automobiles, motorcycles and motorbikes, computers and office equipment, consumer electronics, air conditioners, gold, and gemstones. Decision No. 98/2008/QĐ-BTC of 4 November 2008 regulates maritime fees and charges including tonnage charges, maritime insurance fees, pilotage charges, charges for anchoring and mooring and the use of piers and mooring buoys, and clearance fees. Seaport service charges are established by the respective port authorities and vary depending on the main engine capacity and gross tonnage of the vessels, and the size and weight of the cargo (see also section 4.6.6.1).

3.2.6 Internal taxes

3.31. Viet Nam levies excise taxes on certain goods and services pursuant to the Law on Special Consumption Tax of 30 June 1990, as amended (Table 3.4).²³ The items are considered luxuries or potentially harmful products (e.g. alcohol and tobacco), the consumption of which should be discouraged. No distinction is made between domestically produced and imported goods, but for imports the special consumption tax is levied on the duty-inclusive import price.²⁴

Table 3.4 Goods and Services Subject to Special Consumption Tax, 2006-13

No.	Description of good or service	Tax rate (%)
I.	Goods	
1.	Cigarettes, Cigars:	
	(a) Cigars	65
	(b) Cigarettes	
	- From 2006 to 2007	55
	- From 2008	65
2.	Spirits:	
	(a) Spirits from 40°	65
	From 01.01.2010 – 31.12.2012	45
	From 01.01.2013	50
	(b) Spirits from 20° to less than 40°	30
	From 01.01.2010 – 31.12.2012	45
	From 01.01.2013	50
	(c) Spirits of under 20°, wines brewed from fruits, herbal and medicinal wines	20
	From 01.01.2010	25
3	Beer:	
	(a) Bottled beer and canned beer	75
	From 01.01.2010 – 31.12.2012	45
	From 01.01.2013	50
	(b) Draught beer and draft beer	
	- From 2006 to 2007	30
	- From 2008	40
	From 01.01.2010 – 31.12.2012	45
	From 01.01.2013	50
4.	Automobiles ² :	
	(a) Automobiles of 5 seats or less	50
	(b) Automobiles of 6 to 15 seats	30
	(c) Automobiles of 16 to under 24 seats	15
	From 01.04.2009	
	(a) Automobiles of 9 seats or less (except those indicated in points 4e, 4g, 4h)	45
	Of a cylinder capacity of 2,000 cm ³ or less	45
	Of a cylinder capacity from 2,000 cm ³ to 3,000 cm ³	50
	Of a cylinder capacity of over 3,000 cm ³	60
	(b) Automobiles of 10 to 16 seats (except those indicated in points 4e, 4g, 4h)	30
	(c) Automobiles of 16 to 24 seats (except those indicated in points 4e, 4g, 4h)	15
	(d) Automobiles served for both purposes of carrying passengers and goods (except those indicated in points 4e, 4g, 4h)	15
	(e) Automobiles using petrol combined with electricity/bio energy in which the amount of petrol used is less than or equal to 70% of total energy used	Equal to 70% of the amount of tax applied for the same type of automobiles indicated in points 4a, 4b, 4c and 4d
	(f) Bio-fuel automobiles	Equal to 50% of the amount of tax applied for the same type of automobiles indicated in points 4a, 4b, 4c and 4d

²³ Notably, the Law was amended in 2005 to be consistent with Viet Nam's WTO commitments.

²⁴ Decree No. 26/2009/ND-CP, which provides guidance on the implementation of the Law on Special Consumption Tax appears to allow use of the production price as the tax base in certain circumstances, as an exception. For wines and spirits, this provision may amount to a tax cut of up to 10% for local producers (European Commission, 2011).

No.	Description of good or service	Tax rate (%)
	(g) Electric automobiles	
	Automobiles of less than 9 seats	25
	Automobiles of 10 to 16 seats	15
	Automobiles of 16 to 24 seats	10
	Automobiles served for both purposes of carrying passengers and good	10
5.	Motorbicycles of 2 or 3 wheels with cylinder capacity of over 125 cm ³	20
6.	Airplanes	30
7.	Cruise boats	30
8.	Assorted petrol, naphtha, reformat component and other components to be mixed in petrol	10
9.	Air-conditioners with the capacity of 90,000 BTU or less	15
	From 01.04.2009	10
10.	Playing cards	40
11.	Votive paper	70
II.	Services:	
1.	Operating discotheques, massage lounges, karaoke parlours	30
1.	Operating discotheques	
	From 01.04.2009	40
2.	Operating massage lounges and karaoke parlours	30
	From 01.04.2009	
3.	Operating casinos, offering jackpot games	25
	From 01.04.2009	30
4.	Recreation services with gambling	25
	From 01.04.2009	30
5.	Golf: selling memberships and tickets for playing golf	10
	Golf business	
	From 01.04.2009	20
6.	Lottery	15

a Automobile spare parts are not subject to excise tax.

Source: Law on Special Consumption Tax No. 27/2008/QH12 of 14 November 2008, in effect since 1 April 2009, and Decision No. 5371/TCT-CS of 31 December 2009 of the Taxation Department of the Ministry of Finance.

3.32. At the time of Viet Nam's accession to the WTO, significant differences in its tax rates on alcoholic beverages provided differential treatment for similar or like products. Viet Nam agreed to equalize tax rates on distilled spirits and beer within three years of accession, and a single tax rate of 45% *ad valorem* entered into effect on 1 January 2010. The tax rate was increased to 50% with effect from the beginning of 2013. Automobile taxes have also been changed (in 2009) as rates are currently lower for electric motor vehicles than for vehicles running on fossil fuels.

3.33. Exemptions to the special consumption tax are detailed Article 3 of the Law and in Government Decree No. 16/2009/ND-CP of 16 March 2009. They principally concern goods and cargo in transit through Viet Nam; aircraft, cruise liners, and transportation vehicles used for business or special purposes (e.g. ambulances, funeral vans, etc.); and air conditioners used in transport vehicles. Producers of goods subject to special consumption tax on taxable raw materials may claim tax credit for the tax paid. Exported goods are exempted from special consumption tax (Article 3).

3.34. Viet Nam introduced an environmental tax with effect from 1 January 2012 in accordance with the Law on Environmental Protection Tax No. 57/2010/QH12 of 15 November 2010. The environmental protection tax is applied on petroleum products; coal; hydrogen-chlorofluorocarbon (HCFC) liquids (ozone depleting substances); plastic bags; and various pesticides and herbicides.²⁵ The tax rates are specific and set product-by-product. Most goods are currently taxed at the lower end of the minimum/maximum rates established by the Standing Committee of the National Assembly (Table 3.5). Fuel surcharges on petrol, diesel, kerosene, jet fuel, heating oil, etc., applied in accordance with the Ordinance on fees and charges No. 38/2001/PL-UBTVQH10, were abolished with the introduction of the environmental protection tax. The Law authorizes the Standing Committee of the National Assembly to extend the product coverage. Goods exported directly are not subject to this tax.

²⁵ According to Ministry of Finance Circular No. 159/2012/TT-BTC of 28 September 2012, plastic bags made of certain types of polyethylene (HDPE, LDPE, and LLDPE) are now considered to be environmentally friendly, and thus no longer subject to the environmental protection tax.

Table 3.5 Products subject to environmental protection tax

Item	Product description	Calculation unit	Tax frame	Tax rate (₫)
I	Gasoline, oil, grease			
1	Gasoline, except ethanol	litre	1,000-4,000	1,000
2	Aircraft fuel	litre	1,000-3,000	1,000
3	Diesel oil	litre	500-2,000	500
4	Petroleum	litre	300-2,000	300
5	Fuel oil	litre	300-2,000	300
6	Lubricants	litre	300-2,000	300
7	Grease	kg	300-2,000	300
II	Coal			
1	Lignite	tonne	10,000-30,000	10,000
2	Anthracite coal (anthracite)	tonne	20,000-50,000	20,000
3	Fat coal	tonne	10,000-30,000	10,000
4	Other coal	tonne	10,000-30,000	10,000
III	Hydrogen-chlorofluorocarbon liquid (HCFC)	kg	1,000-5,000	4,000
IV	Taxable-plastic bag	kg	30,000-50,000	40,000
V	Herbicide that is restricted	kg	500-2,000	500
VI	Pesticide that is restricted	kg	1,000-3,000	1,000
VII	Forest product preservative that is restricted	kg	1,000-3,000	1,000
VIII	Warehouse disinfectant that is restricted	kg	1,000-3,000	1,000

Source: Information provided by the Vietnamese authorities.

3.35. Viet Nam passed its first Law on Value Added Tax in 1999. At present, VAT is levied on goods and services according to the Law on Value-Added Tax No. 13/2008/QH12 of 3 June 2008. The VAT rate is zero, 5% or 10%, with 10% being the standard rate.²⁶ The reduced (5%) rate is applicable to "essential" goods and services, such as clean water, fertilizer, animal feed, unprocessed agricultural commodities, fresh food, sugar and sugar by-products, preliminarily processed rubber latex, agricultural machinery, medical equipment, teaching aids, children's toys, and scientific and technological services. Exported goods and services, international transportation services, offshore reinsurance, credit provision, capital transfers and derivative financial services, and post and telecommunication services are zero rated. A new category of "goods and services not subject to VAT" was added to the list of exceptions from 2012 covering, for example, goods and services provided outside of Viet Nam, financial revenues, capital contributions in kind, and agents' commissions (Table 3.6).

3.36. VAT is applied on the duty-paid value of imports, and is due at the same time as the payment of import duties. For domestic producers, VAT is collected monthly and settled at the end of the calendar year.²⁷ For goods subject to excise duty and/or environmental tax, VAT is calculated on the price inclusive of such duties and taxes.

3.37. VAT has become an important element of government revenue. In 2012, the nearly ₫216 billion collected from VAT represented almost one third of the Government's total tax revenue. The special consumption tax and the environmental protection tax raised an additional ₫57.6 billion.²⁸ Taxes on international trade transactions amounted to ₫74 billion.²⁹

²⁶ Non-taxable transactions and transactions subject to 5% VAT or zero-rated are enumerated in Articles 5 and 8 of the Law.

²⁷ Enterprises and individuals established permanently in Viet Nam who are producing or trading goods or services subject to VAT must register as VAT taxpayers, and file monthly tax returns (by the 20th day of the following month). For enterprises and individuals maintaining proper bookkeeping procedures, VAT is calculated according to the deduction method. Establishments with more rudimentary accounts, or foreigners carrying out business not regulated under the Law on Investment, are assessed according to the direct method, i.e. the value of the goods or services sold multiplied by the applicable rate of VAT. In order to provide some financial relief to certain enterprises, the Government issued Resolution No. 13/NQ-CP on 10 May 2012, *inter alia*, granting many small and medium-sized enterprises using the deduction method a six-month extension of the deadline for the submission of VAT in April, May, and June 2012.

²⁸ The amount refers to such taxes collected on domestic goods and services only.

²⁹ This overall figure refers to import duty, special consumption tax and environmental protection tax levied on imports, and revenue from export taxes.

Table 3.6 Goods and services exempt from VAT (as of 1 January 2009)

No.	Product description
1.	Cultivation and husbandry products, and farmed or fished aquatic products not yet processed into other products or only preliminarily processed; sold by producing and fishing organizations and individuals, and products at the stage of importation
2.	Animal breeds and plant variety products, including breeding eggs, breeding animals, seedlings, seeds, sperm, embryos and genetic materials
3.	Irrigation and drainage; soil ploughing and harrowing; dredging of intra-field canals and ditches for agricultural production; harvesting of farm produce
4.	Salt products made of seawater, natural rock salt, refined salt, and iodized salt
5.	State-owned residential houses sold by the State to current tenants
6.	Transfer of land use rights
7.	Life insurance, student insurance, insurance of domestic animals, insurance of plants, and reinsurance
8.	Credit provision services; securities trading; capital transfer; derivative financial services, including interest-rate swap contracts, forward contracts, futures contracts, call or put options, foreign currency sales, and other derivative financial services as prescribed by law
9.	Healthcare and animal health services, including medical examination, treatment, and preventive services for human beings and domestic animals
10.	Public post and telecommunications and universal Internet services under the Government's programmes
11.	Public sanitation services and water drainage in streets and residential areas; maintenance of zoos, flower gardens, parks, street greeneries and public lighting; funeral services
12.	Renovation, repair and construction of cultural, artistic, public service and infrastructure works, and residential houses for social policy beneficiaries, funded with people's contributions or humanitarian aid
13.	Teaching and vocational training as provided for by law
14.	State-budget-funded radio and television broadcasting
15.	Publication, import and distribution of newspapers, journals, specialized bulletins, political books, textbooks, teaching materials, law books, scientific-technical books, books printed in ethnic minority languages, as well as propaganda postcards, pictures and posters, including those in the form of audio or visual tapes or discs or electronic data; money printing
16.	Mass transit by bus and tramcar
17.	Machinery, equipment and supplies that cannot be manufactured in Viet Nam and need to be imported for direct use in scientific research and technological development activities; machinery, equipment, spare parts, special-purpose means of transport and supplies that cannot be manufactured in Viet Nam and need to be imported for prospecting, exploring and developing oil and gas fields; aircraft, drilling platforms and ships that cannot be manufactured in Viet Nam and need to be imported for the formation of enterprises' fixed assets or hired from foreign parties for production and business activities or for lease
18.	Special-purpose weapons and military equipment for security and defence purposes
19.	Goods imported as humanitarian aid or non-refundable aid; gifts for state agencies, political organizations, socio-political organizations, socio-political-professional organizations, social organizations, socio-professional organizations or people's armed forces units; donations or gifts for Viet Nam-based individuals within the Government-prescribed quotas; belongings of foreign organizations and individuals within diplomatic immunity quotas; and personal effects within duty-free luggage quotas. Goods and services sold to foreign organizations or individuals or international organizations for use as humanitarian aid, and non-refundable aid to Viet Nam
20.	Goods transferred out of border gate or transited via the Vietnamese territory; goods temporarily imported for re-export; goods temporarily exported for re-import; raw materials imported for the production or processing of goods for export under contracts signed with foreign parties; goods and services traded between foreign countries and non-tariff areas and between non-tariff areas
21.	Technology transfer under the Law on Technology Transfer; transfer of intellectual property rights under the Law on Intellectual Property; computer software
22.	Gold imported in the form of bars or ingots not yet processed into fine-art articles, jewellery or other products
23.	Exported products that are unprocessed mined resources or minerals as prescribed by the Government
24.	Artificial products used for the substitution of diseased people's organs; crutches, wheelchairs, and other tools used exclusively for the disabled
25.	Goods and services of business individuals who have a monthly income lower than the common minimum salary level applicable to domestic organizations and enterprises

Source: Law on Value Added Tax No. 13/2008/QH12 (English translation viewed at: <http://www.ifrc.org/docs/idrl/899EN.pdf>)

3.2.7 Import prohibitions, restrictions, and licensing

3.38. Viet Nam prohibits the importation of goods generally considered harmful to human health and safety or national security (Table 3.7), or to comply with international treaties and

conventions to which Viet Nam is party. Domestic production of the corresponding goods is either prohibited or, as a minimum, subject to strict controls.³⁰

Table 3.7 Import prohibitions

HS	Description	Legal basis
1207 91 00	Poppy seeds	Law No. 23/2000/QH10 on drug prevention and combat as amended by Law No. 16/2008/QH12 and its guiding legal documents
1302 11 00	Opium, anhydrous morphine anhydrous content	
2618 00 00	Granulated slag (slag sand) from the manufacture of iron or steel	Law on Environment Protection; Circular No. 01/2012/TT-BTNMT of 28 January 2013
2619 00 00	Slag, dross (other than granulated slag), scalings and other waste from the manufacture of iron or steel	
2620	Ash and residues (other than from the manufacture of iron or steel) containing metals or metal compounds	
2621 00 00	Other slag and ash, including seaweed ash (kelp)	
3601 00 00	Propellant powders	Decree No. 12/2006/ND-CP
8710 00 00	Tanks and other armoured fighting vehicles, motorized, whether or not fitted with weapons, and parts	
ex 8702	Right-hand steering vehicles (including components and vehicles modified to left-hand drive ones prior to importation into Viet Nam), except for specialized right-hand steering vehicles operating in small areas such as cranes, trench and canal digging machines, garbage trucks, road sweepers, road construction trucks, airport passenger transportation buses, fork-lifts used at warehouses and ports	
8703		
8704		
8707		
8708		
9301 00 00	Military weapons, other than revolvers, pistols and the arms of heading 307: revolvers, pistols	
9302 00 00	Revolvers and pistols, other than those of heading 9303 or 9304	
9304	Other arms (e.g. spring, air or gas guns and pistols, truncheons), excluding those of heading 9307	
9305	Parts and accessories of Articles of headings 9301 to 9304	
9306	Bombs, grenades, torpedoes, mines, missiles and similar munitions of war and parts thereof; cartridges and other ammunition and projectiles and parts thereof, including shot and cartridge wads	
9307	Swords, cutlasses, bayonets, lances and similar arms and parts thereof and scabbards and sheaths thereof	
..	Second-hand consumer goods, including: <ul style="list-style-type: none">- Textiles and clothes; footwear;- Electronic goods;- Refrigerating equipment and products;- Household electric goods;- Furniture;- Household goods made from porcelain, clay, glass, metal, resin, rubber, plastic, and other materials	
..	Used materials and equipment, including: <ul style="list-style-type: none">- Used machines, structures, inner tires, tires, accessories, motors of automobiles, tractors, 2-wheel and 3-wheel motorbikes;- Internal combustion engines and machines with internal combustion engines (capacity below 30 CV)- Bicycles, 2-wheel and 3-wheel vehicles	

³⁰ Decree No. 12/2006/ND-CP stipulates that goods prohibited for importation are also prohibited for production, purchase, and sale in Viet Nam.

HS	Description	Legal basis
..	Toxic chemicals Lists published by the Ministries of Industry and Trade; Health; and Agriculture and Rural Development	Decree No. 108/2008/ND-CP of 7 October 2008; Decree No. 26/2011/ND-CP of 8 April 2011; Law No. 23/2000/QH10 of 9 December 2000; Decree No. 58/2003/ND-CP of 29 May 2003; Decision No. 134/2003/QĐ-BCN of 25 August 2003; Decree No. 100/2005/ND-CP of 3 August 2005; Circular No. 15/2009/TT-BNNPTNT of 17 March 2009; Circular No. 20/2010/TT-BNNPTNT of 2 April 2010; Circular No. 21/2013/TT-BNNPTNT of 17 April 2013; Circular No. 25/2011/TT-BYT of 23 June 2011
..	Garbage and waste materials which may cause environmental pollution and epidemics The Law on Environment Protection (Article 7) prohibits imports and transit of waste in any form Pursuant to Article 43 of the Law on Environment Protection, importation of scrap is a conditional business. The Ministry of Industry and Trade shall assume prime responsibility for issuing regulations on business criteria and conditions applicable to organizations and individuals engaged in importing scrap, in coordination with the Ministry of Natural Resources and Environment	Law No. 52/2005/QH11 on Environment Protection
..	Depraved and reactionary cultural products	Decree No. 12/2006/ND-CP
..	Children toys having adverse effect in moral education, public order and security	
..	Narcotics	Law No. 34/2005/QH11 on pharmacy and its guiding legal documents
..	Firecrackers (excluding fire signal used for maritime safety and other purposes as stipulated by the Prime Minister in the official Document No.1383/CP-KTTS of 23 November 1998)	
..	Asbestos products and materials under amphibole group	Decree No. 12/2006/ND-CP
..	Specialized encryption machines and encryption software subject to State secret ^a	Law No. 05/2011/QH13 on Cipher

a The restriction does not apply to general, commonly traded goods equipped with encryption technology destined for mass consumption

Source: WTO document WT/ACC/VNM/48 and information provided by the Vietnamese authorities.

3.39. Viet Nam is a signatory to various international treaties and conventions with implications for trade: the Convention on World Cultural Heritage and Natural Resources Conservation; the Convention on Wetland of International Importance, especially of Waterfowls Habitat (Ramsar); the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES); the Montreal Protocol on Substances that Deplete the Ozone Layer; the Framework Convention on Climate Change; the Convention on Biological Diversity (CBD); the Convention on Marine Law; the Basel Convention on controlling the transit and disposal of dangerous waste; the United Nations Convention to Combat Desertification (CCD); the Cartagena Protocol on Biosafety; the Vienna Convention on the Ozone Layer Protection; the Stockholm Convention on Persistent Organic Pollutants; and the Rotterdam Convention on Prior Informed Consent.

3.40. Import prohibitions on cigarettes and other tobacco products were eliminated upon Viet Nam's accession to the WTO.³¹ Moreover, a prohibition on the importation of large new motorcycles (engine capacity exceeding 175cc) was replaced by automatic licensing, and a prohibition on the importation of second-hand motor vehicles (less than five years old) was replaced by high tariffs and domestic product and traffic safety mechanisms. Licensing is also employed to administer importation of goods subject to tariff-rate quotas.

³¹ However, such goods are reserved for "state trading".

3.41. Under Decree No. 12/2006/ND-CP of 23 January 2006, importation of various goods is subject to "line management", i.e. import licences are issued by the Ministry of Industry and Trade, but the imports are regulated by other ministries (Table A3.4). In such cases, neither the value nor the quantity of imports is restricted. The purpose of this system is, *inter alia*, to enforce minimum quality or performance standards for goods related to human, animal, or plant health; local network compatibility (telecommunications equipment); monetary security; or cultural sensitivities. According to the authorities, the "line management" system includes automatic and non-automatic licensing procedures.

3.42. In 2008, Viet Nam introduced what it considers automatic licensing for a wide range of consumer products and agricultural items through Decision No. 24/2008/QĐ-BCT and Circular No. 17/2008/TT-BCT of 12 December 2008. According to the authorities, the measure was introduced to gather "more detailed statistics and trade data for import assessment".³² The product coverage was extended to include certain agriculture and food items, textiles, and clothing in 2010 as Circular No. 24/2010/TT-BCT of 28 May 2010 replaced Circular No. 17.³³ At the time, the measure affected imports of meat and meat products; certain fish and fish products; sugar confectionary, including chocolate; certain vegetable, fruit, cereal, and flour preparations; beverages, spirits and vinegar; plastic products; textiles and apparel; footwear; cosmetics; home electrical appliances; motor vehicles and motorcycles; furniture; toys; and steel products. Subsequently, the product coverage was reduced somewhat in 2011 (Circular No. 32/2011/TT-BCT of 5 September 2011).³⁴ A temporary suspension was introduced in 2012 (Circular No. 27/2012/TT-BCT of 26 September 2012). According to the authorities, products listed in Annex 1 of Circular 24 currently do not need an "automatic" licence. However, Circular No. 23/2012/TT-BCT of 7 August 2012, which covers automatic licensing of certain steel products, is still in effect (see also section 4.4.3).

3.43. The licence must be presented prior to unloading in Viet Nam, and requires, along with the application form, copies of (i) the business registration certificate, (ii) the import contract or equivalent documents, (iii) the commercial invoice; (iv) the letter of credit or payment documents; and (v) the bill of lading. Provided all documentation is in order, the licence should be issued automatically within 7 working days, free of any administrative fee or charge.³⁵ The application is considered by a single administrative organ, i.e. the local Export and Import Management Offices affiliated with the Ministry of Industry and Trade. Licences are valid for 30 days from the date of issue, and are not transferable among importers. Importers must apply for a new licence when the old licence has expired. According to the authorities, the system is automatic in nature and in practice, and complies fully with the WTO Agreement on Import Licensing Procedures. Except for the Circulars pertaining to automatic licences, no changes have occurred to Viet Nam's import licensing regime since its accession to the WTO.³⁶

³² WTO document G/LIC/Q/VNM/3, 18 July 2012.

³³ Other modifications to the system occurred in 2010 through Circulars Nos. 22/2010/TT-BCT of 20 May 2010, 31/2010/TT-BCT of 28 July 2010, and 42/2010/ of 28 December 2010. These circulars are no longer valid.

³⁴ Products listed in Annex 1 of Circular No. 24/2010/TT-BCT fall within HS Chapters 2, 20, 64, and 95 and major parts of HS Chapters 3, 16, 17, 18, 19, 21, 22, 33, 39, 61, 62, 63, 69, 70, 73, 76, 84, 85, 87, and 94. In 2011, Circular 32 removed the licensing requirement for line telephone sets with cordless handsets (HS code 8517.11.00.00) and cell phones or telephones used for other wireless networks (HS 9517.12.00.00).

³⁵ According to some sources, the issuance of licences has often taken more than 7 days. In addition, applications have had to be sent by regular mail, and the requirement to present a copy of the original bill of lading constrained importers wishing to apply early for a licence, as the bill of lading could not be obtained until cargo had been loaded for shipment to Viet Nam. At present, licence applications for steel products can be submitted online (U.S. Commercial Service, 2011; and European Commission, 2011).

³⁶ In the absence of a notification from Viet Nam, the United States addressed formal questions to Viet Nam on the new regime in 2008 (WTO document G/LIC/Q/VNM/1, 10 October 2008). Viet Nam outlined its automatic licensing system with reference to Article 7.3 of the Agreement on Import Licensing Procedures (ILA) in 2011 (WTO document G/LIC/N/3/VNM/1, 12 May 2011). The United States responded to Viet Nam in March 2012, stating that Viet Nam did not appear to have fulfilled the notification obligations of Article 5 of the ILA and had not provided the relevant texts as required by Articles 1.4(a) and 8.2(b) of the ILA (document G/LIC/Q/VNM/2, 20 March 2012). Viet Nam's responses to the issues raised by the United States are contained in WTO document G/LIC/Q/VNM/3, 18 July 2012. Viet Nam provided the texts (in English) of Circulars Nos. 24/2010/TT-BCT and 32/2011/TT-BCT in notifications dated 26 April 2012 (WTO documents G/LIC/N/1/VNM/1 and G/LIC/N/2/VNM/1), and Circular No. 27/2012/TT-BCT in a notification dated 10 January 2013 (WTO document G/LIC/N/1/VNM/2). However, the appendices specifying the goods subject to

3.44. Prior to accession, Viet Nam had eliminated foreign exchange restrictions on "dispensable and non-essential" import items and consumer goods, and "payment method" restrictions. However, in April 2010 the Ministry of Industry and Trade promulgated a long list of "non-essential" imported commodities and consumer goods not encouraged for import.³⁷ The State Bank of Viet Nam subsequently instructed credit institutions to consider carefully or restrict the provision of foreign currency loans to finance imports of the listed items.³⁸ The list was expanded in 2011, as Decision 1899 was replaced by Decision No. 1380/QD-BCT of 25 March 2011. Among the discouraged items are live animals, dairy products, sugar confectionary, fish and crustaceans, and table salt.

3.2.8 Customs valuation

3.45. Article 71 of the Law on Customs No. 29/2001/QH of 29 June 2001, and Article 1, section 23 of the amended Law of 14 June 2005 constitute the basic legal provisions for customs valuation in Viet Nam. Implementing legislation comprises Decision No. 40/2007/ND-CP of 16 March 2007 and Circular No. 205/2010/TT-BTC of 15 December 2010.³⁹ In addition, the Director General of Viet Nam Customs issued Decision No. 103/QD-TCHQ regarding customs inspection, consultations, and the determination of the taxable price for imported and exported goods on 24 January 2011.

3.46. Viet Nam joined the WTO without a transition period to implement the WTO Agreement on the Implementation of Article VII of the GATT 1994 (Customs Valuation Agreement), including the Interpretative Notes (Annex I) to the Agreement.⁴⁰ Viet Nam's legislation stipulates the transaction value as the principal method of customs valuation, and provides for the alternative valuation methods (including the computed value and deductive methods) and the sequential order of application as laid down in the Customs Valuation Agreement. Ministry of Finance Circular No. 114/2005/TT-BTC on import-export post clearance audit was replaced by Circular No. 194/2010/TT-BTC of 6 December 2010.

3.47. Prior to accession, Viet Nam used minimum import prices for the customs valuation of certain goods, including wine, spirits and ceramic tiles, but confirmed that minimum prices or reference prices would not be introduced or re-introduced *in lieu* of the transaction value from the date of accession. However, Viet Nam would consider the establishment of a valuation database as a risk assessment tool.⁴¹ In January 2011, the General Department of Customs issued an official letter identifying reference prices for selected imported goods by trading partner.⁴² The stated purpose of this tool is to enable comparison with the prices declared by the enterprises to prevent false information and tax evasion. The product list initially covered 13 categories, but was expanded to 20 categories in May 2011.⁴³ Together with official letter No. 5486/TCHQ-TXNK of 10 October 2012, the reference price system currently covers frozen meat and poultry, fresh and frozen fish, edible fresh fruit, wine, beer, sanitation equipment, fabrics, tiles, glass, gas stoves, engines, generators, air conditioners, refrigerators, washing machines, household electrical equipment, power generating sets, mobile phones, all types of motor vehicles, electric bicycles, motorcycles, and iron and steel.

3.48. Decree No 40/2007/ND-CP of 16 March 2007 (Articles 16 and 17) provides for a guarantee system for the release of goods from customs pending the final determination of the customs value. An importer may appeal a disputed valuation decision pursuant this Decree and Article 1 of

this measure were not submitted, a fact also noted by the United States in a submission circulated in April 2013 (WTO document G/LIC/Q/VNM/4).

³⁷ Decision No. 1899/2010/QD-BCT of 16 April 2010. The initial list covered some 1,500 tariff lines.

³⁸ Document No. 3215/NHNN-CSTT of 29 April 2010.

³⁹ Decision No. 30/2008/QD-BTC of 21 May 2008 and Circular No. 163/2009/TT-BTC of 13 August 2009 stipulate the declaration forms, and provide some guidance on the declaration of customs value.

⁴⁰ Viet Nam agreed to implement Decision 3.1 of the WTO Committee on Customs Valuation no later than two years from the date of accession. Regarding the valuation of carrier media bearing software for data processing equipment, Viet Nam is applying paragraph 2 of Decision 4.1 according to Article 13, clause 3 of Circular No. 205/2010/TT of 15 December 2010.

⁴¹ Decision No. 1102/2008/QD-BTC of 21 May 2008 concerns the development, management, and use of a price database.

⁴² Official Letter No. 348/TCHQ-TXNK of 21 January 2011 on List of Administrated Imported Goods at Risks and (Reference). The letter entered into force on 29 January 2011.

⁴³ Official Letter No. 2334/TCHQ-TXNK of 23 May 2011, in force since 1 June 2011.

the Law on Complaints and Denunciation. The matter may be taken to a higher administrative body or a case may be brought before the Administrative Court.

3.49. According to Vietnamese businesses, the application of HS Codes is not always uniform across customs offices, which means that the same good could be subject to different duty depending on classification matters.⁴⁴ According to the customs authorities, some of these issues may be due to differences in the technical documentation and product descriptions provided by the importers themselves, or to new high-tech, multi-functional, and complex goods giving rise to different opinions among customs officials regarding correct classification. Viet Nam Customs is currently constructing a database for unified inspection and classification of certain types of goods.

3.2.9 Rules of origin

3.50. Viet Nam has issued several legal documents to implement ASEAN preferential rules of origin and non-preferential rules of origin. The basic legal document is Government Decree No. 19/2006/ND-CP of 20 February 2006 detailing the provisions of the Commercial Law on goods origin. Certificates of origin are required for goods subject to import management regulations in accordance with Vietnamese laws or international treaties or agreements to which Viet Nam is a party; goods considered likely to harm social security, public health or the environment; goods imported from countries subject to trade remedy measures or tariff-rate quotas; and for imports from preferential trading partners. Importers wishing to obtain prior assessments of origin may submit relevant documents and materials to the customs office. According to Article 8 of Circular No. 194/2010/TT-BTC of 6 December 2010, prior certification of origin is valid for one year from the date of issue, and may also apply to goods of the same category coming from the same producer or exporter the importer is trading with.

3.51. Viet Nam implements ASEAN preferential rules of origin. Importers are required to submit certificates of origin (form D) either satisfying the wholly obtained criterion or proving minimum 40% ASEAN cumulative origin for goods imported under the ASEAN Trade in Goods Agreement. ASEAN free-trade agreements with other partners such as China, Korea, Australia/New Zealand, and India are also based on the wholly obtained criterion or substantial transformation involving a change in tariff heading, and allowing for regional cumulative origin.⁴⁵ Other rules may apply specifically to minimal operations and processes; accessories, spare parts, and tools; identical and interchangeable materials; the treatment of packaging materials and containers; and indirect materials.⁴⁶

3.52. The Ministry of Industry and Trade is the competent authority for the issue of certificates of origin. It concurrently authorizes the management boards of industrial parks and export processing zones to issue certificates of origin form D, and the Chamber of Commerce and Industry of Viet Nam to issue preferential certificates of origin under the GSP of foreign countries that grant non-preferential certificates of origin for Viet Nam.

3.2.10 Anti-dumping, countervailing duty, and safeguard regimes

3.53. The Law on Import and Export Duties was amended in May 1998 to introduce provisions (Articles 2 and 9) allowing the imposition of additional duty on imports priced lower than the "normal price as a result of dumping practices, and consequently causing difficulties to domestic producers of like products" or "normal price resulting from subsidy in the exporting country, consequently causing difficulties to domestic producers of like products". These general provisions were supplemented by a more detailed legal and institutional framework during 2002-06, i.e. in the period prior to Viet Nam's WTO accession.

⁴⁴ Vietnam Business Associations (2011).

⁴⁵ The ASEAN agreements with China, Korea, and Australia/New Zealand stipulate a general minimum regional value content of 40%; with India the minimum is 35%. Some agreements also have product-specific rules, e.g. the FTA with Korea contains product-specific rules for 447 tariff lines at the HS six-digit level. Notably for processed shrimps and crabs, the regional value content must be not less than 35% of the f.o.b. value of the goods.

⁴⁶ Viet Nam has notified the preferential rules of origin applicable in the ASEAN FTAs with Australia/New Zealand and India to the WTO Committee on Rules of Origin (WTO document G/RO/N/68 of 23 February 2011).

3.54. In the area of anti-dumping, the Ordinance No. 20/2004/PL-UBTVQH11 sets out the framework for the filing of complaints, the initiation and conduct of an anti-dumping investigation, consultation with the parties, confidentiality, preliminary and final determinations, the application of anti-dumping measures, review, complaints, and the handling of violations. Article 5, clause 4 of the Ordinance establishes a public interest criterion, stating that the application of anti-dumping measures "must not cause harm to the national socio-economic interests". Further detailed provisions to implement Ordinance No. 20 were laid down in Government Decree No. 90/2005/ND-CP.

3.55. Countervailing measures may be applied pursuant to the Ordinance on Anti-Subsidy for imports into Viet Nam No. 22/2004/PI-UBTVQH11. The ordinance establishes the definition of a subsidy in Articles 2 and 3. Countervailing measures may take the form of an anti-subsidy tax or acceptance of undertakings by the exporting enterprises or their governments (Article 4). Additional detailed provisions, particularly concerning the establishment of an Anti-subsidy Commission and the conduct of investigations, are contained in Government Decree No. 89/2005/ND-CP.

3.56. The Ordinance on Safeguards in the Import of Foreign Goods into Viet Nam was approved in 2002⁴⁷, and Government Decree No. 150/2003/ND-CP of 8 December 2003 provides detailed regulations for the implementation of the ordinance. Safeguard measures may only be applied in response to an "excessive" increase in imports, in absolute or relative terms, causing or threatening to cause serious injury to domestic manufacturers of similar or directly competing goods. The Ministry of Industry and Trade is in charge of safeguard investigations. Interim safeguard measures may only take the form of an additional import duty in accordance with the Law on Export and Import Duties. Final measures may involve higher import duty, quantitative restrictions, imposition of a tariff-rate quota, the application of specific (i.e. non-*ad valorem*) duties, import permits, surcharges, or any other measure decided by the Government. Subject to review, and including extensions, a safeguard measure may be in place for a total of ten years.

3.57. In addition to these ordinances and decrees, the Ministry of Finance has issued a circular to guide the collection, remittance, and refund of anti-dumping and anti-subsidy taxes, and the provision of securities for the payment of such taxes.⁴⁸ In early 2006, the Government also issued a decree setting up a council affiliated to the Ministry of Trade and assisting it in the evaluation of anti-dumping, countervailing, or safeguard measures.⁴⁹ The Viet Nam Competition Authority (VCA) may also, upon request of the Minister of Industry and Trade, conduct investigations on the Ministry's behalf and provide other support to the Ministry at various stages in investigations of alleged dumping, foreign subsidies, or the application of safeguard measures.⁵⁰

3.58. Viet Nam notified laws and regulations pertaining to trade remedy measures to the WTO in 2009, and responded to detailed questions on its anti-dumping regime in 2010.⁵¹ Although Viet Nam has established a framework to conduct anti-dumping and countervailing investigations, it has not conducted such actions so far. The Ministry of Industry and Trade initiated a safeguards investigation into the possible application of safeguard measures against imports of float glass through Decision No. 3329/QD-BCT of 1 July 2009.⁵² Although the investigating authority (VCA) reported serious injury, or threat thereof, to the domestic industry caused by increased imports⁵³, it terminated the case with no safeguard measure imposed in February 2010.⁵⁴ The authority considered that other factors, such as trade fraud and depressed domestic demand, had

⁴⁷ Ordinance No. 42/2002/PL-UBTVQH10 of 25 May 2002.

⁴⁸ Circular No. 106/2005/TT-BTC of 5 December 2005.

⁴⁹ Government Decree No. 04/2006/ND-CP of 9 January 2006 on Establishment, functions, duties, powers, and organizational structure of the Council for Handling Cases of Combat against Dumping, Combat against Subsidy, and Self Protection.

⁵⁰ Government Decree No. 06/2006/ND-CP of 9 January 2006.

⁵¹ WTO documents G/ADP/N/VNM/1, 9 October 2009 (anti-dumping legislation) and G/SG/N/1/VNM/1, 30 September 2009 (safeguards). The VCA's Trade Remedies Board is listed as Viet Nam's competent authority for anti-dumping and countervailing investigations in document G/ADP/N/14/Add.28 (G/SCM/N/18/Add.28), 14 October 2009. Replies to questions posed by the United States on Viet Nam's anti-dumping legislation have been circulated in document G/ADP/Q1/VNM/2(G/SCM/Q1/VNM/2), 18 June 2010.

⁵² WTO document G/GS/N/6/VNM/1, 31 July 2009. The affected products carried the HS Codes 7005.29.90.00 and 7005.21.90.00.

⁵³ WTO document G/SG/N/8/VNM/1, 12 January 2010.

⁵⁴ WTO document G/SG/N/9/VNM/1, 7 April 2010.

contributed to the injury, and thus safeguard measures on imports would be inappropriate under the circumstances.

3.59. On 26 December 2012, the VCA initiated a safeguard investigation on imports of certain vegetable oils.⁵⁵ The decision to impose a provisional safeguard measure in the form of an additional import duty of 5% was announced in May 2013 and has been notified to the WTO.⁵⁶

3.60. On behalf of the Ministry of Industry and Trade, the VCA announces and publishes decisions regarding anti-dumping, countervailing, and safeguard measures through notifications to the WTO, official dispatches to the parties concerned, its website (www.vca.gov.vn), and its annual reports. In this manner, the VCA also informs interested parties and the general public about complaints filed by domestic industries, and key stages in the investigation. Domestically, the termination of the safeguard investigation into imported float glass was made public by the Ministry of Industry and Trade through Decision No. 0890/QD-BCT on 23 February 2010, and the initiation of the safeguard investigation into imports of certain vegetable oils was made public in Decision No. 7968/QD-BCT.

3.3 Measures Directly Affecting Exports

3.3.1 Export procedures and requirements

3.61. The requirements to be a registered exporter are essentially the same as the requirements to be a registered importer, i.e. domestic investors need a valid business registration certificate whereas a foreign investor must hold a valid investment certificate. The export rights of foreign-invested enterprises in Viet Nam are laid down in Government Decree No. 23/2007/ND-CP, and the rights of foreign traders without a physical presence in Viet Nam are regulated in accordance with Government Decree No. 90/2007/ND-CP. Foreign-invested enterprises may export their own production as well as any other purchased goods unless they are listed as banned from exportation; exportation is suspended; or the right to export is not granted. The right to export rice from Viet Nam was reserved for Vietnamese individuals with registered business and enterprises until 1 January 2011, but foreigners have been free to enter the Vietnamese rice trade since then. Effective the same date, rice exporters must satisfy stricter requirements regarding storage and processing facilities (see also section 4.2.3.1).⁵⁷ Contracts for the export of rice require registration with the Viet Nam Food Association. The registration procedure has been in place since 2006.

3.62. Decree No. 90/2007/ND-CP allows traders not physically present in Viet Nam to take responsibility for export-related procedures for goods purchased in Viet Nam. However, the right to export does not extend to the establishment of a network in Viet Nam to purchase goods for export. The registration of the export (and import) rights of foreign traders not physically present in Viet Nam is stipulated in Circular No. 28/2012/TT-BCT of 27 September 2012.

3.3.2 Export taxes, fees, and charges for services rendered, and internal taxes on exports

3.63. Viet Nam levies export duties on certain products, mostly metals, raw hides and skins, and wood products, in accordance with the Law on Export and Import Duties, in effect since 1 January 2006 (Table A3.5). The taxes are applied on an MFN basis. In the context of WTO accession, Viet Nam agreed to reduce export duties on scrap metal from 35-45% to 17-22% over a five-year period.

3.64. Apart from the tax reductions on metal scrap, Viet Nam's export tax regime has undergone numerous changes since 2006. For example, export duties have been increased on crude oil (from 4% to 10%), some wood products, and precious stones. Coverage has been expanded to, *inter alia*, notably minerals, agarwood, metal ores and concentrates, coal, rubber, diamonds, gold, and silver. Other items such as cashew nuts, packaging materials, parquet flooring, doors and frames, and ingots and semi-finished products of iron or non-alloy steel are no longer subject to export duty or are temporarily zero-rated.

⁵⁵ WTO document G/SG/N/6/VNM/2, 11 January 2013. The goods concerned are refined soya bean oil, RBD palm olein oil, and RBD palm stearin oil (HS Codes 1507.90.90, 1511.90.91, 1511.90.92, and 1511.90.99).

⁵⁶ WTO document G/SG/N/7/VNM/1, 15 May 2013.

⁵⁷ Decree No. 109/2010/ND-CP and Circular No. 44/2010/TT-BCT guiding Decree No. 109.

3.65. Viet Nam levies royalties on natural resources, such as basic metals and minerals, timber, water, crude oil, and natural gas used in domestic production or exported (Table 3.8). The Law on Royalties No. 45/2009/QH12, together with its implementing regulations, constitutes the legal basis for these payments.⁵⁸ The Standing Committee of the National Assembly has established minimum and maximum rates for each product, and the applied royalty rate is required to remain within the set band.

3.66. Royalty payments are levied at *ad valorem* rates. The f.o.b. export price constitutes the tax base for exported commodities.⁵⁹ In general, the tax base is the exploiter's sales price exclusive of VAT or, if individual sales prices cannot be determined, a regional market price decided by the local People's Committee. Provided it can be determined, the sales price at the place of delivery constitutes the tax base for timber, crude oil, natural gas, and coal gas. Royalties on water used in commercial generation of hydropower are charged on the average sales price of electricity. Royalties may be reduced or refunded in case of accidents or natural disasters. Natural aquatic resources are currently exempt from royalty payments.

Table 3.8 Royalty payments on natural resources

(a) Royalties on natural resources (excluding petroleum)

No.	Group or category of nature resource	Royalty tax frame (%)	Royalty tax rate (%)
I	Metallic minerals		
1	Iron	7-20	10
1	Manganese	7-20	11
2	Titan	7-20	11
3	Gold	9-25	15
4	Rare earths	12-25	15
5	Platinum, silver and tin	7-25	10
6	Volfram and antimony	7-25	10
7	Lead, zinc, copper, nickel	7-25	10
8	Aluminum, bauxite		12
9	Cobalt, molybdenum, mercury, magnesium and vanadium	7-25	10
10	Other metallic minerals	5-25	10
II	Non-metallic minerals		
1	Soil exploited for ground leveling and work construction	3-10	4
2	Rock, gravel	5-15	6
3	Rock used for lime baking and cement production	5-15	7
4	Sand	5-15	10
5	Sand used for glass-making	7-15	11
6	Soil used for brick-making	5-15	7
7	Granite and refractory clay	7-20	10
8	Dolomite and quartzite	7-20	12
9	Kaolin, mica, technical quartz	7-15	10
10	Pyrite, phosphorite	5-15	7
11	Apatite and serpentine	3-10	3
12	Pit anthracite coal	4-20	5
13	Open-cast anthracite coal	6-20	7
14	Lignite and fat coal	6-20	7
15	Other coals	4-20	5
16	Diamond, ruby and sapphire	16-30	22
17	Emerald, alexandrite and black precious opal	16-30	20
18	Adrite, rodolite, pyrope, berine. Spinel and topaz	12-25	15
19	Bluish-purple, greenish-yellow or orange crystalline quartz; chrysolite; white or scarlet precious opal; feldspar; birusa; and nephrite	12-25	15
20	Other non-metallic minerals	4-25	5
III	Natural forest products		
1	Timber of group I	25-35	35
2	Timber of group II	20-30	30
3	Timber of groups III and IV	15-20	20
4	Timber of groups V, VI, VII and VIII and of other categories	10-15	15
5	Tree branches, tops, stumps and roots	10-20	10

⁵⁸ The implementing legislation comprises Resolution No. 928/2010/UBTVQH12 promulgating the royalty tariff, Decree No. 50/2010/ND-CP, and Circulars Nos. 105/2010/TT-BTC and 32/2009/TT-BTC.

⁵⁹ Prior to the issue of Government Decree No. 50/2010/ND-CP of 14 May 2010, the taxable price was the price at the place exploitation also for exports.

No.	Group or category of nature resource	Royalty tax frame (%)	Royalty tax rate (%)
6	Firewood	1-5	5
7	Bamboo of all kinds	10-15	10
8	Sandalwood and calambac	25-30	25
9	Anise, cinnamon, cardamom and liquorice	10-15	10
10	Other natural forest products	5-15	5
IV	Natural aquatic resources		
1	Pearl, abalone and sea-cucumber	6-10	10
2	Other natural aquatic resources	1-5	2
V	Natural water		
1	Natural mineral water, natural thermal water and refined natural water, bottled or tinned	8-10	8
2	Natural water used for hydropower generation	2-5	2
3	Natural water used for production and business activities, except water mentioned at Points 1 and 2 of this group		
3.1	Surface water		
	- Used as primary or secondary raw materials to constitute material elements in the manufacture of products, except for the production of clean water	1-3	3
	- Common use for production industrial hygiene, cooling, steam generation, clean water production	1-3	1
	- For service operations, industrial production, construction, mining	1-3	3
	- For other purposes	1-3	1
3.2	Groundwater		
	- Used as primary or secondary raw materials to constitute material elements in the manufacture of products, except for the production of clean water	3-8	5
	- Common use for production industrial hygiene, cooling, steam generation, clean water production	3-8	3
	- For service operations, industrial production, construction, mining	3-8	6
	- For other purposes	3-8	3
VI	Natural swallow's nest	10-20	20
VII	Other resources	1-20	10

(b) Royalty on crude oil, natural gas, and coal gas

No.	Output	Tax frame (%)	Tax rate (%)	
			Projects eligible for investment promotion	Other projects
I	For crude oil			
1	Up to 20,000 barrels/day	6-40	7	10
2	Between over 20,000 and 50,000 barrels/day	6-40	9	12
3	Between over 50,000 and 75,000 barrels/day	6-40	11	14
4	Between over 75,000 and 100,000 barrels/day	6-40	13	19
5	Between over 100,000 and 150,000 barrels/day	6-40	18	24
6	Over 150,000 barrels/day	6-40	23	29
II	For natural gas and coal gas			
1	Up to 5 million m ³ /day	1-30	1	2
2	Between over 5 and 10 million m ³ /day	1-30	3	5
3	Over 10 million m ³ /day	1-30	6	10

Source: Information provided by the Vietnamese authorities.

3.3.3 Export restrictions

3.67. Viet Nam enforces export controls pursuant to the provisions of international treaties to which it is a party: export permits are required for shipments of arms and ammunition, toxic chemicals, narcotics, antiquities, etc. (Table A3.6). Exports of textiles, which were subject to controls in the past due to quantitative limitations in certain markets, were removed from the list of export controls as Viet Nam joined the WTO. On 16 September 2009, the Ministry of Agriculture and Rural Development issued Circular No. 60/2009/TT-BNNPTNT, listing agricultural, fisheries, and forestry products subject to "specialized export and import management" or authorized conditionally to be exported. Circular No. 88/2011/TT-BNNPTNT of 28 December 2011, which

replaced Circular 60, lists agricultural, fisheries, and forestry products subject to export prohibition, and aquatic species subject to "export conditions".

3.68. Decree No. 12/2006/ND-CP provides the legal basis for the Ministry of Industry and Trade to announce exports to be administered by the issue of automatic licences. Such licences would be applied in specific circumstances, and the purpose would not be to limit the export of goods. No products are subject to automatic export licences at present and, according to the authorities, Viet Nam has never applied automatic licensing to exports. The authorities deny that measures such as (automatic) licensing of minerals export have been applied (see also section 4.3.1), and refer to Circular No. 41/2012/TT-BCT of 24 December 2012 (which stipulates quality standards and conditions for certain exported minerals) for further information. Export controls on unprocessed minerals have been applied for more than ten years. The Ministry of Construction banned exports of eight minerals used as building materials, under Circular No. 04/2012/TT-BXD of 20 September 2012.

3.3.4 Export subsidies, finance, and guarantees

3.69. In 1998, Viet Nam introduced interest rate support, export bonuses, support to vegetables and fruit, and payments to enterprises exporting rice, pork, and coffee to compensate for their losses. The agricultural export subsidies were covered by direct transfers from the State budget. However, as Viet Nam joined the WTO with a commitment not to maintain agricultural export subsidies from the date of accession, these types of direct payments were discontinued and support was shifted to general trade promotion activities.

3.70. The Viet Nam Development Bank (VDB), established under Prime Minister's Decision No. 108/2006/QĐ-TTg of 19 May 2006, provides export credits, investment credit guarantees, and export project performance security. The average outstanding volume of its export credits amounted to \$16.15 trillion in 2010, while the interest paid by its export credit borrowers exceeded \$1 trillion. Further to Circular No. 18/2010/TT-NHNN, interest rate support (4 percentage points) is available to clients contracting medium- and long-term loans with the VDB. The bank estimates that the total interest rate support on such loans exceeded \$97 billion in 2010, of which the subsidized interest on export credits accounted for nearly \$65 billion.⁶⁰

3.71. No export guarantee schemes are operated by the Government or a government agency. Export credits guaranteed by banks, whether Vietnamese credit institutions or foreign bank branches, are governed by Circular No. 28/2012/TT-NHNN of 3 October 2012.⁶¹ No preferential treatment is accorded to export credit guarantee activities.

3.3.5 Export promotion and marketing assistance

3.72. Viet Nam promulgated a national trade promotion programme through Prime Minister's Decision No. 279/2005/QĐ-TTg of 3 November 2005. The Decision constituted the framework for state-funded trade promotion activities from 2006 to 2010, such as the hiring of domestic and foreign experts to advise on export development or product quality improvements; the organization of trade fairs and exhibitions and sponsoring the participation of Vietnamese enterprises at such events in Viet Nam and abroad; surveys in overseas markets; and the establishment of trade promotion centres. The degree of state funding varied and, for example, cover 100% of the expenses for the construction and decoration of pavilions at trade fairs, while the hiring of consultants or participation at overseas fairs required co-funding (50%) by the beneficiary enterprises.

3.73. The state funding of these activities was derived from the Export Promotion Fund, established pursuant to Prime Minister's Decision No. 195/1999/QĐ-TTg. Payments into the fund were originally derived from surcharges of 0.1% to 0.2% on certain exports. In addition to direct allocations from the State budget, revenue from quota allocation charges, and fees for certificates of origin were also channelled into the Fund. The Export Promotion Fund was closed down in 2008⁶², but remaining funds were made available for trade promotion activities. Moreover, People's Committees at the provincial and municipal level were invited to finance trade promotion

⁶⁰ Viet Nam Development Bank (2010).

⁶¹ The circular replaced Decision No. 26/2006/QĐ-NHNN of 26 June 2006.

⁶² Prime Minister's Decision No. 124/2008/QĐ-TTg of 8 September 2008.

activities from surplus revenue or other legitimate sources (mentioned in Government Resolution No. 05/2002/NQ-CP). Viet Nam has no fund supporting trade promotion at present.

3.74. Decision 279 was amended and supplemented by Prime Minister's Decision No. 80/2009/QĐ-TTg of 21 May 2009. The new Decision made the trade promotion system more flexible, *inter alia*, by enabling certain local businesses and trade promotion organizations in centrally governed provinces and municipalities to take part in national trade promotion programmes on an equal footing.⁶³ A measure designed to stimulate the participation of local businesses in national trade promotion programmes, allowed the Ministry of Industry and Trade to approve local business promotion plans seeking capital support from the central budget. Decision 80 also increased the state funding of training programmes from 30% to 100%, and from 70% to 100% for the payment of travel by foreign guests to attend national trade promotion events in Viet Nam.⁶⁴ The Vietnam Trade Promotion Agency (Vietrade) was tasked to transmit written instructions to local People's Committees on the implementation of Decision 80.⁶⁵ At present, Viet Nam's national trade promotion programme is implemented according to Decision No. 72/2010/QĐ-TTg of 15 November 2010.

3.75. Public expenditures on trade promotion activities appear to have been fluctuating in recent years. The Vietnamese Government earmarked more than ₫160 billion (US\$10 million) to finance trade promotion activities in 2007.⁶⁶ The budget for the national trade promotion programme amounted to ₫55 billion.⁶⁷ For 2012, the Ministry of Industry and Trade approved a programme comprising 114 projects with a total budget of ₫93 billion.

3.4 Measures Affecting Production and Trade

3.4.1 Subsidies

3.76. During its WTO accession process, Viet Nam provided information on industrial subsidies in the format used to submit notifications under Article XVI:1 of the GATT 1994 and Article 25 of the WTO Agreement on Subsidies and Countervailing Measures.⁶⁸ The documentation detailed sector-specific programmes applicable to the production of motorbikes, mechanical-electric-electronic products, mechanical engineering, shipbuilding, and textile and clothing, as well as support more generally available in the form of investment incentives, support to "priority" manufacturing sectors, regional development, research and development, and assistance to enterprises facing difficulties "due to objective reasons". The measures differed from programme to programme, but included preferential import duties and tariff exemptions; tax incentives, including reductions or exemptions in relation to corporate income tax, and the land-use tax; subsidized loans; and investment guarantees. Support to textile and garment industries contingent upon export performance or the use of domestic over imported goods was curtailed in 2006.⁶⁹ Certain investment incentives to foreign invested and domestic enterprises, i.e. preferential tariff and tax treatment linked to export performance and local content, were terminated upon WTO accession, but existing beneficiaries could continue to receive preferences for up to five years after Viet Nam joined the WTO. Export performance and local-content requirements were also removed from two programmes operating under the authority of the Development Assistance Fund.

⁶³ *Vietnam Trade News*, 14 October 2009. Viewed at:

http://www.xuatkhauvietnam.com/english/index.php?option=com_content&view=article&id=1271:a-catalyst-to-vietnam-export&catid=45:general-news&Itemid=29.

⁶⁴ *Vietnam Trade News*, 15 June 2009. Viewed at:

http://www.xuatkhauvietnam.com/english/index.php?option=com_content&view=article&id=1271:a-catalyst-to-vietnam-export&catid=45:general-news&Itemid=29.

⁶⁵ Vietrade was established in 2000 and reports to the Ministry of Industry and Trade.

⁶⁶ Ministry of Finance, Legal Department, 27 November 2006. Viewed at:

http://www.mof.gov.vn/portal/page/portal/ilfv_en/dn?pers_id=2426908&item_id=2437562&p_details=1.

⁶⁷ According to the Vietnamese authorities, the budget corresponded to 13.6% of the total amount requested by enterprises for trade promotion activities.

⁶⁸ WTO document WT/ACC/VNM/13 covered the period 1996-98, and its addenda 1 and 2 updated the information for 1999-2000 and 2001-02. Document WT/ACC/VNM/42/Rev.1 details subsidies provided during 2003 and 2004.

⁶⁹ Decision No. 55/2001/QĐ-TTg was repealed on 30 May 2006, and no further disbursements were made further to this Decision as from 31 May 2006.

3.77. Viet Nam did not provide subsidy notifications until March 2013, when it notified details of support programmes applied in 2005-07.⁷⁰ Without a more recent update, the information contained in this section can only be considered indicative of the kind of support provided to specific industries or more generally available to encourage investments, regional development, research, etc. Moreover, the Secretariat has no reliable data on debt forgiveness to loss-making state-owned or private enterprises.

3.78. Corporate income tax is levied at the general rate of 25% in Viet Nam, but tax incentives are available in certain instances.⁷¹ New hi-tech companies or enterprises otherwise involved in research and development, the development of infrastructure of special importance, or the production of software are entitled to a corporate tax rate of 10% for 15 years. The same tax rate is also applicable to enterprises providing education, vocational training, health care services, or sports services, or enterprises operating in geographical areas with "extreme socio-economic difficulties".⁷² Agricultural service cooperatives and people's credit funds are subject to a tax rate of 20%. In principle, the tax rate is applied from the first year in which the enterprise has turnover, but time-limited tax exemptions or tax reductions (50%) may apply, subject to certain conditions. Enterprises employing ethnic minorities or predominantly female workers are entitled to tax reductions. Viet Nam also uses tax incentives to promote environmental protection activities such as the treatment of waste.

3.79. The Viet Nam Development Bank (VDB) was established in 2006, based on a reorganization of the Development Assistance Fund.⁷³ The VDB is a non-profit institution with chartered capital of $\text{₫}10$ trillion. The compulsory reserve ratio of the VDB is 0%, and its solvency is guaranteed by the Government. The VDB raises capital from Vietnamese and foreign sources, and receives funds from the state budget. The Government has entrusted the VDB with the disbursement and management of ODA (official development assistance) loans, which reached a total of 420 projects with a total commitment of $\text{₫}76$ trillion at the end of 2010.

3.80. Over the years, the Viet Nam Development Bank has financed numerous infrastructure projects as well as business development. Funding has been provided, for example, for the construction of canals, afforestation, power generation, sanitation plants, and healthcare facilities. The bank has financed investments in the production of cement. The VDB has also implemented other tasks assigned by the Government, such as providing enterprises in difficulty with working capital to ensure the payment of salaries, pursuant to the Prime Minister's Decisions Nos. 30/2009/QĐ-TTg and 87/2010/QĐ-TTg.

3.81. In addition to export credits and guarantees, the VDB implements state policies with respect to the financing of investments, post-investment assistance, and investment credit guarantees. During 2010, the VDB signed post-investment assistance contracts for 23 projects with a total subsidy of $\text{₫}57.9$ billion.⁷⁴ The bank may issue guarantees for debt contracted by SMEs with commercial banks. In 2010, the VDB approved 428 applications for SME credit guarantees totalling $\text{₫}2,711$ billion. Loans guaranteed by the VDB totalled $\text{₫}4,300$ billion at the end of 2010.

3.82. Enterprises and individuals that contract medium- and long-term loans with the VDB are entitled to a subsidized rate of interest under a programme implemented in accordance with Circular No. 18/2010/TT-NHNN. The interest subsidy exceeded $\text{₫}97$ billion in 2010 for outstanding loans totalling $\text{₫}5$ trillion.⁷⁵ Interest support for medium- and long-term bank financing of production and business development generally was established through Prime Minister's Decision No. 443/QĐ-TTg of 4 April 2009, supplemented by a State Bank circular detailing the implementation of this decision.⁷⁶ The Government has also issued decisions specifically concerning subsidized credit for the acquisition of agricultural machinery and the construction of

⁷⁰ WTO document G/SCM/N/155/VNM, 13 March 2013.

⁷¹ Rates applied to the prospecting, exploration, and mining of rare natural resources, crude oil, and natural gas range from 32% to 50% depending on the specific project and business establishment.

⁷² Otherwise, the tax rate for new enterprises in areas of socio-economic difficulty is 20%.

⁷³ Prime Minister's Decision No. 108/2006/QĐ-TTg, 19 May 2006.

⁷⁴ By the end of 2010, 535 subsidy contracts, with a total committed subsidy of $\text{₫}2,552$ billion, remained valid. Projects eligible for post-investment assistance are identified under Decree No. 106/2008/ND-CP amending and supplementing Decree No. 151/2006/ND-CP, 20 December 2006.

⁷⁵ The subsidy reduces the applicable rate of interest by 4 percentage points.

⁷⁶ Circular No. 05/2009/TT-NHNN, 7 April 2009, amended by Circular No. 21/2009/TT-NHNN, 9 October 2009; and Circular No. 27/2009/TT-NHNN, 31 December 2009, concerning the interest rate support to be granted in 2010.

dwellings in rural areas.⁷⁷ Two additional prime minister decisions concern the provision of credit to commercial traders operating in disadvantaged areas and the interest support to be granted to medium- and long-term dong-denominated loans.⁷⁸

3.83. A Government Decision issued in December 2008 outlines the strategy for local industry development until 2020.⁷⁹ The Ministry of Industry and Trade has issued several legal documents, including Decree No. 45/2012/ND-CP on industrial promotion, and Circular No. 46/2012/TT-BCT guiding the implementation of the decree. The Ministry is currently working with other relevant agencies to complete the framework on industrial promotion.

3.84. Assistance measures to support mechanical engineering industries were put forward in early 2009.⁸⁰ Eligible investors may, *inter alia*, be able to finance up to 85% of their investment through the Viet Nam Development Bank, obtain grants from the Support Fund for the Development of Science and Technology, and benefit from import duty exemptions or reductions on inputs (while the import duties on their output is set at the maximum rates permitted under Viet Nam's multilateral and preferential obligations). Viet Nam's targets for the development of its chemical and mechanical engineering industries are outlined in Table A3.7. Local authorities have also issued legal instruments to support the Government's strategy. Hence, the People's Committee of Ha Noi provides subsidized credits and support for participation at trade fairs to eligible enterprises.⁸¹

3.4.2 Standards, technical requirements, and conformity assessment

3.4.2.1 Technical barriers to trade

3.85. Viet Nam undertook to comply with the obligations of the TBT Agreement from the date of its accession to the WTO.⁸²

3.86. Since its accession, Viet Nam has notified a number of measures to the TBT Committee including, as of end-April 2013:

- a notification that the Directorate for Standards, Metrology and Quality accepted the Code of Good Practice for the Preparation, Adoption and Applications of Standards in Annex 3 to the TBT Agreement⁸³;
- notifications under Article 15.2 of the TBT Agreement on measures taken to comply with the TBT Agreement, and that the TBT Viet Nam Office, in STAMEQ, is the notification authority and enquiry point for TBT-related issues⁸⁴; and
- 33 notifications of regular measures (not counting addenda, or corrigenda) covering a variety of products, including a proposed and final technical regulation on alcoholic beverages⁸⁵, which was raised as a specific trade concern in the TBT Committee by several delegations.⁸⁶

⁷⁷ Agricultural machinery and rural housing support is governed by Decision No. 497/QD-TTg, 17 April 2009, amended by Decision No. 2213/QD-TTg, and details concerning the implementation in Circular No. 09/2009/TT-NHNN of the State Bank of Viet Nam.

⁷⁸ Decisions Nos. 92/2009/QD-TTg, 8 July 2009, and 2072/QD-TTg, 11 December 2009.

⁷⁹ Decision No. 160/2008/QD-TTg, 4 December 2008 on the "Approval of the overall strategy and protection policies for industrial production in accordance with international commitments and WTO regulations until 2020".

⁸⁰ Prime Minister's Decision No. 10/2009/QD-TTg, 16 January 2009, on Mechanisms supporting the development of key mechanical products and list of key mechanical investment projects for the period 2009-2015.

⁸¹ Programme No. 124/Ctr-UBND, 19 September 2012 of the People's Committee of Ha Noi. Eligible recipients are indicated in Decision No. 25/2008/QD-UBND, 3 October 2008.

⁸² WTO document WT/ACC/VNM/48, 27 October 2006, paragraph 303.

⁸³ WTO document G/TBT/CS/N/175, 20 February 2009.

⁸⁴ WTO document G/TBT/2/Add.98, 6 November 2007; Rev.1, 20 February 2009; and Rev.2, 12 September 2012.

⁸⁵ WTO document G/TBT/N/VNM/10, 20 March 2010, Add.1, 23 June 2010, which extended the comment period; and Add.2, 28 March 2011, which announced its promulgation and entry into effect on 1 July 2011.

⁸⁶ WTO document G/TBT/M/51, 1 October 2010, paras 15-20.

In addition, the Ukraine has made two notifications on agreements with Viet Nam on standardization, metrology, and conformity assessment.⁸⁷

3.87. A number of government agencies are responsible for standards, technical regulations, conformity assessment procedures, and other measures related to technical requirements. These agencies include the Ministries of: Science and Technology; Industry and Trade; Agriculture and Rural Development; Information and Communication; Natural Resources and Environment; Transport; Health; Labour, Invalids and Social Affairs; Culture, Sports and Tourism; and Construction. The Ministry of Science and Technology is responsible for publishing and managing national standards and technical regulations in the *Official Journal*; it is responsible along with the other ministries for developing standards and technical regulations for products and services in its areas of competence.

3.88. The Directorate for Standards, Metrology and Quality (STAMEQ), under the Ministry of Science and Technology, represents Viet Nam in international and regional organizations on issues related to technical requirements (Table 3.9). STAMEQ cannot issue legally binding legislation but it is responsible for preparing draft rules on standards and standards-related issues, which are submitted to the relevant Ministry or the Government for approval.

Table 3.9 STAMEQ in international and regional standards organizations

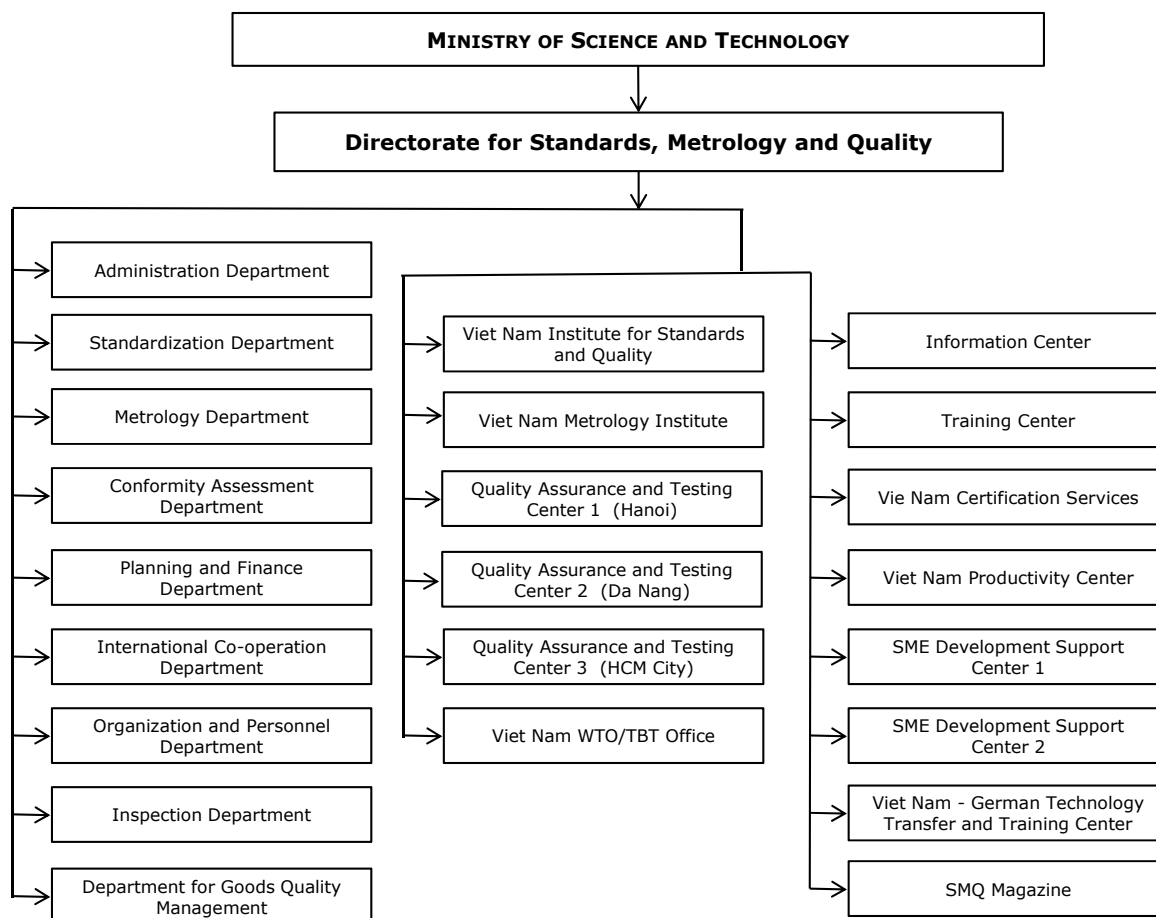
Organization	Status	Date
International		
International Organization for Standardization (ISO)	Member	1977
Codex Alimentarius Commission	Member	1989
International Laboratory Accreditation Co-operation (ILAC)	Member	1992
International Article Numbering (EAN)	Member	1995
International Electrotechnical Commission (IEC)	Associate member	2002
International Organization for Legal Metrology (OIML)	Member	2003
General Conference on Weights and Measures (BIPM)	Associate Member	2003
Regional		
Pacific Area Standards Congress (PASC)	Member	1992
Asia Pacific Metrology Programme (APMP)	Member	1992
Asia Pacific Quality Organization (APQO)	Member	1994
Asia Pacific Laboratory Accreditation Co-operation (APLAC)	Member	1995
ASEAN Consultative Committee for Standards and Quality (ACCSQ)	Member	1995
Asian Productivity Organization (APO)	Member	1996
Asian Pacific Legal Metrology Forum (APLMF)	Member	1996
Asia-Europe Meeting/Trade Facilitation Action Plan/Standards and Conformity Assessment (ASEM/FTAP/SCA)	Member	1996
Technonet Asia (TA)	Member	1998
APEC Subcommittee on Standards and Conformance	Member	1998
Pacific Accreditation Co-operation (PAC)	Member	2003

Source: STAMEQ online information. Viewed at: <http://portal.tcvn.vn/default.asp?action=article&ID=1419> [March 2013]; USAID (2009), *Standards, Metrology, Conformity Assessment and the TBT Agreement, A desk top reference handbook*, STAR - Vietnam p.130. Viewed at: http://pdf.usaid.gov/pdf_docs/PNADP635.pdf [March 2013]; and international and regional organizations listed in the table.

3.89. Several subsidiary bodies under STAMEQ provide support for the development of standards and technical regulations and are responsible for conformity assessment, quality system certification, product certification, accreditation of testing and calibration laboratories, supervision of quality requirements for goods, and other matters related to standards and technical regulations (Chart 3.3).

3.90. The legislation covering technical barriers to trade is set out in a number of laws (Table 3.10). In addition, official circulars and ministerial decisions provide guidance on the implementation of laws, decrees, and Prime Minister's decisions. These include Circular No. 21/2007/TT-BKHCN Guiding the Formulation and Application of Standards (as revised by Circular No. 29/2011/TT-BKHCN), and Decision No. 22/2007/QĐ-BKHCN Promulgating the Regulation on Organization and Operation of the Technical Board for National Standards both from the Minister of Science and Technology.

⁸⁷ WTO documents G/TBT/10.7/N/69, 26 September 2008, and G/TBT/10.7/N/120, 20 August 2012.

Chart 3.3 Standards organizational structure in Ministry of Science and Technology

Source: Viet Nam authorities.

3.91. Under the Law on Technical Regulations and Standards there are two types of technical regulations: national technical regulations (QCVNs); and local technical regulations (QCDPs). In principle, local technical regulations (which are mandatory) may be prepared and approved by local authorities, usually to provide greater details on a national technical regulation in order to meet local conditions.⁸⁸ According to the authorities there is only one QCDP in Viet Nam. There are also two different types of standards: national standards (TCVNs); and organization standards (TCCSs).

3.92. Draft national standards are prepared by technical committees through the Viet Nam Standards and Quality Institute (VSQI) in STAMEQ. The drafts are based on proposals from standardization agencies or the private sector. The VSQI is responsible for organizing the development of TCVNs, providing secretarial support for the technical committees, and planning standardization activities. At the end of 2012, there were 116 national standards technical committees and 52 sub-committees. Draft TCVNs are published on the VSQI website with 60-day comment periods. Each year VSQI publishes a work-programme listing, which is regularly updated. The plan for 2013 includes 813 standards being prepared in various technical committees, proposed by different government ministries.⁸⁹

⁸⁸ USAID (2009), p. 130.

⁸⁹ Ministry of Science and Technology Decision No 3501/QD/BKHCN, 21 December 2012 (Vietnamese). Viewed at: <http://www.vsqi.gov.vn/news.aspx?Cat=29> [March 2013].

Table 3.10 Principal legislation on technical measures⁹⁰

Title	Reference	Note
Prime Minister's Decision on the Implementation of the TBT Agreement	No. 444/2005/QD-TTg	
Prime Minister's Decision on Establishment and Issuance of Statute of Organization and Operation of Vietnam Network of Notification Authorities and Enquiry Points on TBT	No. 114/2005/QD-TTg	
Prime Minister's Decision approving Action Plan on the Implementation of Agreement on Technical Barriers to Trade from 2011-2015	No. 682/QD-TTg	
Prime Minister's Decision approving National Programme on the improvement of products and goods productivity and quality	No. 712/QD-TTg	
Law on Standards and Technical Regulations	No. 68/2006/QH11	Main legal basis for standards and technical regulations
Decree Detailing the Implementation of a Number of Articles of the Law on Standards and Technical Regulations	No. 127/2007/ND-CP	
Law on Products and Goods Quality	No. 05/2007/QH12	Goods in "group 1" are controlled on the basis of standards announced by producers and goods in "group 2" are controlled on the basis of technical regulations established by the competent government agencies
Decree on the Implementation of a Number of Articles of the Law on Product Goods and Quality	No. 132/2008/ND-CP	
Law on Protection of Consumers' Rights	No. 59/2010/QH10	Provides, <i>inter alia</i> , for compensation to consumers for goods and services which do not meet technical standards or norms and for the recall of defective goods
Decree Detailing and Guiding the Implementation of a Number of Articles of the Law on Protection of Consumers' Rights	No. 99/2011/ND-CP	
Decree on Labelling of Goods	No. 89/2006/ND-CP	Provides details of the required size, content, and position of labels. Labels providing compulsory information must be in Vietnamese
Law on Measurement	No. 04/2011/QH13	Establishes the SI system of Units as the legal units of measurement in Viet Nam
Decree detailing and guiding the implementation of a number of Articles of the Law on Measurement	No. 86/2012/ND-CP	
Law on Environmental Protection	No. 52/2005/QH11	Establishes the principles and basic contents of national environmental standards
Law on Construction	No. 16/2003/QH11	Requires that constructions activities must comply with construction rules and standards
Law on Food Safety	No. 55/2010/QH12	Provides for rights and obligations of individuals and organizations to ensure food safety and concerning labelling
Decree detailing and guiding the implementation of a number of Articles of the Law on Food Safety	No. 38/2012/ND-CP	

Source: Viet Nam authorities; and FAOLEX. Viewed at: <http://faolex.fao.org> [May 2013].

3.93. According to the authorities, at the end of 2012 Viet Nam had 6,800 TCVNs in effect, of which 40% were harmonized with international, regional, or foreign standards (up from 25% in 2005).

3.94. Organization standards (TCCS) are developed independently by organizations; STAMEQ has no direct involvement although it does issue guidelines on how they should be developed.

⁹⁰ In many cases unofficial translations of laws are available in English from the Ministry of Justice database on legal normative documents: <http://moj.gov.vn/vbpg/en/pages/vbpg.aspx> [February 2013].

3.95. VSQI also provides support for the development of technical regulations which, like TCVNs, are developed by drafting committees made up of government agencies and experts. Proposals for QCVNs are published on the official websites of the relevant ministries, with opportunities to comment either through membership of the technical committee or through comments to the technical committees. The final QCVNs are also published on the official websites of the relevant ministries, normally six months before they become effective. In addition, the Ministry of Science and Technology publishes an annual catalogue of new technical regulations.

3.96. The Bureau of Accreditation (BOA) of the Ministry of Science and Technology runs the Vietnam Laboratory Accreditation Scheme (VILAS), the Viet Nam Certification Accreditation Scheme (VICAS), and the Viet Nam Inspection Scheme (VIAS). At the end of 2012, VILAS had accredited 527 accreditation bodies (one outside Viet Nam); VICAS had accredited 26 certification bodies; and VIAS had accredited 20 accreditation bodies.

3.97. The Metrology Institute (VMI) under STAMEQ is responsible for establishing and maintaining national standards of measurement using the SI system, and calibration of measurement instruments; it also represents Viet Nam in international and regional metrology organizations (Table 3.9). In addition, the VMI has cooperation agreements with national measurement institutes in Australia, China, Germany, Japan, Korea, New Zealand, and the United States. There are ten measurement laboratories in the VMI accredited by the VILAS, each for a different set of SI units.

3.98. There are four product certification bodies under STAMEQ:

- the Viet Nam Certification Centre (QUACERT), which helps enterprises with compliance with national and international standards and practices including certification for meeting Vietnamese, other national, regional, and international standards; and
- three Quality Assurance and Testing Centres (QUATEST 1, 2, and 3), which are responsible for testing imports and exports for compliance with standards and technical regulations

3.99. QUACERT is the certification body for compliance with:

- Vietnamese standards and technical regulations (including VietGAP for good agricultural practice);
- certification of management systems to international standards (ISO 9001, ISO 14001, OHSAS 18001, ISO 22000, HACCP, GMP, ISO 27001, ISO/TS 29001);
- standards in other countries (ASTM, JIS, DIN, GOST, BSI);
- regional standards (EN, CEN) and International standards (ISO, IEC); and
- electrical and electronic equipment under ASEAN EE MRA.⁹¹

3.100. Under the Law on Products and Goods Quality of 2007, products and goods are divided between Group 1, which are "incapable of causing unsafety", and Group 2, which are "capable of causing unsafety" (defined as "those products and goods which, under rational conditions of transportation, storage, preservation and use for proper purposes, can latently cause harms to humans, animals, plants, assets or the environment").⁹² Products in Group 1 are controlled by producers on the basis of applicable standards, while those in Group 2 are controlled on the basis of relevant technical regulations from the competent state agency as well as by producers on the basis of applicable standards. Different ministries are responsible for the control of quality of products and goods under their responsibility, and for issuing lists of products and goods that can cause "unsafety" and are subject to mandatory inspection (Table 3.11).

⁹¹ QUACERT online information. Viewed at: <http://www.quacert.gov.vn/news/vi/1/1/trung-tam-chung-nhan-phu-hop---quacert.aspx> [March 2013].

⁹² Law on Products and Goods Quality, A. 3(4).

Table 3.11 Goods subject to mandatory inspection and quality control (domestically produced, imported, and for export)

Ministry of Industry and Trade (Circular No. 08/2012/TT-BCT)
Pressure equipment
Lifting equipment for industrial use
Chemicals
Industrial explosives
Oil and gas mining equipment, except for marine exploration and exploitation equipment and facilities
Ministry of Public Security (Circular No. 14/TT-BCA of 2012)
Fire prevention and fighting equipment
Technical equipment
Ammunitions, weapons
Support instruments
Ministry of Information and Communications (Circular No. 20/2011/TT-BTTTT)
Telecommunications terminal equipment
Computers, network and IT equipment
Radio and transmission equipment
Ministry of Health (Circular No. 44/2011/TT-BYT)
Foods
Pharmaceuticals
Vaccines
Medical bio-products
Cosmetics
Drug materials
Drugs for human use
Domestic chemicals
Insecticides
Disinfectants
Medical equipment and facilities
Ministry of Agriculture and Rural Development (Circular No. 50/2009/TT-MARD)
Plants
Animals
Fertilizers
Animal feeds
Plant protection drugs
Veterinary drugs
Bio-products for use in agriculture, forestry or aquaculture
Irrigation works and dykes
Ministry of Science and Technology (Circular No. 01/2009/TT-BKHCN)
Petrol, diesel, and biofuels
Motorbike helmets
Electrical and electronic products
Electrical wires
Toys
Ministry of Transport
Means of transport
Loading and unloading means and equipment
Specialized transport equipment for construction, marine exploration, and exploitation equipment
Traffic works
Ministry of Construction
Civil works
Industrial works
Technical infrastructure works
Ministry of Defence
Military equipment and facilities
Ammunitions, weapons and products in service of defence
Defence works

Source: Viet Nam authorities; the Law on Products and Goods Quality, and ministerial circulars noted above.

3.4.2.2 Sanitary and Phytosanitary Measures

3.101. Viet Nam undertook to comply with the requirements of the SPS Agreement upon its accession to the WTO without recourse to any transitional arrangements.⁹³ The national enquiry

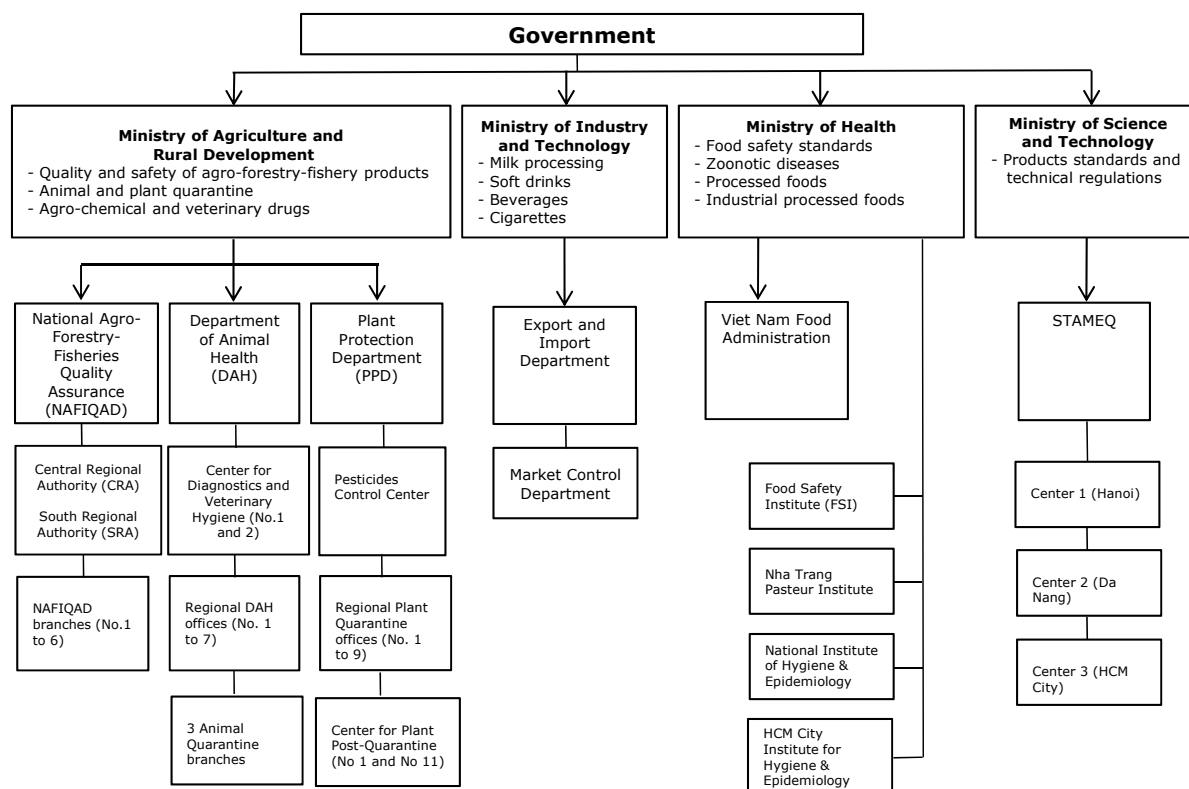
⁹³ WTO document WT/ACC/VNM/48, 27 October 2006, paragraph 327.

point for SPS matters is the Viet Nam SPS Office in the Ministry of Agriculture and Rural Development.⁹⁴

3.102. Viet Nam has made 42 regular notifications (and addenda to two of these) to the SPS Committee in the WTO. These notifications cover a wide variety of products and SPS-related issues. They also included the Law on Food Safety (No. 55/2010/QH12)⁹⁵ and a draft Law on Plant Protection and Quarantine.⁹⁶ Several Members have used the SPS Committee on various occasions to raise a specific concern with Viet Nam about its ban on imports of offal products as from 7 July 2010.⁹⁷

3.103. Several government agencies are responsible for SPS-related matters, including the Ministry of Agriculture and Rural Development, the Ministry of Industry and Technology, the Ministry of Health, and the Ministry of Science and Technology (Chart 3.4).

Chart 3.4 Sanitary and phytosanitary organizational structure



Source: Viet Nam authorities.

3.104. Under Prime Minister's Decision No. 99/2005/TĐ-TTg of May 2005, these agencies are required to coordinate with the Ministry of Agriculture and Rural Development and the SPS Office on notifications, which is the notification authority and enquiry point.

3.105. Viet Nam is a member of Codex Alimentarius and the World Organisation for Animal Health (OIE), and a contracting party to the International Plant Protection Convention (IPPC).

3.106. The basic law for SPS-related matters is set out in the ordinances for plant protection and quarantine, and animal health, and laws on food safety and environmental protection. Under each law there are decrees and decisions setting out more details for implementing the law, and official

⁹⁴ WTO document G/SPS/ENQ/26, 11 March 2011.

⁹⁵ WTO document G/SPS/N/VNM/8, 23 September 2009.

⁹⁶ WTO document G/SPS/N/VNM/41, 16 January 2013.

⁹⁷ WTO documents G/SPS/R/63, 12 September 2011, paras 60-63; G/SPS/R/64, 17 January 2013, paras 57-60; G/SPS/R/66, 23 May 2012, paras 39-41; G/SPS/R/67, 11 September 2012, paras 31-35 and Corr.1, 18 September 2012, para 35; and G/SPS/R/69, paras 33-35.

circulars provide further clarification on some points of the law (Table 3.12). In addition, technical regulations (QCVN) and standards (TCVN) may apply (see above).

Table 3.12 Basic SPS Legislation

Title	Reference	Note
Notifications and enquiry point and the WTO		
Prime Minister's Decision	No. 99/2005/QD-TTg	Establishing the enquiry point and notification authority
Minister of Agriculture and Rural Development's Decision	No. 1733/QD-BNN-TCCB	Organization and operation of the SPS National Office
Prime Minister's Decision	No. 147/2008/QD-TTg	National Action plan for Implementation of commitments under the SPS Agreement
Plant Protection		
Ordinance on Plant Protection and Quarantine	No. 36/2001/PL-UBTVQH10	
Decree on plant quarantine	No. 02/2007/ND-CP as amended by Decree No. 98/2011/ND-CP	Provides for the quarantine of domestic plants and plants that are imported, exported or in transit in Viet Nam. It also sets out treatment for destroying pests and exotic harmful organisms
Decision on HS code of objects target of plant quarantine	No.35/2007/QD-BNN	HS codes of objects for plant quarantine of Viet Nam
Decision regulation on procedures of plant quarantine certificate	No.48/2007/QD-BNN	Plant quarantine certification for imports
Circular import risk assessment	No. 39/2012/TT-BNNPTNT	List of objects requiring risk assessment before being imported
Circular on objects of plant quarantine	No. 40/2012/TT-BNNPTNT	List of objects for plant quarantine
Circular regulation on control of importing plant and plant products	No.13/2011/TT-BNNPTNT	Guidelines for the control of imported plants and plant products
Circular on list of criteria and MRLs in foods derived from plants and plant products	No. 68/2010 /TT- BNNPTNT	Criteria, including minimum residue levels for imported foods and domestic products derived from plants and plant products
Animal Health		
Animal Health Ordinance	No. 18/2004/PL-UBTVQH	
Decree detailing a number of articles of the Animal Health Ordinance	No. 33/2005/ND-CP as amended by Decree No. 119/2008/ND-CP and Decree No. 98/2011/ND-CP	Quarantine of terrestrial animals and animal products
Decree on Administrative Infringement in Veterinary Service	No. 129/2005/ND-CP	
Decision on animal quarantine	No. 45/2005/QD-BNN	List of animals and animal products subject to animal quarantine
Decision on procedures for animal quarantine	No. 15/2006/QD-BNN	Procedures for animal quarantine and animal hygiene
Circular guiding customs clearance of imports and exports subject to quarantine	No. 01/2012/TT-BTC	Sets out procedures for customs clearance and responsibilities of owners of goods and customs departments
Circular on quarantine of aquatic animals and aquatic products	No. 32/2012/TT-BNNPTNT, and No. 06/2010/TT-BNNPTNT as amended by No. 43/2010/TT-BNNPTNT	Aquatic animals and aquatic animal products subject to quarantine and procedures for quarantine
Decision on animal transportation	No. 49/2006/QD-BNN	Guidelines for tracking animal transportation for imports, exports, and domestic transport.
Regulation on documentation	No. 86/2005/QD-BNN	Regulation on documentation for animal quarantine and animal hygiene
Circular regulation on control of importing animal and animal products	No. 25/2010/TT-BNNPTNT	Guidelines for the control of imported animals and animal products
Decision on veterinary drug registration	No. 10/2006/QD-BNN	Registration procedures for veterinary drug production, importation, distribution, material for veterinary drug, bio-products, micro-organisms and chemicals used for veterinary purposes
Decree on management of livestock feed	No. 08/2010/ND-CP	Provides for conditions and responsibilities of feed producers, processors, and traders. Only imports of feed on list of permitted feed may be imported, unless with permission of Minister of Agriculture and Rural Development
Food Safety		
Law on Food Safety	No. 55/2010/QH12	
Decree detailing a number of articles of the Law on Food Safety	No. 38/2012/ND-CP	Sets out rights and obligations associated with food safety in production, trade, transport, testing, risk analysis, and state management of food safety

Title	Reference	Note
Decree on the organizational system of management, inspection and assessment of food safety and hygiene	No. 79/2008/ND-CP	Establishes the Ministry of Health as the state agency primarily responsible for managing food safety of domestic and imported food products, and responsibilities of other agencies
Decree on maximum level of residue of biological and chemical substances allowed in food	No. 46/2007/TD-BYT	
Decision on food additives	No. 3742/2001/QD-BYT	List of permitted food additives
Circular on management of food additives	No. 27/2012/TT-BYT	Management of food additives
Circular on radioactive contamination limit levels in food	No. 17/2011/TT-BYT	Regulates radioactive contamination in foodstuffs
Circular on micro-biological contamination in food	No. 05/2012/TT-BVT	National technical standards for micro-biological contamination of food
Circular guiding food hygiene and safety control of imported foodstuffs of animal origin	No. 25/2010/TT-BNNPTNT	Guidelines for food hygiene and safety control for imported foodstuffs of animal origin under the management of the Ministry of Agriculture and Rural Development
Environmental protection		
Law on Environment Protection	No. 52/2005/QH11	
Decree on biosafety for genetically modified organisms, genetic specimens and products of genetically modified organisms	No. 69/2010/ND-CP	Provides for: risk assessment of GMOs; the basis for biosafety certificates, eligibility for use as food or animal feed; conditions for production, trade, import, export, transportation, and storage; and accreditation of laboratories
Decree detailing and guiding the implementation of a number of articles of the Law on Environmental Protection	No. 80/2006/ND-CP as amended by Decree No. 21/2008/ND-CP, and Decree No. 29/2011/ND-CP	Implements several articles, including strategic environmental assessment; environmental impact assessment

Source: Viet Nam authorities.

3.107. In 2007, it was reported that:

- animal health standards generally observed the standards set out in the OIE Terrestrial Animal Health Code and Aquatic Animal Health Code;
- about 60% of Codex standards had been adopted but the main problem with adopting some standards on maximum residue levels for pesticides, veterinary drugs, and contaminants, was the large number of small farms which make adoption, implementation, and enforcement of higher international standards difficult; and
- the legislation on plant protection had been amended to conform to two of the 27 international standards for phytosanitary measures (on pest-risk analysis) adopted by the IPPC at that time.⁹⁸ The authorities stated that since 2007 the legislation on plant protection has been amended and, as of May 2013, it conforms to 15 of the 36 international standards for phytosanitary measures adopted by the IPPC.

3.108. Under Prime Minister's Decision No. 147/2008/QD-TTg, to meet its obligations under the SPS Agreement, Viet Nam is to harmonize its food hygiene and safety and sanitary and Phytosanitary standards with those of Codex Alimentarius, the OIE, and the IPPC. This Decision also sets out objectives for risk assessment, control measures, and institutional capacity, and states that the same standard should be used for exports and domestic consumption.

3.109. A national food safety strategy for 2011-20 was approved in Prime Minister's decision No. 20/QD-TTg of January 2012. The strategy sets a general objective of implementing master plans on food safety from production to consumption by 2015, and controlling food safety over the entire food supply chain by 2020. It also sets out several specific objectives including improving general knowledge of food safety and food safety practices, building capacity for the food safety management system, improving food safety assurance by producers, processors, and traders through certification, and effectively preventing cases of acute food poisoning. To meet these objectives, the strategy includes a comprehensive list of actions to be undertaken by different state agencies, such as improving institutional support for food safety in the regional offices of the Ministry of Health and the Ministry of Agriculture and Rural Development, improving and better

⁹⁸ Kennedy (2007), p. 19.

coordinating food safety examinations, improving inspection and control, and elaborating and enforcing technical regulations and requirements.

3.110. Importers of food and agricultural products have to provide the Viet Nam authorities with a number of supporting documents (Table 3.13). Depending on the product, these may include a certificate of free sale (CFS) (Prime Minister's Decision No. 10/2010/QĐ/TTg), from the competent authorities of the exporting country, stating that the product is produced and freely sold in the country of origin. The list of agricultural goods to which this requirement applies is part of Circular No. 63/2010/TT-BNNPTNT from the Ministry of Agriculture and Rural Development. The products affected are mostly non-food agriculture and fishery products but all products containing genetically modified materials, products that were irradiated, and products that were produced by new technologies require a CFS when imported to Viet Nam.

Table 3.13 Certificates required for importing food and agricultural products

Product	Documents	Basis	Government Agency
All processed food items	Certificate of GMP, HACCP, or equivalent	Food safety and hygiene	MOH/VFA
	Certificate of analysis (test results)	Food quality and standards	MOH/VFA
Special foods/functional foods	Certificate of GMP or HACCP or equivalent	Food safety and hygiene	MOH/VFA
	Certificate of analysis	Food quality and standards	MOH/VFA
	Results of clinical test	Food supplemental value functioned to improve human health	MOH/VFA
Special foods/nutritious foods for infants	Certificate of GMP or HACCP, or equivalent	Food safety and hygiene	MOH/VFA
	Certificate of analysis (test results)	Food quality and standards	MOH/VFA
	Certificate of free sale (health certificate)	Food safety, quality and standards	MOH/VFA
Special foods/GM foods and irradiated foods	Certificate of GMP or HACCP or equivalent	Food safety and hygiene	MOH/VFA
	Certificate of analysis (test results)	Food quality and standards	MOH/VFA
	Certificate of free sale	Food safety and quality	MARD
Food ingredients/additives	Certificate of GMP or HACCP, or equivalent	Food safety and hygiene	MOH/VFA
	Certificate of free sale	Food safety and hygiene	MOH/VFA
	Certificate of analysis (test results)	Food quality and standards	MOH/VFA
Feed ingredients	Certificate of HACCP, of GMP, or equivalent	Product quality	MARD/DLP
	Certificate of free sale	Product quality and safety	MARD
	Test results	Product quality, safety and hygiene	MARD/DLP
Plants and plant products with minimum processing (plant genetics including seeds, fruit, vegetable, grain, oilseeds, forest products, etc.)	Phytosanitary certificate	Plant health protection	MARD/ PPD
Forest products	Certificate of free sale	Product Quality Standards	MARD
Processed plant products	Export certificate	Plant Health Protection	MARD/PPD
Animals and animal products, except animal genetics, meat and poultry products	Health certificate with additional requirements depending on the product and place of origin	Animal health protection and human health protection	MARD/DAH
Dairy products	Health certificate	Food safety and hygiene	MARD/DAH
	Certificate of HACCP, of GMP, or equivalent		MOH/VFA
Animal genetics	Health certificate	Animal Health Protection and human health	MARD/DAH
	Certificate of free sale	Product quality and standards	MARD/DLP
			MARD/DAH
	Certificate of analysis (test results)	Food quality, safety, and standards	MOH/VFA
	Health certificate	Animal Health Protection	MARD/DAH
	Certificate of inspection of export animals	Animal Health Protection	MARD/DAH
	Animal pedigree document	Genetic Quality	MARD/DLP
Meat and poultry products	Export certificate	Product quality, safety and hygiene	MARD/DAH
Swine offal products (for heart, liver and kidney only)	Export certificate	Product quality, safety and hygiene	MARD/DAH

Product	Documents	Basis	Government Agency
Aquatic animal products except live aquatic animals	Health certificate (export certificate)	Food safety and hygiene	MARD/NAFIQAD
Live aquatic animals	HACCP certificate or equal document Health certificate	Aqua Health Protection	MARD/DAH

Note: MoH - Ministry of Health, VFA - Viet Nam Food Administration, MARD - Ministry of Agriculture and Rural Development, DLP - Department of Livestock Production, PPD - Plant Protection Department, DAH - Department of Animal Health, NAFIQAD - National Agro Forestry Fisheries Quality Assurance

Source: U.S. Department of Agriculture, Foreign Agricultural Service (2011), *Vietnam Food and Agricultural Import Regulations and Standards - Certification, 2011 FAIRS Export Certificate Report*, GAIN Report Number VM1052, 18 July.

3.4.2.2.1 Quarantine

3.111. Imports of plants, plant products, aquatic animals and plants, animals and animal products, and processed food products may be inspected; this may include examination of documentation, and visual inspection before transportation to quarantine where they may be sampled and the samples taken for laboratory testing.

3.112. Under Decree No. 33/2005/ND-CP, as amended by Decree No. 119/2008/ND-CP and Decree No. 98/2011/ND-CP, anyone importing or exporting animals or animal products must inform the DAH or NAFIQAD and present the necessary documents (Table 3.13). For products on the quarantine list and animals or products thereof alien to Viet Nam, DAH or NAFIQAD should reply within five working days informing the owner of the goods of the quarantine agency responsible for conducting quarantine. The quarantine period for animals and animal products, other than breeding animals, may be up to ten days, or longer if the authorities have sufficient reason. For products not on the list, importers and exporters must make a quarantine declaration to the DAH or NAFIQAD and, within one working day, the quarantine agency should notify the owner of the time and place for quarantine, and other details for import or export.

3.113. To import plants or plant products, the importer must make a declaration to the plant quarantine office closest to the point of import at least 24 hours before the import is made. Under the Department of Plant Protection, there are 9 regional plant quarantine sub-departments, over 60 plant quarantine stations, located at various entry points around the country, 2 centres for post-entry quarantine, and a Plant Quarantine Diagnoses Centre.⁹⁹

3.114. According to Decree No. 02/2007/ND-CP, an import consignment of plants: must be accompanied by a phytosanitary certificate from the competent authority of the exporting country (Table 3.13); must be free of regulated pests; must have an import plant quarantine permit from the Department of Plant Protection in the Ministry of Agriculture and Rural Development for objects subject to pest-risk analysis; and wood packaging must undergo phytosanitary treatment. Objects subject to pest-risk analysis include: living plants; fresh fruits; weeds and weed seeds; beneficial organisms, biological agents or living organisms harmful to plant resources; untreated timber; and objects with a high risk of carrying a regulated pest (Circular No. 39/2012/TT-BNNPTNT). Circular No. 40/2012/TT-BNNPTNT contains the list of regulated pests.

3.115. Aquatic animals and aquatic animal products subject to quarantine are set out in Circular No. 32/2012/TT-BNNPTNT, and the procedures for dealing with them are set out in Circular No. 06/2010/TT-BNNPTNT as amended by Circular No. 43/2010/TT-BNNPTNT. Under these procedures importers must register for import quarantine with the Department of Animal Health, and imports may be kept under quarantine for up to ten days, or longer if the authorities have sufficient reason. Among the documents required is a health certificate from the competent authorities of the exporting country. Other documents that may be required depend on several factors, including: whether transportation to a place of quarantine isolation is needed, whether the consignment is a temporary import for re-export, and whether the items are for human consumption. There are 14 laboratories for sampling and testing – 8 under the DAH and 6 under NAFIQAD.

⁹⁹ Asia & Pacific Plant Protection Commission online information. Viewed at: <http://www.apppc.org/index.php?id=1110800&L=0> [March 2013]; and Plant Protection Department (Bui Thi Tuyet Nhung - Deputy Director) (2012).

3.116. Imported and domestically produced foods, other than fresh fruits and meat, require a Food Standards Registration Certificate from the Vietnam Food Administration in the Ministry of Health, valid for three years. In addition, imports of a broad range of agricultural products require an automatic import licence from the Ministry of Industry and Trade for each import consignment (Circular No. 27/2008/TD-BCT).¹⁰⁰ An importer must apply to the Ministry for the licence, and provide a business registration certificate, import contract, commercial invoice, payment document (such as a letter of credit), and a bill of lading.

3.4.3 Trade-related investment measures

3.117. Prior to its WTO accession, for many years Viet Nam required foreign enterprises established in Viet Nam to be "self balanced" in their needs for foreign exchange. This measure was abolished in 2000 as the Law on Foreign Investment was amended. However, Decision No. 718/2001/QĐ-BKH of the Minister of Planning and Investment linked investment incentives to local content and (80%) export-performance requirements for certain industrial products, e.g. automobiles, motorcycles, construction steel, NPK fertilizer, PVC plastics. The export-ratio requirement was eliminated in 2003, and import-duty preferences linked to local content were removed for motorcycle assembly plants in the same year. For mechanical/electric/electronic industries, the local-content requirements were terminated with effect from 1 October 2006¹⁰¹, and the 2005 Investment Law and its implementing Decree did not link the granting of investment licences or the receipt of investment incentives to the acceptance of conditions inconsistent with the WTO Agreement on Trade-Related Investment Measures (TRIMs).

3.118. Viet Nam agreed to comply fully with the WTO TRIMs Agreement from the date of its accession, although for existing beneficiaries the conditioned benefits would be phased out over five years (i.e. by 2012). As a WTO Member, Viet Nam has not notified any new TRIMs or any Vietnamese publications in which TRIMs may be found.¹⁰²

3.4.4 Free zones and special economic areas

3.119. Viet Nam has 289 industrial and export-processing zones (as at May 2013), of which 180 are in operation and 109 are undergoing land clearance or are under construction. The 289 zones cover a total surface of 80,700 hectares, of which industrial land accounts for 52,000 hectares. Under Viet Nam's five-year land-use plan (2011-15), and land-use planning until 2020, the area reserved for the development of industrial zones is set to increase to 130,000 hectares by 2015, and to 200,000 hectares by 2020. Viet Nam is also seeking to enhance the quality of investments in the industrial zones, giving priority to high-technology, energy-efficient, and environmentally friendly projects.

3.120. Industrial zones are established by Government Decision or Decision of the Prime Minister. Adopted in March 2008, Government Decree No. 29/2008/ND-CP addresses the development of legal documents on industrial zones, export-processing zones, and economic zones, and provides a legal framework for the local authorities and businesses engaged in the zones. According to the authorities, the Decision also paves the way for the formulation and effective implementation of a one-stop shop management model in the zones.

3.121. Most of the present zones are based in the key economic regions, i.e. in the South (124), North (52), and Central Viet Nam (23). According to Vietnamese data, the proportion of industrial output generated in the industrial zones and export-processing zones rose from 8% in 1996 to 32% in 2010. By December 2012, the zones had attracted 5,074 domestic investment projects

¹⁰⁰ Including all meat and edible meat offal; live fish (except for breeding); fresh, frozen, chilled, dried, salted or in brine, smoked, minced, and whole fish; crab; molluscs; processed meat (sausage); meat, fish, crustacean, or mollusc extract or juices; caviar or caviar substitutes; confectionary items including sugar; chocolate or items including cocoa; preparatory items for pastries; pastas; tapioca and its derivatives; cereal goods (corn flakes); breads, pastries, cakes, and biscuits; extracts, essences, and concentrates of coffee or tea; sauces and seasonings; soups and broths; ice cream and other edible ice; bottled water; beer; wine; vermouth; all fermented beverages; all spirits; and all vinegars.

¹⁰¹ Decision No. 43/2006/QĐ-BTC, 29 August 2006.

¹⁰² WTO document G/TRIMS/N/2/Rev.20, 3 September 2010.

and 4,509 foreign direct investment projects.¹⁰³ Foreigners have largely invested in light industry, e.g. food processing and textiles. The zones provide employment for some 2.1 million workers.

3.122. Viet Nam invites investors, domestic and foreign alike, to undertake investment in the infrastructure and operational development of the zones. The Government supports the development of infrastructure to attract investment in industrial production in "underprivileged" areas of Viet Nam. Tax incentives granted initially to enterprises in the industrial zones and export-processing zones largely expired during 2001-05. The facilitation of investment procedures, rental of land and premises, labour training, and the supply of water, electricity, and other utilities constitute the main advantages currently provided.

3.123. Imported materials used in production are subject to import duty, but the duty may be refunded for exported goods in proportion to the ratio of such materials used in the exported products. Enterprises in the export-processing zones are exempt from import and export duties for goods imported from, or exported to, foreign countries.¹⁰⁴ Goods produced in the zones are subject to normal customs formalities, including tariff and taxes, if they enter the domestic market.

3.124. Although Viet Nam continues to inaugurate industrial parks and economic zones, and more are set to be created, the existing infrastructure is frequently under-used. The average occupancy rate in operating industrial parks fell from 74% in 2007 to 65% in 2010.¹⁰⁵ Nearly 50 industrial parks have no tenants. The performance of the industrial parks is also highly uneven across regions. In 2010, some 84% of the export turnover from industrial parks was generated in under 50% of the parks.¹⁰⁶

3.4.5 Transit

3.125. According to Article 242 of the Commercial Law No. 36/2005/QH11, all types of goods may be carried in transit through the territory of Viet Nam except arms and ammunition, explosive materials, or other highly dangerous commodities, unless permitted by the Prime Minister. Goods banned (from production or business) in Viet Nam, or subject to import or export prohibition may be allowed in transit upon approval of the Minister of Industry and Trade. The carriers of transit cargo should be Vietnamese or from countries that have signed bilateral transit agreements with Viet Nam, i.e. China, Lao PDR and Cambodia. Allowed transit routes are specified by the Minister of Transport (Article 243).

3.126. Transit goods are subject to customs clearance at the ports of entry and exit. The goods (or means of transport) are subject to a customs processing fee of ₫200,000 per declaration form.¹⁰⁷ The fee is collected upon entry into Viet Nam's customs territory, but not at the exit point. According to Article 252 of the Commercial Law, those who hire transit services must pay remuneration and cover "other reasonable expenses" of the transit service providers.

3.4.6 Government procurement

3.127. Government procurement in Viet Nam is regulated in accordance with the Law on Tendering No. 61/2005/QH11 of 29 November 2005; Law No. 38/2009/QH12, Decree No. 85/2009/ND-CP, Decree No. 68/2012/ND-CP, and other guiding documents. The Law on Tendering defines its scope to include (i) development investment projects with 30% of the capital originating from the state budget; (ii) projects funded by the state budget for the procurement of assets to maintain regular operations of state agencies, political organizations, socio-political organizations, socio-political-professional organizations, social organizations,

¹⁰³ The domestic investment projects involved the commitment of capital totalling ₫532 trillion (US\$17.3 billion), half of which had been disbursed. For FDI, the registered capital amounted to US\$60.2 billion, of which US\$32.3 billion had been disbursed.

¹⁰⁴ In accordance with Decree No. 87/2010/ND-CP of 1 October 2010, enterprises located in the industrial zones are not allowed to import duty-free equipment, machinery, or specialized means of transport for the implementation of their projects.

¹⁰⁵ According to the VDR (2012), international experience suggests a 75% occupancy rate may be needed for an industrial park to be viable in the long run.

¹⁰⁶ These parks are located in Ha Noi, Ho Chi Minh City, and six surrounding provinces.

¹⁰⁷ Ministry of Finance Circular No. 172/2010/TT-BTC of 2 November 2010.

socio-professional organizations, and units of the people's armed forces; and (iii) state budget-funded procurement of assets to service equipment, chains of production, works or workshops of state enterprises. For official development assistance projects, bidding procedures must be based on treaties to which the Socialist Republic of Viet Nam is a contracting party, or international agreements that it has signed.

3.128. The Law prescribes open tendering as the principal form of tendering. Limited bidding may apply if requested by foreign donors or capital sources (Article 19, paragraph 1), when complex or particular technical requirements are involved, or for research or trials for which only certain contractors may satisfy the requirements. Contractors are appointed only in circumstances laid down in Article 40 of Decree No. 85/2009/ND-CP and according to the procedure stipulated in its Article 41, on Article 1, paragraph 1 of Decree No. 68/2012/ND-CP, and in Decision No. 50/2012/QĐ-TTg.¹⁰⁸ Several ministries and agencies apply thresholds for the appointment of contractors that are lower than stipulated in Decree No. 85/2009/ND-CP. According to the authorities, this practice does not violate Viet Nam's procurement legislation, but increases competition in bidding.¹⁰⁹

3.129. In international tendering, the Law on Tendering (Article 14) stipulates that preferential treatment shall be accorded to (i) contractors established in Viet Nam under the Enterprise Law and the Investment Law, (ii) partnership contractors that include partners defined in Article 14, clause 1 that undertake work worth more than 50% of the contract; and (iii) contractors participating in bids when the domestic production costs represent 30% or more of the procurement. Decree No. 85/2009/ND-CP (Article 4) outlines the specific preferences, which are aimed to encourage the use of local labour and to enhance the capability of domestic contractors to compete for international tenders.

3.130. Under Prime Minister's Directive No. 494/2010/CT-TTg of 20 April 2010, Viet Nam should only use international bidding if domestic goods, materials, and equipment do not meet the specifications of the tender package, or cannot be provided locally. In May 2010, the Ministry of Industry and Trade issued a list of machinery, equipment, and materials that can be produced domestically.¹¹⁰ The procurement of such imported goods is thus discouraged in projects involving the use of state funds, and Ministries and People's Committees are to instruct tendering bodies under their authority to apply this list in the evaluation of bids.

3.131. The Ministry of Planning and Investment and other ministries have issued various legal documents to guide the preparation of bidding documents, appraisal reports, the evaluation of bids, and other aspects of government procurement.¹¹¹ The Ministry of Planning and Investment has established a public procurement website (<http://muasamcong.mpi.gov.vn/>). Announcements (procurement plans, notifications, results, etc.) are frequently made in the *Viet Nam Public Procurement Review*, and published online for the benefit of existing and prospective bidders.¹¹² In addition, information is published in Vietnamese newspapers such as *Nhan Dan* and *Lao Dong*, as well as the English language *Vietnam News* and *Vietnam Investment Review*.

3.132. Although Viet Nam made no formal commitment to negotiate accession to the plurilateral WTO Agreement on Government Procurement (GPA) as it joined the WTO, it applied for, and was

¹⁰⁸ Decree No. 85/2009/ND-CP (Article 40, paragraph 1b) states that if the appointment of contractors is "unnecessary", bidding must be organized "under regulations".

¹⁰⁹ The U.S. Commercial Service has noted that, despite some recent improvements, the government procurement process could generally be characterized as multi-layer decision making, often lacking in transparency and efficiency (U.S. Commercial Service, 2011).

¹¹⁰ Decision No. 2840/2010/QĐ-BCT of 28 May 2010.

¹¹¹ Circulars Nos. 01/2010/TT-BKH of 6 January 2010 (preparation of bidding documents for the procurement of works); 02/2010/TT-BKH of 19 January 2010 (bidding documents for the procurement of works – small contracts); 03/2010/TT-BKH of 27 January 2010 (prequalification documents, procurement of works); 04/2010/TT-BKH of 1 February 2010 (documents for direct appointment of works); 05/2010/TT-BKH of 10 February 2010 (documents for the procurement of goods); 06/2010/TT-BKH of 9 March 2010 (selection of consultants); 08/2010/TT-BKH of 21 April 2010 (appraisal of open or limited tenders); and 09/2010/TT-BKH of 21 April 2010 (evaluation, procurement of goods or works). In addition, Circular No. 63/2007/TT-BTC of 15 June 2007 guides the procurement of assets to maintain regular operations of state agencies, as amended and supplemented by Circular No. 68/2012/TT-BTC of 26 April 2012.

¹¹² See <http://www.thongtindauction.com.vn> and <http://muasamcong.mpi.gov.vn>.

granted, observer status to the GPA by the WTO Committee on Government Procurement on 5 December 2012.

3.4.7 State trading, state-owned enterprises, and privatization/equitization

3.133. As part of the move from a centrally planned economy towards market-oriented development policies¹¹³, Viet Nam began the process of reform of state-owned enterprises (SOEs) in the late 1980s. Between 1989 and 1992, the number of SOEs was reduced from around 12,000 to 6,000, through mergers and closures of inefficient or loss-making enterprises. Decision No. 176/HNBT promulgated in 1992, aimed at more efficient management of the State's economic resources. The policy of mergers and dissolutions was continued, and some 720,000 workers were paid to leave the state sector. Viet Nam also began a programme of "equitization", i.e. the transformation of ownership in wholly state-owned enterprises and thus determining which enterprises would (i) remain 100% state owned, (i.e. no equitization), (ii) be majority state-owned, or (iii) have a minority state shareholding or no state ownership at all. With the state capital turned into shares, SOEs could equitize by issuing new shares to attract additional capital from outside sources, sell a part of their existing shares, equitize only a part of a company, or sell the entire state capital and turn the SOE into a joint-stock company. Therefore, equitization as such does not necessarily mean full-scale privatization, and diversity of ownership has been foreseen, including stakes held by the State and by the employees. Equitized enterprises are subject to the Enterprise Law (No. 60/2005/QH-11).

3.134. The Ministry of Finance stipulated equitization procedures through Circular No. 126/2004/TT-BTC of 24 December 2004, i.e. the preparation of the equitization plan for an enterprise, setting up a steering committee for its equitization, and the sale of shares. Employees and "strategic" domestic investors could purchase shares at a discount in accordance with Decree No. 187/2004/ND-CP of 16 November 2004. Equitization is currently governed by Decree No. 59/2011/ND-CP of 17 July 2011. The Decree stipulates that employees in enterprises undergoing equitization are entitled to purchase shares at a discount.

3.135. After the initial equitization, the State has occasionally continued to divest its assets by selling part or all of its remaining shareholding to the public or to a strategic investor. A sovereign wealth fund, the State Capital Investment Corporation (SCIC), was set up in 2005 under the mandate of the Prime Minister to carry out divestments.¹¹⁴ SCIC began its operations in August 2006. At the end of 2012, SCIC had some 400 enterprises in its portfolio.

3.136. In 2000, Viet Nam had just over 5,700 SOEs; 2,000-2,100 owned by the central government and nearly 3,700 owned by local governments. According to data from the authorities, the number of wholly state-owned enterprises fell from 5,655 in 2001 to 1,309 at the end of 2011.¹¹⁵ However, the Government continues to hold a controlling stake, i.e. more than 51% of the charter capital, in an additional 2,000 enterprises. According to Prime Minister's Decision No. 14/2011/QĐ-TTg of 4 March 2011, the Government's plan for 2011-15 is to retain 100% ownership in 692 enterprises; equitize 573 enterprises, but retain controlling interests in nearly 400 of them; and to liquidate 13 enterprises.¹¹⁶ The policy of divestment of stakes the State no longer views as necessary to hold remains in place, but no specific target has been set for divestments.

3.137. Businesses that will remain 100% state-owned include enterprises considered essential for national security and the maintenance of public order, implementation of poverty eradication, or to

¹¹³ Viet Nam's laws do not recognize private ownership of land, forests, and water resources, but sustainable land-use rights, including the transfer of such rights among the users, have been recognized by Viet Nam since 1993.

¹¹⁴ Prime Minister's Decision No. 151/2005/QĐ-TTg of 20 June 2005.

¹¹⁵ At first, equitization, divestment, mergers, and liquidation reduced the number of SOEs steadily. The reduction has been less pronounced since 2008: 290 SOEs underwent transformation during 2008-11. At the same time, new SOEs may be formed. According to a report prepared by the SOE Transformation and Development Committee, 128 wholly state-owned enterprises were established over ten years, including former revenue-earning administrative units or dependent accounting units. Of these enterprises, 72 are enterprises managed centrally or by the local authorities (mainly public utilities), and 56 are subsidiaries of state-owned groups, corporations, and enterprises.

¹¹⁶ Other types of transformation, e.g. transformation into a limited liability company, are foreseen for the remaining 31 enterprises.

guarantee the supply of goods and services that would not be viable for private enterprises. The Government also intends to maintain majority ownership in large and "sensitive" sectors of the economy, e.g. in energy, telecommunications, aviation, and banking. In order to foster state-led business development, Viet Nam began to establish pilot state economic groups (SEGs), i.e. loose alliances of SOEs with similar business interests, in 2005. SEGs established to date include Vietnam Post and Telecommunications, Vietnam National Coal-Mineral Industries Group (Vinacomin), and Vietnam National Textile and Garment Group (VINATEX) (all in 2005); PetroVietnam, Vietnam Electricity, Vietnam Shipbuilding Industry Group (Vinashin), and Vietnam Rubber Group (2006); Baoviet (2007); Vietnam National Chemical Group (VINACHEM), Vietnam Industrial Construction Group (VNIC) (2009); and Vietnam Housing and Urban Development (HUD) (2010), the Viettel Group, and Petrolimex.¹¹⁷ More detailed information on some of these groups can be found in Table 3.14. Information on some SOEs operating in the agriculture sector is provided in section 4.2.3.

3.138. Equitization has also been carried out in the banking sector. At present, only one commercial bank remains wholly state-owned (the Viet Nam Bank for Agriculture and Rural Development (Agribank)), and four banks have state ownership exceeding 75% (the Bank for Investment and Development of Viet Nam (BIDV), the Mekong Housing Bank, Vietinbank, and Vietcombank). The State has a controlling interest in one joint-stock bank (Bao Viet Bank) and direct ownership in three others. Compared with the banking sector overall, the share of direct state ownership has declined as have the market shares of the principal state-owned banks. However, by encouraging SOEs and the five state-owned commercial banks to subscribe to the charter capital of joint-stock banks as these were being equitized, state ownership in some form was being extended to 22 joint-stock banks in total in 2010. The total charter capital invested in these banks by the State directly, by state-owned commercial banks, and by SOEs was estimated at \$15 trillion in 2010, up from \$1 trillion in 2005.¹¹⁸ Although the correlation is not perfect, joint-stock banks' loan exposures to SOEs tend to increase with the degree of state ownership.¹¹⁹

3.139. State-owned enterprises currently account for approximately 38% of Viet Nam's GDP, only slightly less than in 2004 or 2005.¹²⁰ According to an enterprise survey conducted by the General Statistics Office in 2009 (and World Bank estimates), the SOEs accounted for most or nearly all of the domestic production of key goods and services such as fertilizer (99%), coal (97%), gas and electricity (94%), telecommunications (91%), water (90%), and insurance (88%). However, the extent of continued state involvement in the economy is also reflected in light industries such as beer (41%), refined sugar (37%), and textiles (21%).

Table 3.14 Selected large SOEs

Name of group	Main business	Financial data	Group structure	Parent company charter capital (\$ billion)
Viet Nam National Oil and Gas Group (PetroVietnam)	<ul style="list-style-type: none"> - Petroleum research, exploration, and exploitation - Oil refinery and petrochemical filtration - Gas industry - Electricity - High-quality petroleum services 	2011 total revenue: \$346.4 trillion; pre-tax profit: \$53.8 trillion	Parent company and 22 corporations and affiliate companies including: 3 wholly owned corporations; 13 joint-stock corporations (over 50% ownership); 4 wholly owned affiliate companies; and 2 joint-stock companies (over 50% ownership)	177.628
Viet Nam National Coal-Mineral Industries Holding Corporation Limited (Vinacomin)	<ul style="list-style-type: none"> - Coal industry - Mineral and industrial explosive materials industry - power industry - mechanical industry 	2012 consolidated revenue: \$79 billion	Parent company and 23 wholly owned affiliate companies; 46 joint-stock companies; and 7 non-business units	14,794

¹¹⁷ Decision No. 1428/QĐ-TTg of 2 October 2012 ended the pilot operation of VNIC and HUD.

¹¹⁸ VDR (2012), figure 2.5.

¹¹⁹ VDR (2012), figure 2.8. Nevertheless, five joint stock banks with 20%-40% of their charter capital owned by state institutions have only marginal loan exposure to the SOEs.

¹²⁰ Adding subsidiaries of SOEs and private enterprises controlled by top government officials, the State sector may account for as much as 70% of Viet Nam's GDP (*France 24*, 30 January 2013. Viewed at: <http://www.france24.com/en/20130130-vietnams-state-sector-cancer-economy>).

Name of group	Main business	Financial data	Group structure	Parent company charter capital (đ billion)
Viet Nam Electricity (EVN)	<ul style="list-style-type: none"> - Production, transmission, distribution, and trading of electricity - Management of production, transmission, distribution, and allocation of electricity in the national grid - Export and import of electricity, investment and management of invested capital in electricity projects - Management, operation, repair, maintenance, overhaul and upgrade of equipment, machinery, and automated systems 	2012 estimated revenue: đ142 trillion	Parent company (Viet Nam Electricity) and 9 wholly owned corporations; and 5 affiliate companies (more than 50% ownership)	143,404
Viet Nam National Chemical Group (Vinachem)	<ul style="list-style-type: none"> - Production and trading of fertilizer, pesticides - Mineral exploitation and processing to produce fertilizer and chemicals - Rubber processing - Production and trading of basic chemicals, household chemicals, and pharmaceutical chemistry 	2011 total revenue: đ36.5 trillion Pre-tax profit: đ3.268 trillion	Parent company and 29 corporations including: 8 wholly owned affiliate companies; and 21 affiliate companies with more than 50% ownership	8,000
Viet Nam Rubber Group (VRG)	<ul style="list-style-type: none"> - Rubber plantation and exploitation 	2011 revenue: đ33.5 trillion	Two parent companies and 22 affiliate companies	10.217
Vietnam Textile Group (Vinatex)	<ul style="list-style-type: none"> - Textile - Cotton - Clothes manufacturing 	Pre-tax profit: US\$1,340 billion	Parent company and 8 subsidiaries	0.811

Source: Information provided by the Vietnamese authorities. Groups and companies are listed by the State Bank of Viet Nam:
<http://sbv.gov.vn/wps/wcm/connect/df85450048a3179caa6ceb2bfb28bc0/DNNN.pdf?MOD=AJPERE&CACHEID=df85450048a3179caa6ceb2bfb28bc0>;
<http://vnexpress.net/ql/kinh-doanh/2013/03/cuoc-dai-phau-nhung-tap-doan-khung-o-viet-nam/>;
<http://doanhnhuan.vneconomy.vn/20130117023542739P0C5/suc-khoe-tap-doan-tong-cong-ty-nha-nuoc-qua-cac-con-so.htm>;
<http://www.nhipcaudautu.vn/article.aspx?id=11304-vinatex-du-kien-dat-2,73-ti-usd-kim-ngach-xuat-khau>; http://www.pvn.vn/?portal=news&page=detail&category_id=95&id=3648;
<http://vov.vn/Kinh-te/Vinacomin-dat-loi-nhuan-2500-ty-dong/243799.vov>;
<http://www.tienphong.vn/Kinh-Te/610962/Nam-2012-Tap-doan-Hoa-chat-lai-3318-ty-dong-tpp.html>.

3.140. According to data provided by the authorities, Viet Nam's SOEs employ around 1.6 million workers. Their combined production value was approximately đ189 trillion in 2010, and their collective profit was đ111 trillion. However, the overall profit figures are dominated by the performance of PetroVietnam, which reports directly to the Prime Minister. The taxes paid by PetroVietnam accounted for 30% of the state budget in 2010.

3.141. Although Viet Nam has worked on reforming its state-owned sectors for more than 20 years, data suggest that the SOEs are less efficient in the use of capital, land, labour, and other fixed assets than private or foreign-owned enterprises, and that the difference in efficiency has been increasing in recent times. From 2000 to 2009, the average capital per employee in SOEs soared from đ0.4 billion to đ1.5 billion while the average capital/employee ratio in Vietnamese enterprises, generally, rose more modestly (from đ0.3 billion to đ0.8 billion). Moreover, the average net turnover to capital ratio (an indicator of the productivity of capital) increased generally by nearly 240% during the period, while the ratio fell by more than 30% in the SOEs.

3.142. The financial difficulties of the Vietnam Shipbuilding Industry Group (Vinashin), exposed in 2010, also revealed a number of other structural weaknesses in large Vietnamese SOEs, such as weak corporate governance, complex corporate structures, lack of effective oversight and monitoring, limited accountability, and the apparent will and ability of senior management to use

borrowed capital and profits retained in an enterprise to expand business well beyond the stated core activities of the SOE. In 2011, a Steering Committee, headed by the Minister of Finance, was set to restructure SOEs. In addition, Decree No. 59/2011/ND-CP of 18 July 2011 introduced more flexible provisions in the legal framework for equitization with regard to the selection of strategic investors, the determination of the share price, and the sequence of equitization and initial public offerings. Viet Nam also began the process of legally separating state ownership rights from the State's regulatory functions. However, there are no signs so far that Viet Nam would be ready to abandon its fundamental approach towards state ownership in large enterprises, which may be characterized as mixture of renovation, preservation, and expansion.¹²¹

3.143. Viet Nam identified some state-trading enterprises in its WTO accession package.¹²² It also reserved the importation of some goods for state trading (cigars and cigarettes; crude oil and petroleum products; newspapers, journals and periodicals; recorded media for sound or pictures; and aircraft and spacecraft).¹²³ Nevertheless, Viet Nam has so far not notified to the WTO whether it maintains any state-trading enterprises, within the meaning of Article XVII of the GATT 1994, or the working definition in the Understanding on the Interpretation of Article XVII, trading in these or any other goods. Furthermore, Viet Nam has not submitted periodic reports to the WTO, for the purpose of transparency, on the status of its equitization programme or the reform of equitized enterprises, as indicated in the accession documents.¹²⁴

3.4.8 Competition policy

3.144. Viet Nam's Law on Competition entered into force on 1 July 2005.¹²⁵ The law applies to all enterprises operating in Viet Nam, including state-owned or state-controlled enterprises, foreign-invested enterprises, and trade associations. The law generally prohibits acts constituting unfair competition or acts restricting competition, such as competition restriction agreements, the abuse of dominant or monopoly positions¹²⁶, or economic concentration arrangements. Unfair competition acts, defined in Chapter III of the Law, include the provision of misleading indications, infringement of business secrets, coercion in business, discrediting or disturbing the business activities of competitors, advertisement or promotion aimed at unfair competition, discrimination by an association, and illicit multi-level sales, i.e. pyramid schemes. Agreements preventing, restraining, or disallowing other enterprises from entering a market or developing their business; eliminating enterprises other than the parties to an agreement, or bid-rigging agreements are prohibited *per se*. Competition restriction agreements, such as direct or indirect price fixing; market sharing; restraining or controlling production, supply, sales, technological developments, or investment; and the imposition of conditions (not directly related to the subject matter of the contract) on other enterprises, are prohibited when the parties to such agreements have a combined share of 30% or more of the relevant market. Mergers, acquisitions, joint ventures, etc. are in principle not allowed if the combined market share of the participating enterprises exceeds 50% of the relevant market, unless (i) the enterprises remain small or medium-sized, (ii) one or more of the participants face dissolution or bankruptcy, or (iii) the economic concentration contributes to Viet Nam's socio-economic development. Economic concentration agreements that cover 30%-50% of the relevant market must be notified before implementation, unless the participants will remain small or medium-sized enterprises.

3.145. The Viet Nam Competition Authority (VCA), a government agency under the Ministry of Industry and Trade, is the enforcement authority and policy advisor on competition matters. In addition, the VCA is working on strengthening consumer rights further to Law No. 59/2010/QH12 on Protection of Consumers' Rights, in effect since 1 July 2011, and, as noted above, conducts trade remedy investigations on imports into Viet Nam. The VCA investigates alleged competition restriction practices on the basis of complaints or on its own initiative. Final reports are presented

¹²¹ VDR (2012), p. 35.

¹²² WTO document WT/ACC/VNM/48, Table 5.

¹²³ WTO document WT/ACC/VNM/48, Table 8(c).

¹²⁴ WTO document WT/ACC/VNM/48, paragraph 95.

¹²⁵ Law No. 27/2004/QH11 of 3 December 2004. Five decrees constitute the implementing legislation, i.e. Decrees Nos. 110/2005/ND-CP of 24 August 2005, 116/2005/ND-CP of 15 September 2005, 120/2005/ND-CP of 30 September 2005, 05/2006/ND-CP of 9 January 2006, and 119/2011/ND-CP of 16 December 2011, together with Circular No. 19/2005/TT-BTM of 8 November 2005.

¹²⁶ Sales of goods or services below total prime cost to eliminate competitors, application of different commercial conditions for the same transaction to create unequal competition, and preventing competitors from entering a market are examples of abuse of dominant or monopoly position.

to the Competition Council for decision.¹²⁷ The Competition Council's subsidiary body (the Competition Case-Handling Council) may conduct hearings, order additional investigations, dismiss a case, or uphold the VCA's findings. The subsidiary body arrives at its decision by majority vote. Decisions of the subsidiary body may be appealed to the Competition Council, and appeals of VCA decisions may be brought before the Ministry of Industry and Trade. Their decisions may be challenged in an administrative lawsuit. Competition decisions are enforced by provincial-level civil judgement enforcement agencies in the province or city where the offender is headquartered or resident.

3.146. Since 2006, the VCA has launched an increasing number of investigations into alleged unfair acts of competition. By the end of 2011, 94 investigations had been concluded, mostly relating to unfair advertising (58 cases) or illegal multilevel sales (20 cases). The VCA issued fines and administrative fees totalling ₫1.425 billion in 2011, taking accumulated fines and administrative fees imposed since 2006 to more than ₫4.2 billion. The VCA initiated 10 investigations into agreements restricting competition, in 2010, and a further 10 in 2011, taking the number of cases launched since 2006 to 40.¹²⁸ However, at the end of 2011 only six of these investigations had been completed, and only three had been decided by the Competition Case-Handling Council.

3.147. Based on past experience, the VCA initiated studies and surveys in 2011 into the structure of the Vietnamese market for the production of automobiles, detergents, paper, oil and glass, and the provision of pay-TV services, advertising, shipping, life insurance, as well as the distribution of pharmaceuticals. The VCA is also engaged in raising the understanding of competition law issues among the business community and the public at large. The VCA is a member of the ASEAN Experts Group on Competition (AEGC), and participates in meetings of the International Competition Network (ICN) and other international working groups on competition. The VCA has also been engaged in the negotiations to establish a competition policy framework within the Trans-Pacific Partnership (TPP) Agreement, and Viet Nam's FTA negotiations with the EU, EFTA, and the Customs Union of Belarus, Kazakhstan, and the Russian Federation.

3.148. Work on consumer protection has been focused on strengthening the legal framework. Government Decree No. 99/2011/ND-CP provides guidelines for implementing the Law on the Protection of Consumer Rights, and Government Decree No. 19/2012/ND-CP of 16 March 2012 stipulates guidelines for the imposition of sanctions such as warnings, administrative fines up to ₫70 million, revocation of business licences or certificates, the confiscation of illicit profits, and other forms of penalty. Violations include harassment or coercion of consumers, inadequate warranty or sale of defective goods, breach of confidential customer information, violation of general trading conditions and contractual obligations, and other infringements as stipulated by the Law.

3.149. The VCA has so far not been overly busy conducting trade remedy investigations in Viet Nam. However, significant resources have been employed to assist Vietnamese exporters subject to investigations in overseas markets.¹²⁹ The VCA is also engaged in Viet Nam's efforts to be recognized as a market economy by its trading partners. According to the VCA, 8 additional countries agreed to grant Viet Nam market-economy status during 2012, increasing the total to 37 trading partners.

3.4.9 Price controls

3.150. Until recently the basic principles of price control in Viet Nam were laid down in the Ordinance on Price, in effect since 1 July 2002, and Decree No. 170/2003/ND-CP, as amended in 2008.¹³⁰ The Ordinance on Price was replaced by the Law on Price No. 11/2012/QH12, in effect

¹²⁷ The Competition Council was established pursuant to Government Decree No. 05/2006/ND-CP of 9 January 2006. The Council has from 11 to 15 members, who are appointed (or dismissed) by the Prime Minister on the proposal of the Minister of Industry and Trade.

¹²⁸ In 2011, nine cases concerned cartels and one dealt with abuse of dominant/monopoly position (Viet Nam Competition Authority, 2011).

¹²⁹ The agency has, for example, set up an early warning system based on anti-dumping cases against Vietnamese exports to major markets.

¹³⁰ Decree 170 was amended and supplemented through Decree No. 75/2008/ND-CP of 9 June 2008. Circular No. 104/2008/TT-BTC of 13 November 2008 guides Decrees 170 and 75. In addition, Prime Minister's Decision No. 116/2009/QĐ-TTg of 29 September 2009 modified the list of goods and services subject to "price

since 1 January 2013. Respecting the market mechanism and the right of businesses to set their own prices, the State may exercise price regulation to stabilize prices or to protect the legitimate interests of business entities, consumers, or the State. The Law on Price identifies four forms of price regulation, i.e. price "valorization", prices for goods and services determined by the State, price consultation, and the examination of "price constituents".

3.151. Price valorization, i.e. efforts to stabilize the prices of certain essential goods and services (covered by Articles 15 to 18) affects petrol and other petroleum products, electricity, liquefied petroleum gases, nitrogenous fertilizer and NPK fertilizer, plant protection chemicals (specified by law), vaccines preventing diseases for bovine animals and poultry, kitchen salt, milk for children under six, edible sugar, husked and un-husked ordinary rice, and preventive and curative medicines for human use (according to a list of essential medicines for use in medical establishments).¹³¹

3.152. Price determination by the State is in the form of specific rates, price ranges, or minimum or maximum charges (Articles 19 to 22). Specific price setting applies to aviation services¹³², including take-off and landing charges, flight management, assistance for "flight assurance", and security screening; telecommunications connecting services; and electricity, electricity transmission, and electricity system support services.¹³³ Price ranges with specifically determined prices affect land and forests, ground water and potable water, rents and rent/purchase options for housing built with state funds, medical treatment, and education/training services. Minimum (or maximum) prices are set for the rental of state-owned infrastructure, domestically produced cigarettes, public utility services, and certain "national reserve" goods. Price consultation, i.e. the mediation of a governmental authority in price discussions between buyers and sellers, can be effected for important goods and services where competition is limited on the side of the seller and/or buyer. Price constituents, i.e. detailed production costs, are examined when specific price setting is applied for goods and services subject to price "valorization", and for other goods and services at the request of the Prime Minister, ministers, or other high-level officials when prices are changing "abnormally".

3.153. Since 2008, certain businesses have been obliged to declare their selling prices, and changes to them, to the competent state authorities, e.g. the Ministry of Finance or provincial level Finance Departments.¹³⁴ Price declaration affects industrial explosive materials, seaport services, airport services, domestic airfreight rates, charges for transportation by car, and medicines for human use.¹³⁵ The Ministry of Finance may apply controls when prices increase or decrease "groundlessly" or "unreasonably". It has been observed that, for goods and services subject to price declaration, this measure is likely to lead to greater harmonization in the price calculations of market participants and thus more uniform profit margins, thereby ignoring the differences in risks facing many businesses.¹³⁶

3.154. According to the authorities, the scope of price declaration and price registration measures has been reduced with the promulgation of the new Law on Price.¹³⁷ Price registration is currently only applied for the period of price stabilization measures. The authorities also note that price declaration implies a statement of the new price, and not the submission of the calculation data. Provisions on dumping and monopoly pricing, included in the earlier Ordinance on Price, were not carried forward into the Law on Price, to avoid overlapping with other relevant legislation.

valorization", and the Government Office issued an official letter on 24 May 2010 (No. 3450A/PCP-KTTH) on the promulgation of a circular on price management.

¹³¹ The list of goods and services specified in Article 15, clause 2 can only be modified by the Standing Committee of the National Assembly upon proposal by the Government.

¹³² The State establishes tariffs for domestic air transportation services on monopolized routes.

¹³³ Regarding the retail price of electricity, higher rates are charged for industrial users, commerce, and foreign consumers (see section 4.3.2.1).

¹³⁴ Circular No. 104/2008/TT-BTC of 13 November 2008.

¹³⁵ Goods and services subject to price declaration are listed in Ministry of Finance Circular No. 122/2010/TT-BTC of 12 August 2010. The People's Committees may decide on assets, goods, or services to be subject to price declaration or price control at the local level.

¹³⁶ European Commission (2011).

¹³⁷ The Ministry of Finance has submitted to the Government a draft Decree to implement the Law.

3.4.10 Trade-related intellectual property regime

3.4.10.1 Overview

3.4.10.1.1 General

3.155. Intellectual property (IP) protection is a focus for Viet Nam and many of its trading partners. The *Doi Moi* process was followed by relatively more active liberalization in IP, to allow Viet Nam's accession to the WTO. However, in addition to facing the challenges common to all low-income developing countries, Viet Nam also had to make a radical switch from an IP approach for a socialist, planned economy to an IP system adapted for market-oriented economies. To some extent, the transition is still on-going. However, the various interests and efforts in Viet Nam are accelerating the movement towards higher integration of the IP-innovation-trade triangle into the international framework and towards more business and legal security, in the WTO, the World Intellectual Property Organization (WIPO), ASEAN, or APEC.

3.156. Viet Nam is continuing to modernize its IP system to adjust it to developments, and to its international commitments, whilst anticipating modern IP challenges. At the same time, Viet Nam is defending its interests, considerations, and stances in on-going negotiations with its trading partners. The international framework (and other policy considerations) has contributed to its more outward-oriented approach, and more active, offensive strategy, albeit more defensive in certain areas, such as enforcement.

3.4.10.1.2 Notifications in the TRIPS Council and review of legislation in 2008

3.157. In accordance with Article 63.2 of the TRIPS Agreement and with the procedure and practice of the Council for TRIPS¹³⁸, Viet Nam notified its main dedicated IP laws and regulations in late 2007/early 2008.¹³⁹ Viet Nam's legislation was reviewed by other Members from 13 March to 17 June 2008.¹⁴⁰ In the course of the review, the Vietnamese delegation provided useful information about its enforcement system. Viet Nam notified amendments to the legislation in 2010.¹⁴¹ Amendments made after 2010 have yet to be notified formally to the TRIPS Council.¹⁴²

3.4.10.1.3 IP authorities

3.158. The National Office of Intellectual Property (NOIP), under the Ministry of Science and Technology (MOST), and the Copyright Office of Viet Nam (COV), under the Ministry of Culture, Sports and Tourism, are the principal agencies responsible for IP issues.¹⁴³ Other agencies are involved in aspects of IP protection, e.g. in the granting of plant variety certificates (Ministry of Agriculture and Rural Development), the issuance of compulsory licences, or enforcement matters.

3.159. The NOIP is responsible for the overall management of intellectual property and the direct management of industrial property. The agency is also engaged in the development of legislation and policymaking. Apart from the granting of industrial property titles of protection¹⁴⁴, the NOIP provides expert opinions to serve enforcement. The NOIP records licences, contracts, and

¹³⁸ IP/C/2.

¹³⁹ The table of main laws and regulations notified by Viet Nam in document IP/N/1/VNM/1 contains a summarized description of the main dedicated IP legislation. Main dedicated IP laws and regulations: IP/N/1/VNM/1, IP/N/1/VNM/2, IP/N/1/VNM/3, IP/N/1/VNM/4. Enforcement: IP/N/1/VNM/E/1, IP/N/1/VNM/E/2, IP/N/1/VNM/E/3, IP/N/1/VNM/E/4, IP/N/1/VNM/E/5. Copyright: IP/N/1/VNM/C/1. Industrial property (patents, utility models, trademarks, industrial designs, etc.): IP/N/1/VNM/I/1, IP/N/1/VNM/I/2, IP/N/1/VNM/I/3, IP/N/1/VNM/I/4. Plant variety protection: IP/N/1/VNM/P/1. Undisclosed information (test data for pharmaceuticals): IP/N/1/VNM/U/1.

¹⁴⁰ Viet Nam's responses to questions raised by other Members are contained in documents IP/Q/VNM/1-IP/Q2/VNM/1-IP/Q3/VNM/1-IP/Q4/VNM/1.

¹⁴¹ WTO document P/N/1/VNM/O/1, 28 May 2010.

¹⁴² According to the authorities, notifications should be submitted in June 2013.

¹⁴³ The agencies' respective websites are: <http://www.noip.gov.vn> and <http://www.cov.gov.vn>. The predecessor of the COV, the Viet Nam Copyright Protection Agency, was established in 1987.

¹⁴⁴ In general, decisions taken by the NOIP can be appealed to the Administrative Court (Article 39 of the Law on Complaints and Denunciation 1998, amended in 2005, and Article 2 of the Ordinance on Procedures for Settlement of Administrative Cases in 1996, amended in 2006).

assignments. Its two main branches are in Ho Chi Minh City and in Da Nang City, and it has a liaison office in the Hoa Lac High-Tech Park.

3.160. The NOIP is very active nationally and internationally, for example, in AWGIPC, within ASEAN, and in training and IP awareness campaigns, including public outreach actions. The NOIP has, *inter alia*, created a Distance Learning Program on IP. A recipient of technical assistance until recently, Viet Nam (through the NOIP) has become a provider of assistance, for example to Lao PDR.¹⁴⁵

3.161. The COV has two branches, in Ho Chi Minh City and in Da Nang. Its tasks include helping the Minister of Culture, Sports and Tourism in the management of copyright and related rights protection; the submission of proposals for strategies, laws, mechanisms and policies, implementation, and enforcement; taking measures to protect copyright; and granting registration certificates for copyright and related rights.¹⁴⁶ The COV is also in charge of applying commitments under the Brussels Convention concerning encrypted program-carrying satellite signals.

3.162. In the context of the meetings of the TRIPS Council (regular and special sessions¹⁴⁷), Viet Nam coordinates its positions with other ASEAN members as a general rule. In view of the importance of IP for the country, the Permanent Mission in Geneva has an IP expert exclusively dedicated to TRIPS/IP-related issues in WIPO, the WTO, and other fora.

3.4.10.1.4 International treaties

3.4.10.1.4.1 WIPO

3.163. In addition to the WIPO Convention, Viet Nam is party to a number of WIPO-related treaties (Table 3.15). Viet Nam has not yet signed the most recent treaties negotiated in WIPO, e.g. the Internet treaties (WCT, WPPT, Beijing Treaty) or the trademark procedural treaties (TLT, Singapore Treaty).¹⁴⁸

Table 3.15 WIPO treaties (+ UPOV Convention) in force for Viet Nam

Treaty	Subject-matter (non-exhaustive list of elements)	Date of accession or ratification	Date of entry into force
WIPO treaties			
WIPO Convention	Constituent instrument of WIPO	7 April 1981 (Declaration of Continued Application)	21 July 1976
Berne Convention	Copyright (artistic, literary, etc. works)	26 July 2004	26 October 2004
Rome Convention	Related rights (performers, producers of phonograms and broadcasting organizations)	1 December 2006	1 March 2007
Phonograms Convention	Protection of producers of phonograms against unauthorized duplication of their phonograms	6 April 2005	6 July 2005
Brussels Convention	Distribution of programme-carrying signals transmitted by satellite	12 October 2005	12 January 2006
Paris Convention, 1883 - Stockholm Act, 1967	Industrial property (patents, trademarks, utility models, trade names, industrial designs, geographical indications and appellations of origin, unfair competition, enforcement, etc.)	7 April 1981	2 July 1976
Patent Co-operation Treaty (PCT), 1970	International patent applications	10 December 1992	10 March 1993
Madrid Agreement (Marks) - Stockholm Act, 1967	International registration of marks	7 April 1981 (Declaration of Continued Application of the Stockholm Act)	2 July 1976

¹⁴⁵ NOIP (2012), p. 15.

¹⁴⁶ The duties and tasks are stipulated in Decision No. 41/2008/QĐ-BVHTTDL of 15 May 2008.

¹⁴⁷ The Special Session of the TRIPS Council is the Doha Round group negotiating the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits.

¹⁴⁸ Viewed at: http://www.wipo.int/treaties/en/ShowResults.jsp?country_id=185C.

Treaty	Subject-matter (non-exhaustive list of elements)	Date of accession or ratification	Date of entry into force
Protocol relating to the Madrid Agreement (Marks)	International registration of marks	11 April 2006	11 July 2006
UPOV Convention 1961 - 1991 Act	<i>Sui generis</i> system of protection of plant varieties	24 November 2006	24 December 2006

Source: WTO Secretariat, on the basis of WIPO information on treaties. Viewed at: www.wipo.int/treaties/en/.

3.4.10.1.4.2 APEC

3.164. Viet Nam is pro-active in APEC's Intellectual Property Group (IPEG). Towards implementing the Collective Action Plan approved by IPEG, the NOIP participated in the development of Viet Nam's IP Action Program in 2011, in cooperation with other APEC economies.¹⁴⁹

3.4.10.1.4.3 ASEAN

3.165. Viet Nam is a party to various IP schemes within the framework of ASEAN.¹⁵⁰ Since 1996, the ASEAN countries have been cooperating closely on the development of a common IP system through the ASEAN Working Group on Intellectual Property Cooperation (AWGIPC). As ASEAN economic integration is planned for 2015, AWGIPC prepared a new work plan as part of the Blueprint of the ASEAN Economic Community (AEC).¹⁵¹ The ASEAN Intellectual Property Action Plan 2011-2015 aims to meet "the goals of the AEC by transforming ASEAN into an innovative and competitive region through the use of IP for their nationals and ensuring that the region remains an active player in the international IP community". AWGIPC has set five strategic goals, to be monitored and regularly evaluated: (i) to achieve a balanced IP system taking account of the varying levels of development and the various interests at stake (those of users and generators of IP); (ii) to develop appropriate legal and policy IP infrastructures nationally or regionally; (iii) to promote IP creation, awareness, and utilization as a tool for innovation and development, as a tool for technology transfer, etc.; (iv) to maintain active regional participation in the international IP community, closer relationship with dialogue partners and institutions to develop the capacity of ASEAN countries, and address the needs of the stakeholders of the region; and (v) to intensify cooperation to enhance human and institutional capacity of IP offices in the region.

3.166. For each strategic goal, "initiatives" or projects will have a lead country or co-leading countries. Viet Nam is leading efforts on plant variety protection, and co-leads the capacity-building of design and trademark attorneys, and geographical indication protection.

3.4.10.1.4.4 Bilateral or regional agreements

3.167. Viet Nam's various economic and free-trade agreements (Chapter 2) all contain an IP component, with various degrees of binding commitments and detail. The bilateral agreement with the United States (BTAs) on copyright, signed in 2000, is particularly detailed.¹⁵² Chapter 9 of the Economic Partnership Agreement between Viet Nam and Japan covers all IPRs and enforcement.¹⁵³ In addition to its participation in the negotiations on "new generation FTAs"¹⁵⁴, Viet Nam has signed bilateral agreements and concluded MoUs focusing on issues such as technical assistance and cooperation between IP agencies, and streamlined IP procedures.

¹⁴⁹ NOIP (2011).

¹⁵⁰ NOIP (2011), p. 13.

¹⁵¹ AWGIPC has recently launched the ASEAN IP Portal (at www.aseanip.org), the official website of the ASEAN on Intellectual Property.

¹⁵² Viewed at: http://www.noip.gov.vn/web/noip/home/en?proxyUrl=/noip/cms_en.nsf/ and <http://www.cov.gov.vn/cbqen/index.php>.

¹⁵³ WTO RTA Database. Viewed at: <http://rtais.wto.org/UI/PublicShowMemberRTAIDCard.aspx?rtaid=170>.

¹⁵⁴ Examples are negotiations towards a Trans-Pacific Partnership Agreement (TPP), a Free Trade Agreement with the EU, and a Free-Trade Agreement with EFTA states.

3.4.10.1.5 Innovation

3.168. Viet Nam is moving rapidly to modernize its IP system and to integrate with the global economy, particularly at the regional level.

3.169. The 2012 *Global Innovation Index* ranked Viet Nam 76th out of 141 countries.¹⁵⁵ Within ASEAN, this puts Viet Nam in fifth place. The 2012-2013 *Global Competitiveness Report*, which also uses innovation as one of its indicators, ranks Viet Nam 75th out of 144 countries.¹⁵⁶

3.4.10.2 Intellectual property

3.170. As Viet Nam stated in the TRIPS Council in 2008, the Civil Code of 1995, which introduced the basic principles of property, including intellectual property, was the fundamental text representing a turning point in Vietnamese efforts to become a market economy. The Civil Code was revised in 2005 by Law No. 33/2005/QH11, re-stipulating the basic civil principles of IPRs. The Civil Code is the basis on which the whole universe of IPRs is regulated by IP legislation in Viet Nam (Table A3.8). The Law on Intellectual Property (Law No. 50/2005/QH11 of 29 November 2005) was amended and supplemented in 2009 (Law No. 36/2009/QH12). This Law covers comprehensively the full range of full IPRs. Implementing provisions are generally regulated by decrees and circulars.

3.4.10.2.1 Copyright and related rights

3.171. Under the amended Article 27 of the Law on Intellectual Property, the term of protection for a work is the life of the author plus 50 years *post mortem auctoris*. Other works have different periods of protection and the duration of protection is computed differently as provided by the Berne Convention and the TRIPS Agreement. Moral rights are protected for an indefinite term. The State is owner of anonymous works, works whose author passed away without successors-in-title, and works assigned to the State (amended Article 42). Currently, Viet Nam has four non-governmental, non-profit collective societies, i.e. the Viet Nam Literary Copyright Center (VLCC); the Recording Industry Association of Viet Nam (RIAV); the Viet Nam Center for protection of Music Copyright (VCPMC); and the Viet Nam Reproduction Rights Organization (VIETRRO). The collective management of copyright and related rights is a new concept in Viet Nam, and technical cooperation with other WTO Members and sister collecting societies elsewhere has played an important role in the establishment of the Vietnamese societies.

3.172. COV delivers certificates of protection of copyright and related rights. The Berne Convention as incorporated in the TRIPS Agreement provides for automatic protection. However, Viet Nam, like some other countries, has set up a system of registration of copyright.¹⁵⁷ The registration system allows authors and creators to use the certificates as evidence in case of litigation. Nationals and foreigners may use the system. Some 4,000-5,000 registration certificates have been issued annually in recent years.

3.4.10.2.2 Industrial property

3.173. IP registration statistics for 2008-11 indicate stability or growing interest in protection among IP stakeholders (Table 3.16). Most applications and registrations relate to trademarks and patents. Most applications and registrations emanate from individuals and enterprises resident in Viet Nam, except for patents, where the great majority of the applications are filed by non-residents.

¹⁵⁵ INSEAD and WIPO (2012). See also WIPO-INSEAD Press Release No. PR/2012/715, 3 July 2012, "Release of the Global Innovation Index 2012: Switzerland Retains First-Place Position in Innovation Performance". Viewed at: http://www.wipo.int/pressroom/en/articles/2012/article_0014.html.

¹⁵⁶ World Economic Forum (2012).

¹⁵⁷ Viewed at: <http://www.cov.gov.vn/cbqen/index.php>. According to the Law on Intellectual Property (Articles 6 and 49, paragraph 2), an application for a registration certificate is not mandatory for entitlement to copyright and related rights.

Table 3.16 Trademarks, industrial designs, and patents and utility models, 2008-12

	2008	2009	2010	2011	2012
Trademark applications					
Resident	20,831	22,378	21,214	22,376	22,838
Non-resident	11,853	10,486	11,075	10,483	6,740
Total	32,684	32,864	32,289	32,859	29,578
Abroad	1,001	881	945	1,676	..
Trademarks granted					
Resident	15,826	16,231	12,731	15,879	14,976
Non-resident	11,855	10,481	8,142	10,236	5,066
Total	27,681	26,712	20,873	26,115	20,042
Abroad	803	656	1,053	1,372	..
Industrial designs applications					
Resident	1,088	1,430	1,206	1,197	1,349
Non-resident	648	469	511	636	597
Total	1,736	1,899	1,717	1,833	1,946
Abroad	84	136	65	75	..
Industrial designs granted					
Resident	908	747	861	825	681
Non-resident	429	489	323	344	440
Total	1,337	1,236	1,184	1,169	1,121
Abroad	27	29	85	71	..
Patent applications					
Resident	320	391	306	300	382
Non-resident	3,163	2,752	3,276	3,260	3,577
Total	3,483	3,143	3,582	3,560	3,959
Abroad	14	6	19	21	..
Patent granted					
Resident	39	29	29	48	45
Non-resident	627	677	793	1,796	980
Total	666	706	822	1,844	1,025
Abroad	2	2	4	5	..
Utility solutions applications					
Resident	116	133	215	193	198
Non-resident	168	120	40	54	100
Total	284	253	255	247	298
Abroad			2	1	..

.. Not available.

Source: WTO Secretariat, based on WIPO statistics data, last updated in December 2012 (for 2008-11). Statistics for 2012 provided by the Vietnamese authorities.

3.4.10.2.2.1 Trade marks

3.174. Viet Nam reformed its trademark system during the WTO accession process. It reported to the TRIPS Council in 2008 that its trademark protection for goods and services is TRIPS compliant overall. Vietnamese legislation provides for regular, collective, and certification marks, and protects well-known trademarks. While the use of signs such as seals is forbidden for regular trademarks, it is authorized for collective and certification marks. The NOIP undertakes formal and substantive examinations of trademark applications. Viet Nam provides an initial period of protection from the grant date until the expiry of ten years from the filing date, renewable indefinitely for periods of ten years.

3.4.10.2.2.2 Geographical indications (GIs)

3.175. Viet Nam's Law on Intellectual Property provides protection of GIs, including appellations of origin for all products, through registration at the NOIP. Once registered, the protection has an indefinite duration from the date of grant of the certificate by the NOIP. Persons entitled to use a GI may ask the competent state agency to stop illegal use of that GI. The right to register GIs of Vietnamese origin and ownership rights belong to the State. The concept and the protection requirements of a GI in Viet Nam's legislation (Articles 4 and 79 of the IP Law) correspond to Article 22.1 of the TRIPS Agreement, and additional protection for GIs for wines and spirits is provided through Article 129.3 of the Law.

3.176. From 2001 to 2012, 62 applications were filed for the protection of GIs, mainly for agricultural products, foodstuff, and handicraft. Applications for GIs are mainly presented by Vietnamese local authorities. Of the 34 GI certificates issued during the same period, 3 (out of 5 applications) concern foreign GIs.¹⁵⁸

3.4.10.2.2.3 Industrial designs

3.177. In accordance with Viet Nam's TRIPS commitments, the NOIP protects two- and three-dimensional designs. According to Article 93.4 of the IP Law, an initial term of protection (from the grant date) until the expiry of five years from the filing date is provided, and renewable for two consecutive periods of five years. Prior used industrial designs that are "independently created" ("prior users" in IP Law) are not considered infringements of the right of the industrial design owner (Article 134).

3.4.10.2.2.4 Patents for inventions

3.178. The NOIP undertakes formal and substantive examination of patent applications. Viet Nam's legislation covers "utility solution patents", which include utility models (Article 58.2 of the IP Law), for which the inventive step is lower. Protection lasts until the expiry of 20 years from the filing date for a patent for invention, and 10 years for a utility solution. The IP Law provides for exclusions from patentability and exceptions to exclusive rights, e.g. prior use, private use, or temporary entry into Viet Nam's space.

3.179. The share of patent applications by top fields of technology from 1997 to 2010 was: engines, pumps, turbines (13.01%); transport (8.13%); other special machines (7.32%); machine tools (6.50%); textile and paper machines (6.50%); furniture, games (6.50%); civil engineering (5.69%); electrical machinery, apparatus, energy (4.88%); handling (4.07%); materials, metallurgy (4.07%); and others (33.33%).

3.180. Viet Nam's Law on Intellectual Property reflects the main TRIPS provisions on compulsory licensing. Such licences may be granted to any third organization or person for (i) national defence and security, disease prevention, and treatment and nutrition of people or other urgent needs of society; (ii) failure to use the patented invention; (iii) failure to grant a voluntary licence on reasonable terms and conditions despite efforts by the third party to negotiate such voluntary licence; or (iv) in case of anti-competitive practices prohibited by the Law on Competition. The Law provides for a time-limit of non-use of four years from the date of patent application, or three years from the date of grant. Article 136.1 of the Law stipulates that right-holders are obliged to "use" the patented invention to meet the needs for national defence and security, disease prevention and treatment, and nutrition of people, or other urgent needs of society. In compliance with Article 27.1 of the TRIPS Agreement, needs satisfied by imported products or products manufactured under contractual licences are deemed to fulfil the obligation to "use" the invention (Article 23.2 of Decree No. 103). The compulsory licensing provisions also apply to utility solution patents.

3.181. Ministries and ministerial-level agencies may issue compulsory licences in their respective areas of competence noted above. The Ministry of Science and Technology is responsible for compulsory licensing in other cases (Article 177.1 of the Law). No compulsory licences have been granted since 2008.

3.182. Regarding the "Paragraph 6 System" established under the Doha Declaration on TRIPS and public health, Viet Nam benefits from the waivers accepted in the WTO 2003 Decision WT/L/540 and Corr.1.¹⁵⁹ According to the latest information available, Viet Nam has no legislation reflecting the Paragraph 6 system under the waiver decision. Furthermore, Viet Nam has so far not notified its acceptance of the 2005 Protocol amending the TRIPS Agreement (WT/L/641).¹⁶⁰

¹⁵⁸ NOIP (2011), p. 70.

¹⁵⁹ See http://www.wto.org/english/tratop_e/trips_e/wtl641_e.htm

¹⁶⁰ See http://www.wto.org/english/tratop_e/trips_e/implement_para6_e.htm and http://www.wto.org/english/tratop_e/trips_e/amendment_e.htm

3.4.10.2.2.5 Plant varieties

3.183. The UPOV Convention (1991 Act) entered into force for Viet Nam on 26 December 2006. The Ministry of Agriculture and Rural Development (MARD) is the main authority responsible for plant variety protection.¹⁶¹ The conditions for obtaining protection of plant varieties are those provided under the UPOV Convention, e.g. novelty, distinctiveness, uniformity, and stability. Part IV of Viet Nam's IP Law enunciates other aspects of plant variety protection, such as exclusive rights, and compulsory licences, which may be issued by other ministries and ministerial-level agencies in their areas of competence, on the basis of consultations with MARD.

3.184. As regards exceptions to exclusive rights, Part IV of the Law provides exceptions such as private use or use for other non-commercial purposes, experimental use, plant breeder's exception (i.e. for another plant breeder to use the protected plant variety to create another variety), and farmer's privilege (i.e. the right for a farmer to use material harvested on his/her own land).

3.4.10.2.2.6 Layout-designs of integrated circuits

3.185. Viet Nam's legislation regarding this category of IPRs reflects the provisions of the TRIPS Agreement, including the provisions of the Washington Treaty incorporated in the Agreement. The terms of protection are those set out in Article 38 of the TRIPS Agreement. The NOIP conducts a formal examination, and not a substantive examination of applications for protection. So far, 16 registration certificates have been granted.

3.4.10.2.2.7 Protection of undisclosed information

3.186. According to Article 84 of the Law on Intellectual Property, undisclosed information, such as trade secrets, is protected without registration as long as the three requirements for such protection provided by Article 39.1 of the TRIPS Agreement are fulfilled. Conditions for test data protection, provided in the pharmaceutical and agri-chemical sectors, reflect TRIPS Article 39.3 provisions. In addition, Article 128 of the Law specifies that the authority concerned shall not allow, for five-years from the grant of market authorization to the original provider of such data, that the test data be used by subsequent applicants for market authorizations, without the consent of the original provider.

3.4.10.2.2.8 Unfair competition

3.187. Article 130.1 of the Law on Intellectual Property sets out a non-exhaustive list of acts considered as "acts of unfair competition", e.g. use of commercial indications that cause confusion as to: business entities, activities or commercial source of goods or services; the origin, quality, or other characteristics of goods or services; registration or use of a domain name identical or confusingly similar to a protected trade name. Organizations and individuals that have committed acts of unfair competition are liable to the administrative remedies provided for in Viet Nam's competition legislation.

3.4.10.2.2.9 Other matters

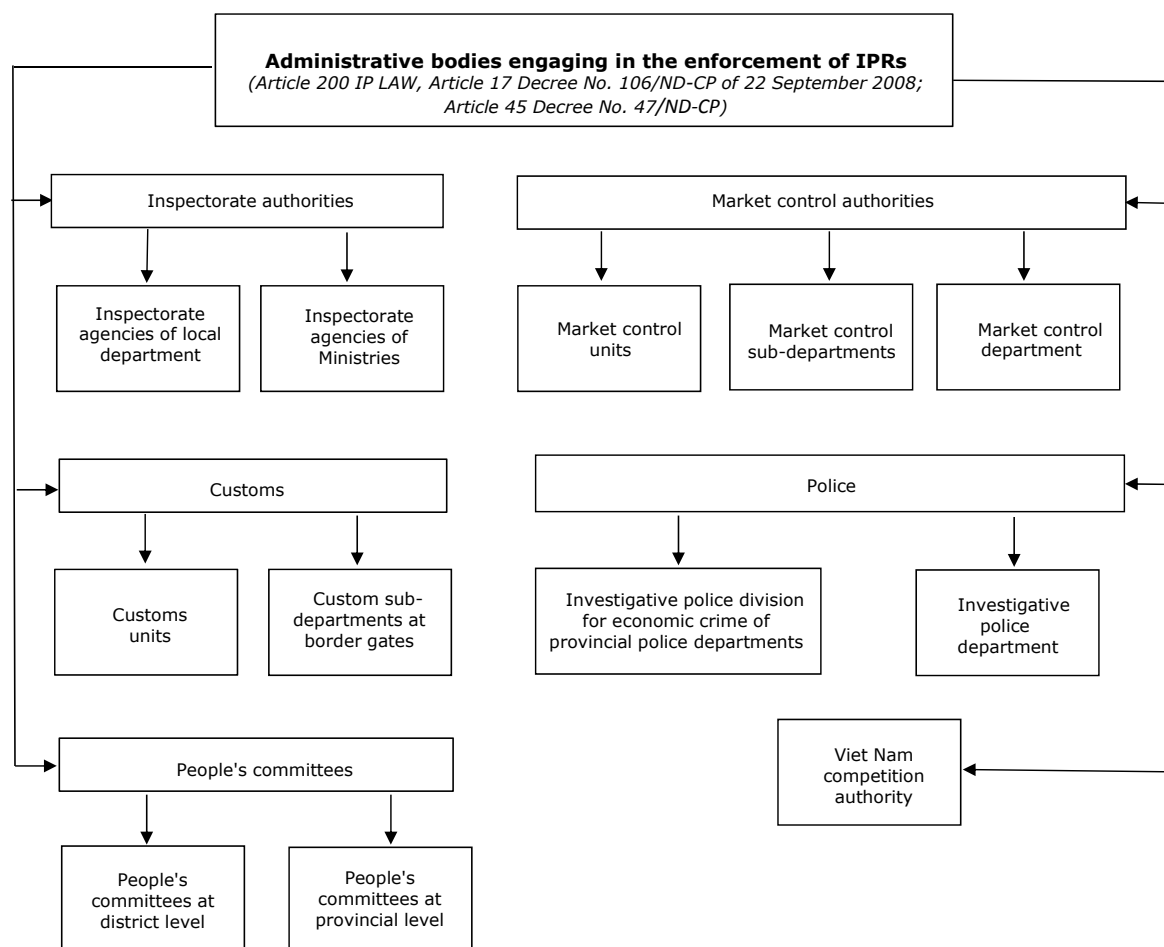
3.188. Viet Nam has opted for international exhaustion of IPRs. Article 21.2 of Decree No. 103/2006/ND-CP, as amended and supplemented by Decree No. 122/2010/ND-CP.

3.4.10.2.3 Enforcement

3.189. Before the review of the TRIPS Council in 2008, Viet Nam provided responses to the Checklist of issues on Enforcement¹⁶², including a chart on the administrative system for IPR enforcement (Chart 3.5).

¹⁶¹ The MARD has issued 53 certificates for plant variety protection, with a total of 112 plant variety rights in the crops sector in 2012.

¹⁶² WTO document IP/N/6/VNM/1, 1 February 2008.

Chart 3.5 Administrative IPR enforcement agencies

Source: Information provided by the authorities of Viet Nam.

3.190. Viet Nam's enforcement system is highly complex. It is regulated by a combination of various legal and administrative texts (Table A3.9).¹⁶³

3.191. District-level people's courts (civil courts) are responsible for civil procedures and remedies. The legislation reflects the features of the TRIPS provisions on civil procedures and remedies. For example, it provides for injunctions, provisional measures, including "*inaudita altera parte*", damages, including recovery of profits and moral injury, and other remedies. Remedies under Article 46 of the TRIPS Agreement are provided for in Article 214.3 of the IP Law and Articles 29 to 31 of Decree No. 105/2006/ND-CP.

3.192. Various administrative bodies may be competent for measures or remedies against IPR infringements: the Customs Office for border measures (importation and exportation), and administrative remedies against infringements of IPRs (copyright-related rights and industrial property (trademarks and GIs); Science and Technology Inspectorates (industrial property rights); Culture, Sports and Tourism Inspectorate (copyright and related rights); People's Committees (IPRs within their jurisdiction); Economic Police - head of the District Police and Economic Police Division, the Director of the Provincial Police, and Director General of the Economic Police Department (investigation and actions against infringements of IPRs in all areas of production and business).

¹⁶³ Civil Code, the Civil Procedure Code (2004), the Penal Code, the Law on Intellectual Property, rules regarding market control officers of the Ministry of Industry and Trade (Market control department and district-level market control departments), rules regarding the customs officers (customs office, customs department, Department of anti-smuggling investigation), Specialized Inspection, including cultural, sport and tourism inspectorates at central level and local level, scientific and technological inspectorates at central level and local level, and local People's committees and Police (district police, province police and economy police).

3.193. The issues of counterfeited (trademarks in particular) and pirated goods (copyright and related rights) remain matters of concern for Viet Nam's trade partners, e.g. cable and satellite signal theft or piracy of books.¹⁶⁴ The number of infringement cases brought before the authorities and the monetary amounts of fines issued by them have fluctuated considerably in recent years (Table 3.17).

Table 3.17 Industrial property infringement cases, 2007-12

Year	2007	2008	2009	2010	2011	2012
<i>Total infringement cases</i>	3,257	2,855	1,905	1,904	1,711	1,164
Industrial design	394	447	212	215	107	38
Trademark	2,833	2,386	1,654	1,632	1,561	1,083
Patent	18	3	7	0	4	10
GI	3	7	26	46	39	33
Unfair competition	6	5	6	11	-	-
<i>Total monetary fine (₫ million)</i>	5,514	8,692	7,744	5,115	9,314	4,002

Source: Information provided by the Vietnamese authorities.

¹⁶⁴ Office of the United States Trade Representative (2013). Although the USTR recognizes that Viet Nam has made progress on its regulatory framework and enforcement efforts in recent years, Viet Nam remains on the Special 301 Report "watch list". Widespread counterfeiting and piracy, including over the Internet, remain serious concerns. In addition, unauthorized reception and distribution of satellite channels via illegal decoders and domestic pay TV platforms continue. The USTR notes that administrative actions and penalties do not seem to have any significant deterrent effect.

4 TRADE POLICIES BY SECTOR

4.1 Overview

4.1. Since 2007, Viet Nam has made continuous progress towards a market-oriented economy, and is gradually opening up most sectors while maintaining government intervention in sensitive or lucrative activities characterized by high market concentration. Its approach to protection of goods is, by and large, tariff-based and dualistic, i.e. relatively low overall manufacturing tariff protection, contrasts with higher levels of protection in agriculture. Emphasis is put on relatively inward-oriented development of certain activities (e.g. mining, manufacturing) involving, *inter alia*, local content, domestic value-added, and market share improvement objectives. The fact that some sectors continue to be protected or otherwise assisted more than others constitutes a potential impediment to efficient re-allocation of resources in the economy as a whole, to the detriment of total factor productivity and thus, *inter alia*, international competitiveness.

4.2. Production and trade in agricultural products has increased considerably over the past few years as yields increased following land reforms, which started in 1988, and Viet Nam is now a major producer and exporter of several agricultural products with a significant surplus in agricultural trade. Although productivity has increased, several factors continue to constrain production, the main one being the small size of most farms, which limits economies of scale. State support to agriculture is concentrated on improving infrastructure, research and development, and extension services although interest rates and inputs are also subsidized and state-owned enterprises have an important role in processing and trade of some products.

4.3. Although smaller than the agriculture sector, fisheries is also important to the economy and both the capture and aquaculture subsectors are expanding. Viet Nam has a large trade surplus in fishery products and most imports are for processing and re-export. The capture industry is based on large numbers of small vessels, which makes regulation and control difficult.

4.4. In mining, where foreign-invested enterprises account for the largest part of total output, efforts have been undertaken to promote sustainable development and ensure that mined products are used in a cost-effective and efficient way; legislative changes have affected, *inter alia*, the granting of mining licences and increased royalties. Overall tariff protection in the sector remains relatively low; the average applied MFN tariff on mineral fuels and oils has dropped considerably while the rate for ores, slag, and ash has increased slightly. Export prohibitions, controls and taxes on several mining products have been reinforced to ensure adequate domestic supplies, increased value-added (e.g. assistance to down-stream activities), and/or vital tax revenue.

4.5. Efforts have been made to promote renewable energy sources, and energy saving and efficiency. The energy sector remains dominated by cross-owned state enterprises¹, and characterized by loose separation between operational, regulatory, and ownership functions. Efforts are being made to address the country's limited oil-refining capacity. Retail petrol and oil prices are adjusted in accordance with flexibly applied market-based mechanisms and are now closer to international market prices. Natural gas prices along with wholesale electricity prices are kept generally low. Despite the on-going establishment of a competitive electricity market, the low purchase prices of electricity by the state-owned monopoly discourage investment in much-needed new power-plant capacity; the current pricing structure does not allow electric utilities to cover the full cost of producing and distributing electricity, and electricity rates for low-income households and irrigation are cross-subsidized by higher rates for industry and commerce.

¹ For statistical purposes, the official definition of state-owned enterprises (sections 1.4.2.2 and 3.4.8) includes: enterprises with 100% of state capital operating according to the provisions of the Enterprise law and under the control of central or local governmental agencies; limited companies under management of central or local government; and joint-stock companies with domestic capital, of which the government holds more than 50% of the charter capital. Non-state enterprises are enterprises set up by domestic capital of the following types: cooperatives; private enterprises; cooperative name companies; private limited companies; joint-stock companies without capital of the state; and joint-stock companies with 50% or less of charter capital owned by the Government. Foreign direct invested enterprises are enterprises with capital directly and entirely or partly (joint ventures) invested by foreigners (General Statistics Office of Vietnam, 2011, pp. 189-190).

4.6. The contribution of manufacturing to GDP has dropped steadily since 2007, while its share in employment has risen. Overall, average applied MFN tariff protection for industrial products has been cut by almost half; nevertheless, tariffs on apparel and clothing, footwear, ceramic products, automobiles, and motorcycles remain relatively high compared with those on other manufactures. Reference prices have been used for risk assessment purposes for imports of certain products (e.g. apparel and clothing, footwear). Domestic support to manufacturing activities is provided in the form of tax and non-tax incentives, as well as government-procurement practices, and a buy-locally campaign entitled "Vietnamese people use Vietnamese products". In addition to border protection, industry-specific support was adopted to boost "support industries", an important element for increasing local content in some key sectors (e.g. textiles and garments, motor vehicles) and the steel industry, while assistance to the automotive sector has been under consideration. Efforts were made to, *inter alia*, promote patient safety and sustainable access to pharmaceutical and biological products.

4.7. Services, the largest sector of the economy, have been further liberalized as a result of Viet Nam's comprehensive WTO accession undertakings; consequently, its GATS+ commitments in recent regional-trade agreements have been more limited. Although higher than the overall average level in the rest of the economy, labour productivity grew at a slower pace than in other sectors. Certain activities, e.g. telecommunications, aviation services, and railways, are subject to ceilings on foreign ownership. State involvement in major services subsectors (e.g. banking, telecommunications, and transport) with high market concentration is significant in some cases. Despite visible successes, the banking sector has been exposed to unusually rapid growth in lending but action is being taken to address safety and soundness issues. Great strides have been made in upgrading telecommunications, and improving the access to and affordability of such services; a pro-competition regulatory regime was passed, albeit subject to certain limitations. While screening quotas for foreign movies in cinemas were passed recently, certain restrictive conditions tied to film imports were removed. Transport infrastructure deficiencies, and the increasingly higher fees and surcharges of foreign firms that dominate Viet Nam's overseas shipping market, have seemingly affected export competitiveness; the presence of foreign vessels operating in the domestic container-shipping market was temporarily restricted. Efforts have been made to address ports' competitiveness by reducing their fees. Reduced airport charges and fees were offered to encourage airlines to increase their flight frequencies. Despite Viet Nam's openness to fully foreign-owned businesses, an economic needs test is compulsory for any retail outlet to be established after the first one.

4.2 Agriculture

4.2.1 Features

4.8. Agriculture is an important part of the economy of Viet Nam where, in 2012, it represented about 17% of GDP and 47% of employment. Although the contribution of agriculture to GDP has declined from nearly 40% in the early 1990s, over the past few years it has increased, driven by relatively high prices and expanding production.

4.9. According to the 2011 rural, agricultural and fishery census, out of a total agricultural land area of 26.2 million ha, about 10.1 million are used for crops, 15.4 million for forestry, and 0.7 million for aquaculture.²

4.10. Production is based on family farms, with about 8.9 million households engaged in agriculture in 2011, slightly down from 9.1 million in 2006.³ Most farms are less than 0.5 ha, and 84% are less than 2 ha; very few greater than 10 ha. Although, farm sizes vary somewhat from one region to another, the proportion over 2 ha never goes higher than 5%.⁴ However, in many areas, the climate and infrastructure allow two or three crops per year, which means harvested area can be greater than farm size.

4.11. Viet Nam produces a wide variety of agricultural products, with crop production accounting for over three quarters of the gross value of output. Rice, the main crop, accounts for 36% of the total value of agricultural production, followed by coffee and rubber. In 2011, Viet Nam was the

² General Statistics Office of Vietnam (2012), Table 65.

³ General Statistics Office of Vietnam (2012), Table 50.

⁴ General Statistics Office of Vietnam (2012), Table 60.

world's biggest producer of cashew nuts and pepper, the second biggest producer of coffee, and one of the ten biggest producers of several other products including rubber, rice, tea, pig meat, and cassava.⁵

4.12. Production of all major agricultural products increased steadily in recent years (Table 4.1) and growth has been particularly strong for cashew nuts and cassava, which had average annual growth rates of over 15% from 2000 to 2011. Cotton is the main exception to the general story of growth, as production declined by 3.5% annually.⁶ The total value of production of livestock and livestock products is much smaller than the total value of crop production, but it has grown strongly over the past ten years, particularly pig meat which, in value terms, is now the second agricultural product.

Table 4.1 Production of selected commodities, 2005-11

		2005	2006	2007	2008	2009	2010	2011
Total	Const 1994 đ bn	137,055	142,643	147,765	158,108	162,593	170,215	178,537
Crops	Const 1994 đ bn	107,898	111,613	115,375	123,391	124,463	129,779	135,882
Rice, paddy	Const 1994 đ bn	57,333	57,360	57,509	61,968	62,320	64,010	67,838
	'000 hectares	7,329	7,325	7,207	7,400	7,437	7,489	7,655
	'000 tonnes	35,833	35,850	35,943	38,730	38,950	40,006	42,399
Coffee, green	Const 1994 đ bn	9,024	11,820	10,992	12,672	12,696	13,200	14,016
	'000 hectares	497	497	509	531	539	555	571
	'000 tonnes	752	985	916	1,056	1,058	1,100	1,168
Cashew nuts	Const 1994 đ bn	1,441	1,362	1,872	1,851	1,751	1,863	1,908
	'000 hectares	348	382	440	407	391	379	360
	'000 tonnes	240	227	312	309	292	311	318
Cassava	Const 1994 đ bn	3,492	4,047	4,260	4,841	4,436	4,470	5,147
	'000 hectares	426	475	496	554	508	498	558
	'000 tonnes	6,716	7,783	8,193	9,310	8,531	8,596	9,898
Rubber	Const 1994 đ bn	3,952	4,551	4,969	5,412	5,830	6,166	6,658
	'000 hectares	483	522	556	632	678	749	834
	'000 tonnes	482	555	606	660	711	752	812
Maize	Const 1994 đ bn	5,946	6,052	6,756	7,180	6,864	7,263	7,534
	'000 hectares	1,053	1,033	1,096	1,440	1,089	1,126	1,081
	'000 tonnes	3,787	3,855	4,303	4,573	4,372	4,626	4,799
Sugar cane	Const 1994 đ bn	3,139	3,511	3,653	3,391	3,278	3,394	3,683
	'000 hectares	266	288	293	271	266	269	282
	'000 tonnes	14,949	16,720	17,397	16,146	15,608	16,162	17,540
Bananas	Const 1994 đ bn	1,747	1,780	1,932	2,083	2,096	2,124	2,267
	'000 hectares	105	108	111	112	116	120	122
	'000 tonnes	1,344	1,369	1,486	1,602	1,612	1,634	1,744
Pepper	Const 1994 đ bn	1,480	1,462	1,647	1,813	1,998	1,943	2,017
	'000 hectares	49	49	48	50	51	51	55
	'000 tonnes	80	79	89	98	108	105	109
Livestock	Const 1994 đ bn	26,051	27,839	29,114	31,326	34,628	36,824	38,925
Pig meat	Const 1994 đ bn	18,304	20,040	21,304	22,264	24,288	24,288	24,792
	'000 tonnes	2,288	2,505	2,663	2,783	3,036	3,036	3,099
Cattle meat	Const 1994 đ bn	1,179	1,328	1,710	1,884	2,183	2,316	2,382
	'000 tonnes	142	160	206	227	263	279	287
Chicken meat	Const 1994 đ bn	4,173	4,511	4,667	5,824	6,864	8,138	9,048
	'000 tonnes	321	347	359	448	528	626	696
Hen eggs	Const 1994 đ bn	2,646	2,660	2,992	3,308	3,662	4,269	4,621
	'000 tonnes	3,949	3,970	4,466	4,938	5,465	6,371	6,897

Source: Viet Nam authorities; and FAOSTat. Viewed at: <http://faostat.fao.org> [March 2013].

4.13. Land reform has been credited with being a significant factor in the increase in production of agricultural products.⁷ Although the State, through the local authorities, is the owner, farmers are entitled to land-use rights. Under Resolution No. 10 of 1988 land use rights were for 15 years for annual crops and 40 years for perennial crops. The periods of tenure were increased under the Land Law of 1993 to 20 years for annual and 50 years for perennial crops. The Land Law also allowed for the exchange, transfer, lease, inheritance, and mortgaging of land-use rights. The Law has been further amended over the years, *inter alia*, to improve the functioning of the market in land-use certificates, allow foreign investment, and permit changes in land use.

⁵ FAOSTat online database. Viewed at: <http://faostat.fao.org> [March 2013].

⁶ WTO Secretariat calculations based on FAOSTat data.

⁷ OECD (2010).

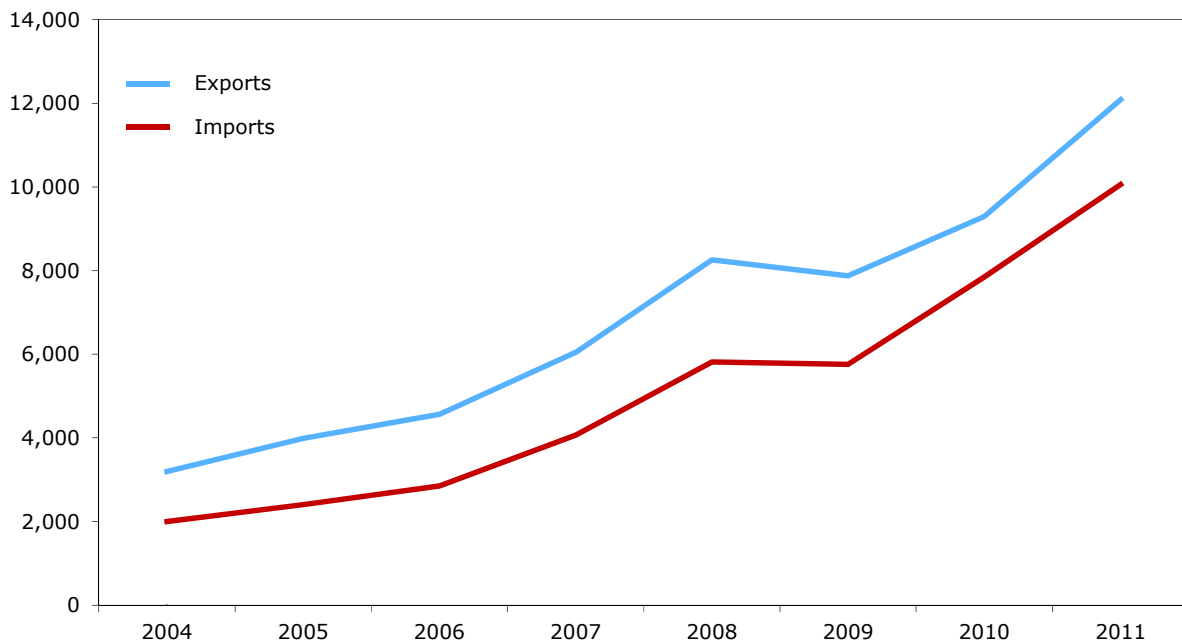
4.14. Technical change has also had a major impact on production, for example the increased use of machines reduced labour requirements and released for production land that had been used for working animals. Rural and agricultural infrastructure has also improved: the 2011 census showed that by July 2011 practically all communes and villages had access to electricity and that roads and irrigation systems had improved.⁸

4.2.2 Trade

4.15. Viet Nam has a surplus in agricultural trade with both imports and exports of agricultural products increasingly significantly over the past few years, except in 2009 when both declined before growth resumed in 2010 (Chart 4.1). The value of trade has increased more rapidly than the volume as agriculture prices have increased in most years since the early 2000s, with the exception of 2009.

Chart 4.1 Imports and exports of agricultural products, 2004-11

US\$ million



Source: UN Comtrade.

4.16. The main exports, rice and coffee, together make up over half of total exports of agricultural products (WTO definition), followed by pepper, starches, and manioc.⁹ Over the past few years, Viet Nam has become a major exporter of several agricultural products, and in volume terms, in 2011 was the biggest exporter of shelled cashew nuts and pepper and the second biggest of rice, green coffee, and several other products.

4.17. Imports are more widely dispersed than exports. The main imports tend to be feed and raw materials; oil cake and cotton were the top two imports in 2010 (Table 4.2). The increase in imports of animal feeds is reflected in the increase in domestic production of pig meat and other animal products, although domestic production of animal feed has also increased (with considerable variations from one year to the next). The increase in imports of cotton is also reflected in the increase in production of textiles although, in this case, domestic production has declined.

⁸ General Statistics Office of Vietnam (2012), pp 67-70.

⁹ For the purposes of this Review, agriculture products are defined as set out in Annex 1 of the Agreement on Agriculture, where fish products are defined as HS2002 Headings 0208.40, 03, 0511.91, 1504, 1603, 1604, 1605, and 2301.20. Although not defined as an agricultural product under the Agreement on Agriculture, export data for rubber is included under exports in Table 4.2 but is not included in the total for exports of agricultural products.

Table 4.2 Exports and imports of agricultural, 2005-11

HS 2002			2005	2006	2007	2008	2009	2010	2011
Exports									
	TOTAL (not including rubber)		3,988	4,561	6,049	8,254	7,873	9,289	12,083
1006	Rice	'000 tonnes	3,040	4,643	4,580	4,745	5,969	6,894	7,117
		US\$ million	1,408	1,276	1,490	2,896	2,666	3,250	3,659
0901	Coffee	'000 tonnes	503	981	1,232	1,061	1,184	1,218	1,260
		US\$ million	740	1,217	1,917	2,114	1,731	1,851	2,761
0801	Coconuts, Brazil nuts and cashew nuts	'000 tonnes	115	142	166	188	231	..	244
		US\$ million	514	479	636	910	884	1,137	1,496
0904	Pepper	'000 tonnes	76	117	83	91	135	117	124
		US\$ million	152	191	272	312	349	423	734
1108	Starches; inulin	'000 tonnes	313	584	665	473	640	..	981
		US\$ million	80	148	203	206	250	354	528
0714	Manioc, arrowroot, sweet potatoes, etc.	'000 tonnes	142	315	273	234	..	..	..
		US\$ million	69	149	196	171	336	223	448
0902	Tea	'000 tonnes	33	105	116	105	135	137	135
		US\$ million	99	110	133	147	180	201	206
0810	Other fruit, fresh	'000 tonnes	66	68	..	81	86	..	94
		US\$ million	89	91	107	157	160	147	182
1701	Sugar	'000 tonnes	1	8	11	13	4	2	276
		US\$ million	0	2	5	5	2	1	174
4001	Rubber	'000 tonnes	561	628	674	642	630	672	714
		US\$ million	714	1,137	1,312	1,563	1,109	2,090	2,989
Imports									
	TOTAL (not including rubber)		2,404	2,850	4,066	5,819	5,757	7,849	10,052
2304	Oil-cake and other solid residues	'000 tonnes	1,016	1,222	2,494	3,162	2,080	2,650	2,981
		US\$ million	320	385	683	1,045	1,029	1,218	1,287
5201	Cotton, not carded or combed	'000 tonnes	106	176	202	291	295	349	320
		US\$ million	163	214	259	456	385	661	1,037
1001	Wheat and meslin	'000 tonnes	1,018	1,248	1,223	702	1,386	2,221	2,431
		US\$ million	201	226	343	293	346	570	814
1511	Palm oil and its fractions	'000 tonnes	225	270	627	546	..	573	673
		US\$ million	119	167	328	450	347	478	657
0801	Coconuts, Brazil nuts and cashew nuts	'000 tonnes	26	22	197	55	33	92	90
		US\$ million	87	73	139	224	167	289	570
1201	Soya beans	'000 tonnes	4	20	51	167	129	212	993
		US\$ million	1	7	17	65	78	109	478
0402	Milk, cream, concentrated or with added sugar	'000 tonnes	99	90	120	94	61	135	135
		US\$ million	230	213	289	319	235	349	407
2309	Preparations used in animal feeding	'000 tonnes	88	104	129	128	132	172	218
		US\$ million	107	126	160	188	208	273	336
1005	Maize	'000 tonnes	188	475	..	..	..	1,873	..
		US\$ million	44	95	105	146	327	454	328

.. Not available.

Source: UNSD Comtrade.

4.2.3 Policies

4.18. The Ministry for Agriculture and Rural Development has primary responsibility for agricultural policy, preparing draft legislation, implementing the legislation, supporting production, and regulating inputs to and outputs from the agriculture sector. It is also responsible for the forestry, fisheries, and salt subsectors. The Ministry's structure is set out in Decrees No. 01/2008/ND-CP and No. 75/2009/ND-CP. A number of divisions are responsible for specific subsectors and/or cross-cutting issues such as planning, science and technology, and the environment. Also under the Ministry are several agencies responsible for the delivery of agricultural services, such as the Centre for Informatics and Statistics, the National Centre for Agriculture and Fisheries Extension, and the National Centre for Rural Water Supply and Environmental Sanitation. In addition, there are 63 Departments of Agriculture and Rural Development responsible for applying laws and policies around the country.

4.19. Other ministries responsible for some aspects of agricultural policy are: the Ministry of Natural Resources and Environment, responsible for land-use; the Ministry of Industry and Trade, responsible for food distribution and trade; the Ministry of Health, responsible for social policies and food security; and the Ministry of Finance for fiscal policy, including support to agriculture. In addition, the People's Committees are responsible for some aspects of agricultural policy in the provinces.

4.20. The private sector is represented by the Vietnam Food Association for enterprises engaged in trade and processing agricultural products, and the Vietnam Farmers' Union, with some sector-specific associations also representing producers.

4.21. State-owned enterprises play a critical, though declining, role in the production, processing, and trade of agricultural products (Table 4.3). Examples include:

- Vietnam Northern Food Corporation (Vinafood1) and the Vietnam Southern Food Corporation (Vinafood2), which purchase, process, import, and export food and salt products. About half of Viet Nam's rice exports are exported by these two corporations. Until marketing year 2012/13, Vinafood2 had the exclusive right to sell to the Philippine market, and has retained exclusive supplier status for government-to-government contracts, which totalled about 200,000 tonnes for 2012/13¹⁰;
- Vietnam National Coffee Corporation (Vinacafe) which, through its subsidiaries, member companies, and associated companies, has interests in all stages of the coffee chain. The Corporation's interests in production are mostly limited to research into coffee production, and it assists producers by providing seeds and advice. Vinacafe is currently being restructured and it has disposed of a number of subsidiaries¹¹;
- Vietnam Rubber Corporation, which is the largest natural rubber company in Viet Nam with 40 subsidiaries, 39 farms, and 30 processing plants. It accounted for 70% of total production in Viet Nam in 2005¹²; and
- Vietnam National Tea Corporation (Vinatea), which is involved in all stages of tea production, processing, and marketing, and is involved in research and providing extension services.

Table 4.3 Gross output of state, non-state, and foreign invested sector at constant 1994 prices, 2005-11^a

(đ billion)

	2005	2008	2009	2010	2011
State					
Food products	21,228.5	15,886.4	13,282.6	14,462.4	16,935.8
Beverages	4,424.9	7,274.8	7,790.5	7,085.8	8,313.5
Tobacco	11,109.5	12,281.2	12,872.2	14,072.1	15,465.4
Non-state					
Food products	35,557.2	71,631.6	76,818.7	87,435.9	102,260.8
Beverages	2,369.6	5,084.9	5,652.4	7,725.4	8,100.2
Tobacco	37.7	13.9	10.8	10.4	9.8
Foreign invested sector					
Food products	18,325.8	33,618.8	40,273.2	46,946.5	55,819.6
Beverages	4,291.4	7,198.8	6,968.7	6,209.6	6,793.3
Tobacco	87.1	191.6	211.9	232.0	256.6

- a "State-owned enterprises include following types: (1) Enterprises with 100% of state capital operating according to enterprise law and under control of central or local governmental agencies; (2) Limited companies under management of central or local government; (3) Joint stock companies with domestic capital, of which the government shares more than 50% charter capital. Non-state enterprises are enterprises set up by domestic capital. The capital may be owned by cooperative, private with 1 or individual group or the government when capital of the Government is equal to less than 50% of registered capital. There are following types of non-state enterprises: (1) Cooperatives; (2) Private enterprises; (3) Cooperative name companies; (4) Private limited companies; (5) Joint stock companies without capital of State (6) joint stock companies with 50% and less than of charter capital shared by the Government. Foreign direct invested enterprises are enterprises with capital directly invested by foreigners, not separated by per cent of capital shared. There are following types of foreign direct invested enterprise: Enterprises with 100% of capital invested by foreigners and joint-venture enterprise between domestic investor and foreigner."

Source: General Statistics Office (2011), *Statistical Year Book of Viet Nam*, pp. 190, 447, 451, 455, Tables 204, 206, 208.

¹⁰ USDA Foreign Agricultural Service (2013), p. 18.

¹¹ USDA Foreign Agricultural Service (2012a).

¹² Global Rubber Markets. Viewed at: <http://globalrubbermarkets.com/3583/the-rise-of-the-magic-weapon-of-vietnamese-natural-rubber-industry.html> [April 2013].

4.2.3.1 Trade policies

4.22. The simple average for tariffs on agricultural products (WTO definition) was 17% in 2013 which, although lower than in 2007, is higher than the overall average tariff of 10%. Tariffs on agricultural products tend to vary considerably from one group to another; the highest are for HS heading 24 (see section 3.2.2).

4.23. Under its WTO accession commitments for agriculture, Viet Nam operates tariff quotas for eggs, sugar, and tobacco, which increase by 5% each year. The most recent notification on imports under tariff quotas for 2010 shows no imports of eggs under the tariff quota, most of the sugar quota was used, and about half the tobacco quota was used.¹³ In addition, Viet Nam has quotas for preferential imports of rice and tobacco from Cambodia and Lao PDR (see section 3.2.2).

4.24. Viet Nam bound its export subsidy commitments at "nil" on acceding to the WTO. According to the Master Plan for agriculture, support for exports is through trade promotion rather than through direct support.

4.25. Under Decree No. 109/2010/ND-CP and Circular No. 44/2010/TT-BCT on rice export businesses, rice exporters require a certificate from the Ministry of Industry and Trade. To qualify for a certificate, the enterprise must have storage capacity of at least 5,000 tonnes and milling capacity of at least 10 tonnes per hour, and must meet other technical requirements intended to improve value added for rice exports. The Decree also provides the legal basis for regulating export prices of rice, while Ministry of Finance Circular No. 89/2011/TT-BTC sets out guidelines to be used to determine the floor price for rice exports. According to the authorities, the Viet Nam Food Association uses these guidelines to calculate minimum export prices for rice.

4.26. In addition to minimum export prices the government imposed a temporary suspension on new export contracts from July 2007 to the end of that year.

4.27. According to the authorities, Viet Nam does not control exports of any agricultural products.

4.2.3.2 Domestic policies

4.28. The supporting tables on domestic support for agriculture, which were distributed during Viet Nam's accession to the WTO, relate to the years 1999-01. In this period, the main focus of support was for programmes notified as exempt from reduction commitments under Annex 2 of the Agreement on Agriculture (Green Box) (₫14,689.3 billion in 2001) where most support was provided for infrastructure, regional assistance, and relief from natural disasters. A further ₫1,814.05 billion was provided in 2001 for development programmes exempt from reduction commitments under Article 6.2 of the Agreement on Agriculture.

4.29. The supporting tables also showed Amber Box support for rice, sugar, cotton, and pork, along with non-product-specific support. However, only support for sugar was over the 10% *de minimis* threshold.¹⁴ Viet Nam bound its Total Aggregate Measurement of Support at ₫3,961.59 billion. The main policy tools used were interest rate and input support and, for sugar, price support. Since acceding to the WTO, Viet Nam has not made any notifications on domestic support or on export subsidies to the Committee on Agriculture.

4.30. According to the Master Plan for agriculture development, public spending on agriculture in 2000-10 was about 5-6% of the total state budget, which suggests that in 2010 it was between ₫33,068.5 and ₫39,682.2 billion.¹⁵

4.31. According to the IMF, in 1993-2011, 24 projects for agriculture and natural resources were approved for public support with a total value of US\$1,461 million in lending, US\$45.4 million for technical assistance, and US\$47.7 million in grants.¹⁶

¹³ WTO document G/AG/N/VNM/2, 3 November 2011.

¹⁴ WTO document WT/ACC/SPEC/VNM/3/Rev.7, 2 August 2006.

¹⁵ Ministry of Agriculture and Rural Development (2012), p. 61 (Vietnamese) states public spending on the agriculture sector was 5-6% of the total State budget; the General Statistics Office (2011), p. 149, Table 68, states that the state budget expenditure in 2010 was ₫661,370 billion in 2010.

4.32. The general objectives for agricultural development are set out in the Master Plan of Production Development of Agriculture to 2020 and a Vision toward 2030, approved by the Prime Minister's Decision No. 124/QĐ-TTg of February 2012 and Resolution No. 63/NQ-CP of December 2009. The Plan sets out objectives for different agricultural products, such as area planted; yields and production volumes with an emphasis on increasing yield (through research and development as well as better training and infrastructure); and market development (both domestic and export through promotion and market development). The Plan recognizes current weakness in policy formation due to a lack of research and monitoring and poor statistical base.¹⁷

4.33. To achieve the objectives in the Plan, domestic policy is focused on increasing productivity and reducing risk exposure through investment in infrastructure, research and development, better extension services, and easier access to credit.

4.34. Product-specific plans set out objectives and general policies for some crops and other agricultural products. For example, a new plan for the development of the coffee was approved in August 2012 by the Ministry of Agriculture and Rural Development. Like the Master Plan for agriculture, the coffee plan sets objectives for areas and yields. In addition to improving infrastructure, government policy is to improve productivity by replacing spent trees and expanding Arabica planting, as well as assisting farmers to obtain third-party certification for sustainable production.¹⁸ Similarly, the Cotton Development Master Plan for 2015-20 sets targets for areas (in this case, an increase in area planted) and states that assistance will be provided through low-interest loans and improved infrastructure.¹⁹

4.35. Interest rates on purchases of farming and aquaculture equipment, and investments in storage facilities and the manufacture of farming equipment are subsidized under Prime Minister's Decisions No. 63/2010/QĐ-TTg and No. 65/2011/QĐ-TTg. Under the State Bank's circular No. 22/2012/TT-NHNN guiding the implementation of these decisions, qualifying loans from the participating banks have an interest rate subsidy of 100% for the first two years and 50% thereafter. The participating banks are all state-owned and include the Vietnam Bank for Agriculture and Rural Development (VBARD), the Mekong Housing Bank (MHB), the Bank for Investment and Development of Viet Nam (BIDV), the Vietnam Bank for Industry and Trade (Vietinbank), and the Joint-Stock Commercial Bank for Foreign Trade of Vietnam (Vietcombank). The scheme has been operational since August 2012. By 31 March 2013, total loans from the participating banks under the scheme were ₫687.21 billion to 16 enterprises, 3 cooperatives, and 7,300 household/individuals.

4.36. In Circular 14/2012/TT-NHNN of May 2012, the State Bank imposed an interest rate cap on short-term loans for investments in agriculture, rural development, production, exports, SMEs and supporting industries. The maximum interest rate was set as the State Bank one-month rate plus 3% and, as of May 2013, was equal to 11%. According to the authorities, this is a temporary measures intended to address the global financial crises.

4.37. Charges for different types of irrigation for different agricultural uses are set out in Government Decree No. 142/2003/ND-CP as amended by Decree No.115/2008/ND-CP and Decree No. 67/2012/ND-CP. Households and individuals using land for most agricultural purposes are partly or fully exempt from irrigation fees. The estimated cost for the reductions in irrigation fees under Decree No. 115/2008/ND-CP was approximately ₫4,000 billion.

4.38. Fertilizer importers have access to subsidized credits while producers may obtain loans at preferential rates. The state-owned Vietnam National Chemical Group (Vinachem) and Petrovietnam Fertilizer and Chemicals Corporation are the biggest fertilizer producers in the country. In addition, inputs (natural gas) to the Phu My Fertilizer Plant, owned by Petrovietnam, are subsidized, although other fertilizer plants using coal as a raw material do not receive input subsidies.

4.39. Government support is provided to enterprises to buy rice for reserves. In 2008 and 2009, it covered the loan interest charges of the (state-owned) Vinafood2 for buying 500,000 tonnes of

¹⁶ IMF (2012).

¹⁷ Ministry of Agriculture and Rural Development (2012), p. 62 (Vietnamese).

¹⁸ USDA Foreign Agricultural Service (2012a).

¹⁹ USDA Foreign Agricultural Service (2012b).

rice to increase domestic reserves, at a cost of about \$35 billion in 2008.²⁰ In addition, the Government uses national stocks to stabilize prices. Although they may establish maximum and/or minimum prices, the authorities generally use prices subsidies.

4.40. In addition to their small size, most farms also tend to be made up of several holdings, which exacerbates problems of economies of scale. In response, the Government launched a Large Scale Farm model for rice for the 2010-11 winter-spring rice crop in the Mekong River Delta region, which covered about 100,000 ha in early 2013.²¹

4.3 Fisheries

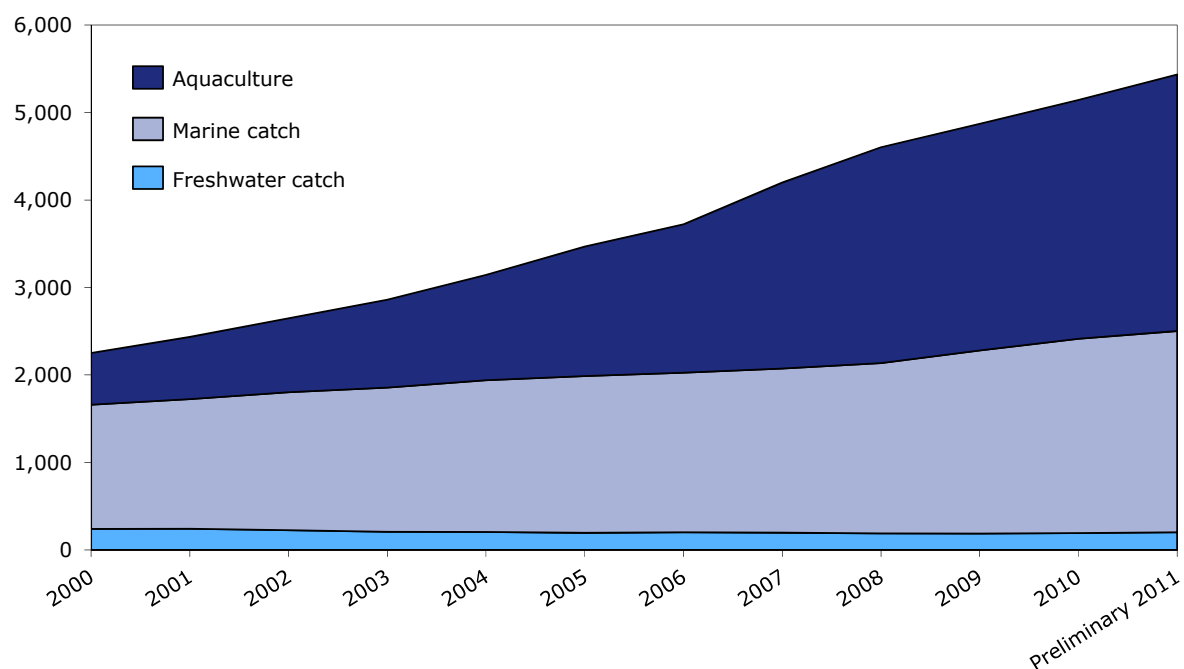
4.3.1 Features

4.41. Fisheries remains an important part of the economy in Viet Nam: it represented 6.3% of merchandise exports in 2011 (down from 7.5% in the 1990s). In 2012, fisheries contributed about 4.2% to GDP (down from 10-11% in 1990s but up from 3.7% in 2009); and in 2011, it accounted for 3.2% of total employment. Viet Nam has a surplus in fisheries trade, with exports worth more than US\$6,255 billion, nearly eleven times greater than imports (Table 4.7).

4.42. Both the aquaculture and marine catches have increased steadily for the past few years although the rapid increase in the value of the fisheries sector is due to higher prices as well as greater volumes (Charts 4.2 and 4.3). However, inland catch declined from a peak of 244,000 tonnes in 2001 to 203,000 tonnes in 2011 due, to some extent, to pollution as well as to excessive exploitation, including inappropriate fishing methods such as electrocution and chemicals.

Chart 4.2 Total fisheries catch in Viet Nam

'000 tonnes



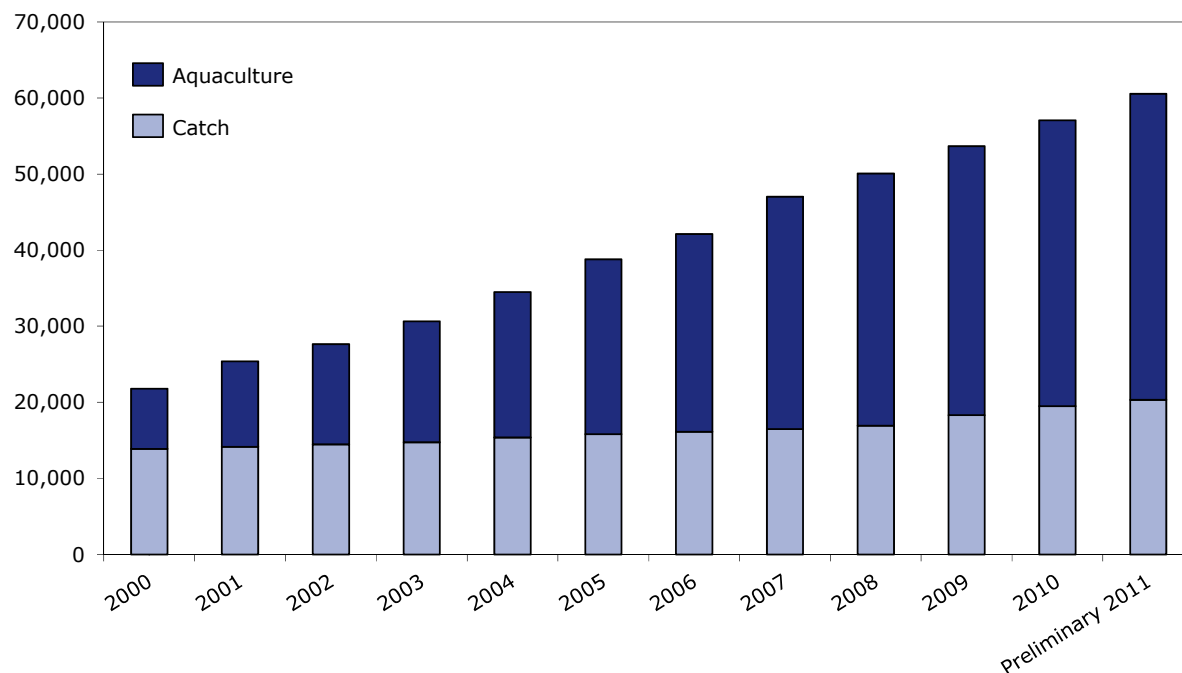
Source: GSO online information. Viewed at: <http://www.gso.gov.vn> [March 2013].

²⁰ Le Trong Hai (2012), p. 10.

²¹ USDA Foreign Agricultural Service (2013).

Chart 4.3 Total fisheries production in Viet Nam

Constant 1994 dong billion

Source: GSO online information. Viewed at: <http://www.gso.gov.vn> [March 2013].

4.43. The area devoted to aquaculture has increased considerably (although slower than production, as productivity has also increased): the 641,900 ha in aquaculture in 2000 had increased to 1,054,700 ha by 2011, while production increased from 590,000 tonnes to 2,930,000 tonnes. Several factors are driving the rapid increase in aquaculture, but higher incomes are probably the principle driving force, as aquaculture offers higher income per hectare than traditional farming (Table 4.4).

Table 4.4 Gross output per hectare, 2005-11

(đ million)

	2005	2006	2007	2008	2009	2010	2011
Cultivated land	23.6	26.4	31.6	43.9	45.5	54.6	72.2
Aquaculture	47.4	55.4	67.4	77.4	87.1	103.8	135.2

Source: GSO online information. Viewed at: <http://www.gso.gov.vn> [March 2013].

4.44. According to the FAO Global Aquaculture Production database, aquaculture production in Viet Nam was valued at US\$5.7 million in 2011. Most production is of catfish and shrimps/prawns (Table 4.5).

Table 4.5 Aquaculture production, 2005-11

		2005	2006	2007	2008	2009	2010	2011
Aquaculture	US\$ million	2,946	3,334	4,047	4,624	4,820	5,168	5,699
	'000 tonnes	1,467	1,694	2,123	2,498	2,590	2,707	3,053
of which								
Pangas catfish nei	US\$ million	564	780	1,275	1,875	1,575	1,710	1,727
	'000 tonnes	376	520	850	1,250	1,050	1,140	1,151
Giant tiger prawn	US\$ million	709	600	680	1298	1264	1332	1,200
	'000 tonnes	177	150	170	325	306	333	300
Whiteleg shrimp	US\$ million	400	600	612	154	144	547	748
	'000 tonnes	100	150	153	39	36	137	187

Source: FAO Global Aquaculture Production online query. Viewed at: <http://www.fao.org/fishery/statistics/global-aquaculture-production/en> [March 2013].

4.45. According to the FAO Global Capture Production database, the capture subsector has increased steadily over the past few years, from nearly 2 million tonnes in 2005 to 2.5 million in 2011. The database also reflects national statistics, showing that inland capture declined from a peak of 244,000 tonnes in 2001 to 203,000 in 2011. Most of the catch is unidentified fish (Table 4.6).

Table 4.6 Capture fishing production 2005-11

('000 tonnes)

	2005	2006	2007	2008	2009	2010	2011
Total capture	1,988	2,027	2,075	2,136	2,281	2,414	2,503
of which							
Inland waters	197	203	198	190	189	194	203
of which							
Freshwater fish not identified	188	193	187	179	177	183	190
Marine areas	1,791	1,824	1,876	1,947	2,092	2,220	2,300
of which							
Marine fish not identified	1,314	1,343	1,378	1,425	1,529	1,620	1,663
Squids, cuttlefish, octopuses	197	200	212	228	243	260	272
Molluscs	261	264	277	299	216	340	356

Source: FAO Global Capture Production online query. Viewed at: <http://www.fao.org/fishery/statistics/global-capture-production/en> [March 2013].

4.46. The fisheries sector in Viet Nam is based on small-scale producers, with few large vessels. According to the Directorate of Fisheries, there are about 130,000 fishing boats (with and without engines); about 28,424 are offshore vessels, an increase of about 38% since 2005.²²

4.47. Under Decree No 33/2010/ND-CP, the sea areas of Viet Nam are divided into coastal, inshore, and offshore areas. Motor vessels with main engine capacity of 90 hp or more may operate in the offshore area only; vessels with main engine capacity of between 20 and 90 hp may operate in the offshore and inshore areas only; and vessels with main engine capacity of less than 20 hp and unmotorized vessels may operate in the coastal area of the provinces where they are registered. In practice, most fishing boats are less than 45 hp, but the number of larger vessels has been increasing: in 2007, 15.8% of vessels had an engine capacity of more than 90 hp, up from only 1.4% in 1997.

4.48. Although the fish capture subsector is based on small-scale fishing vessels operating in shallow waters, it has been reported that, since 1986, catch has exceeded the maximum sustainable yield.²³

4.49. In 2009, a number of problems were identified that affected the sustainability of fishing in Viet Nam:

- a lot of fishing gear did not comply with regulations, such as mesh size, leading to high discards and depletion of juveniles;
- inappropriate fishing techniques, such as explosives and chemicals were being used;
- overcapacity in inshore waters; and
- pollution by fishing boats and waste management in fishing villages.²⁴

4.3.2 Trade

4.50. Viet Nam has a trade surplus in fisheries products with exports of US\$6,255 million and imports of US\$577 million in 2011.²⁵ Both exports and imports have increased considerably in recent years, rising annually by 12% and 19%, respectively, from 2004 to 2011. Until 2011, the main exports were frozen shrimps and prawns (HS 030613); although, together with prepared

²² General Statistics Office (2011), p. 403, Table 182.

²³ Pomeroy (2009).

²⁴ Pomeroy, Nguyen, and Thong (2009), p. 424.

²⁵ For the purposes of this Review, fish products are defined as HS2002 Headings 0208.40, 03, 0511.91, 1504, 1603, 1604, 1605, and 2301.20.

preserved shrimps and prawns (HS 030613 plus HS 160520), they were still the biggest export in 2011, exports of frozen fish fillets (HS 030420) had increased faster and were the single biggest export at the HS six-digit level (Table 4.7). The Harmonized Commodity Description and Coding System of tariff nomenclature does not identify what species of fish are used for fish fillets but data from the Vietnam Association of Seafood Exporters and Producers indicates that most fillets are from catfish.²⁶ The main market for exports is the United States, followed by Spain, Japan, Germany, and Mexico.

4.51. Although the value of fish imports has been increasing, reaching US\$577 million in 2010, it is small compared with exports, and most imports are for transformation and re-export.

Table 4.7 Exports and imports of fisheries products, 2004-11

HS 2002			2004	2005	2006	2007	2008	2009	2010	2011
Exports										
	Total	US\$ million	2,749	2,754	3,374	3,786	4,555	4,305	5,118	6,255
030420	Fish fillets, frozen	'000 tonnes	72	121	251	258	399	262	380	432
		US\$ million	385	385	800	1,076	1,586	1,403	1,535	1,992
030613	Shrimps & prawns, frozen	'000 tonnes	168	184	200	214	197	192	252	272
		US\$ million	1,129	1,129	1,226	1,372	1,301	1,278	1,546	1,689
160520	Shrimps & prawns, prepd./presvd.	'000 tonnes	5	12	20	23	37	43	67	88
		US\$ million	78	78	135	163	268	330	523	707
030490	Fish meat other than fillets, frozen	'000 tonnes	34	65	79	63	96	57	91	97
		US\$ million	124	124	150	168	268	190	279	347
030749	Cuttle fish & squid	'000 tonnes	44	76	86	98	91	54	94	109
		US\$ million	181	181	205	245	257	199	261	319
030759	Octopus other than live/fresh/chilled	'000 tonnes	8	2	23	24	24	25	19	32
		US\$ million	6	6	94	91	112	124	98	166
Imports										
	Total	US\$ million	172	203	214	260	323	302	369	577
30613	Shrimps & prawns, frozen	'000 tonnes	11	7	6	6	9	6	7	21
		US\$ million	73	46	40	41	57	41	45	137
30379	Fish, n.e.s., frozen (excl. fillets, etc)	'000 tonnes	13	14	10	16	27	24	30	44
		US\$ million	23	26	19	28	50	46	59	82
30349	Tunas, frozen (excl. fillets etc)	'000 tonnes	2	11	18	31	32	16	24	36
		US\$ million	3	15	25	43	52	32	48	53
30343	Skipjack/striped-bellied bonito, frozen	'000 tonnes	2	4	9	11	12	14	28	37
		US\$ million	2	4	8	11	15	23	34	44
30749	Cuttle fish & squid	'000 tonnes	1	3	4	5	4	3	5	8
		US\$ million	4	7	11	15	11	11	14	26

Source: UNSD Comtrade. Viewed at: <http://comtrade.un.org/> [May 2013].

4.52. Viet Nam has about 567 fish processing plants with total processing capacity of about 2.5 million tonnes per year. However, production is below total capacity levels even though most imports are for processing and re-export.²⁷

4.3.3 Policies

4.53. The Ministry of Agriculture and Rural Development is responsible for fisheries policies, the development of draft legislation, and implementing of existing legislation. Within the Ministry, the Directorate of Fisheries is responsible for advising the Minister on policy development as well as implementation of established policy and laws. The Directorate is divided into various departments including: aquaculture; capture and resource protection; fisheries resources surveillance; planning and finance, science, technology and international cooperation; and legal and inspection. Also under the Directorate are the Viet Nam Institute of Fisheries Economics and Planning (VIFEP), the Fisheries Information Centre (FICen), and the Testing and Verification Center (TVC).

4.54. The Vietnam Association of Seafood Exporters and Producers (VASEP, established in 1998), the Vietnam Fishery Society (VINAFIS, 2000), and the Vietnam Pangasius Association (VN Pangasius, 2013) were established to support the fisheries sector.

²⁶ Vietnam Association of Seafood Exporters and Producers online information. Viewed at: http://www.vasep.com.vn/Thong-ke-thuy-san/123_23971/Xuat-khau-thuy-san-Viet-Nam-nam-2012.htm [March 2013].

²⁷ Tuong et al. (2009).

4.55. Viet Nam is a member of several international and regional intergovernmental organizations involved in fisheries and aquaculture, including the FAO and the Asia-Pacific Fishery Commission (APFIC), which is an FAO Article XIV Regional Fisheries Body. Viet Nam is also a member of the Southeast Asian Fisheries Development Center (SEAFDEC), the Network of Aquaculture Centres in Asia-Pacific (NACA), and the Mekong River Commission (MRC). It is also a cooperating non-member of the Western and Central Pacific Fisheries Commission (WCPFC).

4.56. Fisheries policy is included in the Master Plan for the Production Development of Agriculture to 2010 and a Vision Toward 2030 (Prime Minister's Decision 124/QĐ-TTg of 2 February 2012). The Plan sets objectives for improving quality and increasing aquaculture production, partly through combining it with rice production in one-crop per season areas. For the capture subsector, the emphasis in the Plan is on resource management and improvement of infrastructure; similarly, for processing, the Plan focusses on updating and improving facilities and increasing value added. Increasing capacity is limited to catfish processing plants in one region (Cuu Long River Delta).

4.57. The principle legislation on fisheries is the Law of Fisheries (No. 17/2003/QH11) along with Decree No. 53/2012/NĐ-CP which amended a number of earlier decrees on fisheries, including Decree No. 59/2005/NĐ-CP on aquatic resources production, No. 33/2010/NĐ-CP on fishing activities in marine areas by Vietnamese entities, No. 32/2010/NĐ-CP on fishery activities by foreign ships, and Decree 52/2010/NĐ-CP on imports of fishing vessels. The Law of Fisheries covers a broad range of fishing-related issues including marine fishing, aquaculture, conservation, ports, markets, processing, domestic and international trade, quality, and international cooperation.

4.58. Under the Law, fisheries resources are owned by the people and managed by the State with exploitation rights set out in legislation. The Law emphasises the role of regional authorities in resource management and sustainable development of fisheries and aquaculture by providing, *inter alia*, for:

- effort and gear restrictions (including closed areas, seasonal closures, size limits, annual allowable catches, and prohibited species);
- assessments of fisheries resources;
- requirements that fishing vessels larger than 0.5 tonnes have licences indicating, *inter alia*, the type of gear, allowed fishing times, and allowed fishing grounds. It also provides for the conditions under which licences may be withdrawn; and
- requirements to keep fishing reports and logbooks.

4.59. The Law restricts aquaculture to land and marine areas allocated and leased for that purpose by the local authorities, although the lease of marine areas for aquaculture should be free of charge for local residents.

4.60. Prime Minister's Decision on the programme on protection and development of fisheries resources until 2020 (No. 188/QĐ-TTg of 13 February 2012) sets out several specific objectives related to resource protection, including (for completion by 2015):

- a database on aquatic resources, to make forecasting of resources, fishing grounds, and fishing seasons part of the fisheries management;
- 10 marine conservation zones and 19 inland water area conservation zones and, by 2020, to complete the designation of conservation zones and include them in the marine and inland water conservation master plan; and
- to have designated no-fish zones and zones subject to seasonal fishing restrictions.

4.61. The Decision also sets objectives to improve research into fisheries resources and to improve enforcement of laws as well as improving stocks and rehabilitating damaged areas. A committee was established for this programme under Decision No. 2322/QĐ-BNN-TCTS of 26 September 2012.

4.62. According to a 2009 report, the Government of Viet Nam had not implemented measures to cope with overfishing and destructive fishing in the country, and overfishing remained a serious problem particularly excessive catches of crustaceans, cutter-fish, and octopus.²⁸ However, the authorities pointed out that under Prime Minister's Directive No. 01/1998/CT-TTg the use of explosives, electrocution, and toxins to exploit aquatic resources was strictly banned and the Ministry of Fisheries (now the Ministry of Agriculture and Rural Development), in coordination with other ministries, established a Central Steering Committee to implement the ban. Since then the Committee has issued a number of documents on the implementation of Directive No. 01/1998/CT-TTg, including Document No. 481CV/BVNL of 18 February 1998, which requested the provincial and city peoples' committees to implement the Directive and establish local committees for this purpose. These committees include representatives of the fisheries sector, public security, military, culture, and information agencies. As of May 2013, 43 of the 63 provinces and cities with seas and rivers had established steering committees. The Department of Fisheries Resources Surveillance was established in January 2013 by Decree No. 102/2012/ND-CP under the Directorate of Fisheries.

4.63. Under the Law on Resources Tax No. 45/2009/QH12 of 25 November 2009, natural aquatic products are subject to royalties of 1% to 5% of the sale price, except for pearls, abalone, and sea cucumbers, for which the royalties rate is 6-10%. However, the same Law also exempts natural aquatic resources from royalties.

4.64. Several support programmes have been or are being implemented to support the fisheries sector including:

- in response to higher fuel prices, Government Decision No. 289/TQ-TTg of March 2008 provided temporary support to a number of sectors, including fuel subsidies for fishing vessels. Total spending on the programme was $\text{đ}1,600$ billion;
- Prime Minister's Decision No. 137/2007/QĐ-TTg of August 2007 on organizing information for preventing natural disasters at sea included a project to build an information system on the management of marine fisheries. The first phase of this project started in 2009 to provide fishers and management agencies with weather and oceanographic information. The second phase, due to start in 2010, was to introduce a GPS-based vessel position monitoring system and a ship-to-shore communication system. The total amount required for the first phase was $\text{đ}92.42$ billion, of which $\text{đ}34.8$ billion was from the state budget; and
- for the 2006-2010 phase of the programme for fisheries ports, landing sites, and fish markets, the Ministry of Fisheries (now the Ministry of Agriculture and Rural Development) allocated $\text{đ}1,498$ billion.

4.4 Mining and Energy

4.4.1 Mining

4.65. Viet Nam is endowed with abundant, diverse, and unexploited mineral resources, sufficient for the establishment and development of large-scale, sustainable, and high-tech mining industries. In 2010, it produced about 2%, 1.5%, and 1.1% of the world's tin, cement, and barite, respectively. As well as offshore oil and gas (section 4.4.2.2), it holds some of the world's largest reserves of bauxite (7% of world reserves) and tungsten (7% of world production in 2013) and significant deposits of rare earths (see below), titanium, and iron ore.²⁹ In 2012, mining and quarrying (including mineral fuels) accounted for 12.6% of GDP and 0.6% of total employment (Table 1.2), and in 2011, 0.4% (0.5% in 2007, excluding mineral fuels) of total merchandise exports (Table A1.1). It follows that labour productivity, which according to GSO data almost tripled in the period 2008-11, is roughly 20 times (or 7 times according to Table 1.2 data) the level in the rest of the economy, presumably due in large part to its high capital intensity.³⁰ All

²⁸ Tuong et al. (2009).

²⁹ Other mineral resources include copper, gold, nickel, zinc, tin, lead, chromite and manganese (U.S. Department of Interior/U.S. Geological Survey, 2012; and Masan Group online information. Viewed at: <http://www.masangroup.com/en/vietnam>).

³⁰ General Statistics Office of Vietnam (2011), Table 20.

mines belong to the State and its enterprises in natural resources exploitation. Foreign-invested enterprises still account for the largest part of total mining output, although their share dropped steadily from 64.7% to 60.2% in 2007-10; during the same period the share of state-owned enterprises fell to 23.6% (25.5% in 2007) while that of domestic private enterprises rose to 16.1% (9.7% in 2007). In 2010, there were 84 SOEs operating in the sector (80 in 2007); their activities provided 58% (3.3% in 2007) of total government revenue from royalties, export taxes, and fees for mines exploitation, which peaked at ₫98.7 trillion in 2008 before dropping to ₫35.7 trillion in 2010, below the 2007 level.

4.66. Mining constitutes a key activity for attaining sustainable development targets and objectives, due to its linkage to related industries, such as electricity, metallurgy, chemicals, fertilizers, and construction materials. In line with the 2010 Mineral Law (see below), in 2011 Viet Nam issued several key pieces of legislation in connection with the government's national mineral resources strategy to 2020 with a vision to 2030, and an action plan for the strategic orientation of mineral resources and their exploitation.³¹ Under Decision No. 2427 of 2011, the national strategy provides, *inter alia*, for: non-renewable mineral resources to be managed, protected, exploited and used rationally; survey and evaluation of mineral resources to be implemented in advance to permit efficient planning; exploration and mining to be associated with the potential for processing and use of each type of mineral, in light of the needs of all economic sectors; for large-scale deposits of minerals, only processed products with high economic value to be exported; and international cooperation to be utilized to access scientific knowledge and environmentally friendly technologies.³² The strategy focuses on: coal, uranium, metals, non-metals, construction materials, natural thermal water, mineral water, oil, and gas. It also provides guidelines in several specific areas of regulation, i.e. management and planning, science and technology, finance, and environmental protection. The strategy envisages adjusting the financial policies governing the export of minerals in line with its objectives.

4.67. To cope with shortcomings in technology, production scale, labour efficiency, research, and management and investment, the authorities have undertaken legal and administrative actions aimed at attracting more domestic and foreign investment, accelerating the change of state-owned enterprises to private status, and modernizing technology.³³ Furthermore, a 2011 action plan set out the tasks of diffusion of mining legislation and completion of the legal system on mining.³⁴ Reportedly, while the recent issue of new legal instruments (see below) demonstrates efforts to draft stricter provisions on exploiting and preserving mineral resources, they imply that investors in the mining sector could face greater regulatory obstacles.³⁵

4.68. In November 2010, a new Mineral Law replaced the 1996 law (as amended in 2005) and became fully effective on 1 July 2011.³⁶ The 2010 Mineral Law protects unexploited minerals, regulates geological surveys of mineral resources, regulates mineral exploration and mining, and regulates the management of minerals nationwide. It introduced changes for mineral exploration and exploitation by, *inter alia*, reforming the process for acquiring mining licences and requiring financial commitments on the part of the licence holder; previous prerequisites for the acquisition of mining licences were changed or eliminated (e.g. requirement for a prospecting licence). At present, the licence holder must have at least 50% equity in the total proposed capital investment for the implementation of an exploration project, and at least 30% of the total investment capital of the mining project. The Law introduced new provisions regarding the auctioning of mining rights, and the fees involved in the acquisition of mining rights. The State is in charge of collecting all fees related to the acquisition of mining licences, and rates are based on the quality and type of minerals to be mined, mining conditions, reserves, and value of the property. Under the 2010 Law, the eligible interested party is required to have written permission only from the provincial government in order to conduct field surveys and collect surface samples for exploration purposes at the proposed area.

³¹ Politburo Resolution No. 02-NQ/TW, 25 April 2011; Decision No. 2427/QĐ-TTg, 22 December 2011; Resolution No. 103/NQ-CP, 22 December 2011.

³² For more information about the strategy see Hawkins and Szotyory-Grove (2012).

³³ Vietrade factsheet, "Investment opportunities in Mineral exploitation", 30 October 2011. Viewed at: http://www.vietrade.gov.vn/en/index.php?option=com_content&view=article&id=974:investment-opportunities-in-mineral-exploitation&catid=272:investment-opportunities&Itemid=250 [31 August 2012].

³⁴ Resolution No. 103/NQ-CP, 22 December 2011.

³⁵ Hawkins and Szotyory-Grove (2012).

³⁶ U.S. Department of Interior/U.S. Geological Survey (2012).

4.69. A new Law on Royalties (2009) and its implementing texts were passed during 2009-10, and became effective on 1 July 2010, thus making substantial amendments to the relevant provisions.³⁷ This change was aimed at restraining rampant mineral exploitation activities, raising more local government revenue for environmental protection and infrastructure improvement, and encouraging more rational, efficient, and effective mineral exploitation. The 2009 Law allows for a much higher range (tax frame) of royalty rates to be used as a basis for fixing/choosing the royalties applied for certain period of time; this tax frame of rates is on average three times higher than the previous rates depending on the types of natural resources.³⁸ Consequently, the change has led to higher royalty rates; for example, the royalty rate for gold increased from 9% to 15%, and for iron and manganese from the 7% to 11%, whereas exploitation of more than 150,000 barrels of oil per day is charged a royalty of either 23% (for "encouraged" investment projects as defined in the Petroleum Law) or 29% instead of the previous 22% (for "encouraged" investment projects) or 27% (section 3.4.1, Table 3.8). Furthermore, in 2010 Decree 50 introduced a new method for calculating the taxable price, i.e. the taxable price is the selling price of the natural resource by the entity exploiting it, excluding VAT. The taxable price for exported natural resources is now the f.o.b. export price, while in the past the valuation basis was the price paid at the place of exploitation; the current method raised the royalty amount because all costs, including for transport, concentrating, refining, and insurance are subject to the tax. The authorities indicated that royalties are levied at the same effective rates on exported minerals and those used domestically. Royalties revenue rose from $\text{đ}26.3$ billion (including $\text{đ}22.1$ billion from crude oil) in 2010 to $\text{đ}38.4$ billion ($\text{đ}31.5$ billion from crude oil) in 2011 and $\text{đ}32$ billion ($\text{đ}24.3$ billion from crude oil) in 2012.

4.70. Certain production and export restrictions (see below) have been implemented under the 2012 Directive 02 on strengthening State management of exploration, exploitation, processing, usage and export of minerals.³⁹ No further licences are to be granted for the exploration or exploitation of bauxite and production of alumina until the Tan Rai and Nhan Co mines for production of alumina become operational and achieve high socio-economic value. No new exploration licences are to be issued in the Northern provinces. The exploration and exploitation of gold must use in-depth processing and modern techniques that cause no harm to the environment. New licences for exploitation of placer gold are prohibited. According to the authorities, to overcome the drawbacks of gold processing and trading, and to prevent the impact of gold price volatility on the exchange and inflation rates, as well as on monetary and macroeconomic policies, in April 2012 the State Bank of Viet Nam (SBV) took measures to organize and restructure the gold market.⁴⁰ Those measures included the introduction of the Government's exclusive right to produce bullion gold as well as to import and export material gold; private enterprises were expected to cease their production and only process bullion gold for SBV. Exploitation of coal and minerals used to manufacture cement is allowed, subject to approved master plans⁴¹; no further information on these plans was available from the authorities.

4.71. Action is being taken to exploit Viet Nam's large reserves of rare earth as the shortage of these metals becomes more apparent worldwide.⁴² In October 2011, Viet Nam and Japan signed the Cooperation Arrangement on Rare Earth, whereby businesses from both parties would jointly explore, exploit, and process rare earth at Dong Pao, Lai Chau province. A memorandum of

³⁷ Law on Royalties, 25 November 2009 (in force on 1 July 2010); National Assembly Resolution 928/2010/UBTVQH12, 19 April 2010 (in force on 1 July 2010); Decree 50/2010/ND-CP, 14 May 2010 (in force on 1 July 2010); and European Commission (2011).

³⁸ For example, the range of royalty rates increased for: gold, from 2-6% to 9-25%; iron & manganese, from 1-5% to 7-20%; crude oil, from 6-25% to 6-40%; and natural mineral water, from 0-5% to 8-10% (European Commission, 2011).

³⁹ Directive 02/CT-TTg, 9 January 2012.

⁴⁰ At present eight enterprises ensure the production of bullion gold. Prior to the 2012 changes there were no provisions on the regulation and control over bullion gold operations (Decrees No. 174/1999/ND-CP, 9 December 1999, and No. 24/2012/ND-CP, 3 April 2012).

⁴¹ According to the private sector it seems that master plans set for sectors provide guidelines and often set quantitative targets that are rarely met, often due to, *inter alia*, the lack of specific domestic support measures for attaining them.

⁴² Viet Nam is among the few countries in the world holding rare earth reserves. Rare earths include 17 minerals used for many modern technologies like hybrid cars, weapons, flat-screen TVs, mobile phones, and mercury-vapour lights (*Viet Nam News*, "VN inks rare earth agreement with Japan", 18 May 2012. Viewed at: <http://vietnamnews.vnagency.com.vn/Economy/224887/vn-inks-rare-earth-agreement-with-japan.html> [30 August 2012]; and *RT News*, "Rare earth: Japan and Vietnam challenge China's monopoly", 20 June 2012. Viewed at: <http://rt.com/business/news/china-rare-metals-rivals-269/>).

understanding on mining and processing rare earth was signed with Japan in May 2012; it involves research and setting up a mine with a capacity of 10,000 tonnes a year, and the establishment of a joint venture. Prior to this development there was a project on "Basic geological investigation on rare-earth elements associating with gold-copper-iron oxide mineralization in Lao Cai, Yen Bai and Lai Chau Provinces, Vietnam" under the Department Of Geology and Minerals of Viet Nam (DGMV) in cooperation with the Japanese Oil, Gas and Metals National Corporation (JOGMEC).⁴³

4.72. Between 2007 and 2012, average applied MFN tariff protection for ores, slag, and ash (HS26) increased slightly, from 3.5% to 3.6%, while rates for mineral fuels and oils bituminous substance, and mineral waxes (HS27) dropped considerably (Table A3.1). Under Decision No. 29/2008/QĐ-BTC (19 May 2008), import duty on gold materials (HS 7108) increased from 0.5% to 1%. The Government encourages minerals exports as long as quality, tracing, and domestic needs requirements are met.⁴⁴ Since January 2012, exports of raw, unprocessed minerals have been suspended under Directive 02/CT-TTg⁴⁵; and as from 1 July 2012, the export of unprocessed titanium ore must be approved by the Prime Minister. To prevent future shortage, exports of eight types of minerals were prohibited as of 6 November 2012; at the same time, criteria and conditions were set for exports of building materials such as sand, crushed sand, limestone as raw materials for the production of building glass, stone tiles, stone beads, quartzite, and pyrophyllite.⁴⁶ Export taxes on certain mineral products were lowered as of 20 May 2010 (section 3.3.2, Table A3.5).⁴⁷ However, Viet Nam increased export taxes on iron ore and concentrates (including roasted iron pyrites), from 20% to 30% (24 September 2010); on apatite, from 7% to 10% (fine-grained ores) and 15% (other) (11 October 2010); and certain ilmonite ore and concentrates, from 20% to 30% (27 October 2010). Circular 157/2011/TT-BTC enacted a list of 87 mineral products such as iron ores, metal scraps, and various kinds of monumental or building stones, subject to export taxes effective from 1 January 2012⁴⁸; 16 new products have been added to the list of products subject to export tax. The authorities indicated that, in line with WTO accession commitments, the export taxes on eight categories of ferrous and non-ferrous scrap metals were lowered from 34%–45% to 17%–22% as of 1 January 2012 (section 3.3.2, Table A3.5).⁴⁹ Export bans and export taxes constitute assistance to domestic down-stream processing activities.

4.73. The Ministry of Natural Resources and Environment oversees and coordinates (with other ministries) the preparation of the mineral strategy, subject to the Prime Minister's approval. All mining projects must be submitted to the Appraisal Council consisting of the Ministry of Industry and Trade (MOIT), the Ministry of Construction, and the relevant provincial or municipal People's Committee.⁵⁰ Only projects involving advanced and environmentally friendly techniques are approved. All mining, oil, and gas projects require the Prime Minister's approval, regardless of

⁴³ Coordinating Committee for Geoscience Programmes in East and Southeast Asia (CCOP) document CCOP-48AS/3-xx, "Member Country Report of Vietnam", 48th CCOP Annual Session 13-17 November 2011, Bangkok, Thailand. Viewed at: http://www.dgm.gov.vn/default_en.aspx?tabid=165&ItemID=3188.

⁴⁴ The authorities indicated that under Decree No.12 of 2006 mining is a "conditional" business with source and quality standards allowing illegally exploited minerals to be traced and restricted (MOIT Circular No. 41/2012/TT-BCT, 24 December 2012. Viewed at: <http://luatkhaiphong.com/Van-ban-Tieng-Anh/Circular-No.-41/2012/TT-BCT-dated-December-24-2012-7389.html>).

⁴⁵ During its WTO accession procedure, Viet Nam indicated that although the State could limit the exportation of raw minerals and concentrates, minerals that met the quality requirements and conditions stipulated in the Ministry of Industry Circular No. 04 of 2 August 2005 in 2005-10 would be allowed for exportation; these conditions were aimed at preventing the illegal exploitation, and subsequent exportation, of minerals. WTO document WT/ACC/VNM/48, 27 October 2006.

⁴⁶ This export prohibition covers: limestone; additive minerals as raw materials for cement; building stones of mines in the provinces of South East and South West; cubes; sandy saline; construction sand (natural sand); cobbles and gravel; and feldspar (agar) and clay from hills (Ministry of Construction Circular 04/2012/TT – BXD of September 2012 cited in *Vietnam Economic Forum*, "Eight types of minerals forbidden of exporting", 27 September 2012. Viewed at: <http://vef.vn/2012-09-27-se-cam-xuat-khau-8-loai-khoang-san> [26 November 2012]).

⁴⁷ Global Trade Alert online information. Viewed at: http://www.globaltradealert.org/measure?tid=All&tid_1=500&tid_3=All.

⁴⁸ MOF Circular 157/2011/TT-BTC, 14 November 2011; and European Commission (2012).

⁴⁹ MOF Circular 157/2011/TT-BTC, 14 November 2011.

⁵⁰ Directive 02/CT-TTg, 9 January 2012.

capital source and size, as do projects with capital in excess of \$1.5 trillion (approximately US\$81 million) in mineral processing and metallurgy.⁵¹

4.4.2 Energy

4.74. Viet Nam's ability to continue expanding its economy and attain its poverty-reduction targets is directly linked to its ability to access energy and address power shortages.⁵² In 2010, 35% of Viet Nam's domestic energy production came from coal, with oil (23%), natural gas (12%), hydropower (9%), and non-commercial energy (21%) supplying the remainder; imported energy accounts for 19% of primary energy supply.⁵³ Final energy consumption in 2010 was: 35.6% petroleum products, 29.1% non-commercial energy, 19.6% coal, 14.8% electricity and 1% gas. Industry accounts for 39.9% of final energy consumption. The energy sector is still heavily regulated and dominated by state-owned monopolies (sections 4.4.2.1 and 4.4.2.2). Between October 1993 and December 2011, the energy sector was the second major beneficiary (after transport and ICT) of Asian Development Bank (ADB) concessional sovereign loans; it accounted for 10 projects (out of 114) and 22.7% of the financing made available by the ADB.⁵⁴

4.75. Despite Viet Nam's great potential, there has been no significant commercial production from renewable energy sources (i.e., geothermal, solar, wind, tidal, wood or waste) so far, as production costs are seemingly too high to be attractive for the state-owned single buyer, Electricity of Viet Nam Group (EVN, section 4.4.2.1).⁵⁵ In recent years, the authorities have become more aware and involved in renewable energy and energy efficiency development in order to contribute to national energy security and to cope with future electricity shortages while diminishing carbon fuel dependence. In 2007, Prime Minister's Decision No. 130 provided for tax breaks, land-leasing preference, and investment credits for a Clean Development Mechanism (CDM) also covering wind-power plants, as part of a global UN initiative; the Government indicated its intention to subsidize some CDM projects through the Vietnam Environmental Protection Fund.⁵⁶ A June 2010 Law on Energy Saving and Efficiency (which entered into force on 1 January 2011) provides for incentives for energy efficiency and conservation as well as cleaner production measures, and new environmental tax measures to promote energy efficiency and renewable energy indirectly by introducing taxes on oil, gas, and coal, and specific pollutants.⁵⁷ A Prime Minister Decision was passed in September 2011, promulgating the list of devices and equipment subject to energy labelling, the application of the minimum energy efficiency requirements, and the relevant implementation roadmap until 2014.⁵⁸ MOIT Circulars regulating the training and issuing of certificates for energy administration and energy auditing, energy labelling for means and equipment of energy utilization, the planning and report of the implementation schedule for energy saving and efficiency, and the implementation of energy auditing were issued in 2011 and 2012.⁵⁹ An October 2012 National Targeted Programme on Energy Saving and Efficiency, and phase 2012-2015, budgeted at \$930 billion, provides for wide-ranging action involving several other activities (e.g. steel, cement, textiles and apparel, construction, transportation) aimed at achieving savings of 5%-8% of the total energy

⁵¹ U.S. Commercial Service (2011).

⁵² Viet Nam's rapidly growing industry and services sector have helped drive spikes in energy demand in recent years, as have the country's emerging middle class population. Nevertheless, 80% of the rural population still relies on non-commercial biomass, such as wood and rice husks, as an important fuel source for cooking and other purposes (Asian Development Bank, 2011; and Working Group of Economic and Commercial Counsellors of the EU, 2011).

⁵³ Non-commercial (traditional) energy sources include fuels such as firewood, cattle dung, and agricultural wastes, which are traditionally gathered, and not bought; they are used especially in rural households (Institute of Energy, 2012).

⁵⁴ IMF (2012).

⁵⁵ Pricewaterhouse Coopers (2008); and Working Group of Economic and Commercial Counsellors of the EU (2011).

⁵⁶ EIU (2012d), *Energy - Vietnam*.

⁵⁷ Law on Energy Saving and Efficiency, 17 June 2010; and NL Agency online information, "Vietnam - Sustainable Energy sector: Energy Efficiency (EE) & Renewable Energy (RE)", (undated). Viewed at: www.cleantechholland.nl/dsresource?objectid=18857&type=org.

⁵⁸ The items subject to these requirements are household appliances, office and commercial equipment, industrial equipment, and means of transport, including passenger cars of seven seats or less (Prime Minister Decision No. 51/2011/QĐ-TTg of 12 September 2011).

⁵⁹ MOIT Circular No. 39/2011/TT-BCT, 28 October 2011; Circular No. 07/2012/TT-BCT, 4 April 2012; and Circular No. 09/2012/TT-BCT, 20 April 2012.

consumption of the country.⁶⁰ The MOIT has submitted to the Government projections to increase the share of non-hydro renewables (including wind power, geothermal power, solar power, and biofuels), in total primary commercial energy from around 2% to 3% in 2010, 5% in 2020, and 11% in 2050. In March 2011, MOIT was urged to complete policies to support wind projects and set up favourable conditions for investors. As a result, in 2012 regulations were issued on the mechanism for developing wind power, implementation of wind-power development projects, and samples of power sale-purchase contracts for wind-power projects.⁶¹ Under the solar-power cooperation programme between France and Viet Nam, a solar station was installed in Ho Chi Minh City to provide electricity for the Gia Lai, Quang Nam, and Binh Phuoc provinces.⁶² Following the passing of the Atomic Energy Law in June 2008, construction of two nuclear power plants was approved in 2009.⁶³ In 2010, the Russian Federation's Rosatom was awarded a contract to build Viet Nam's first nuclear power plant (Ninh Thuan 1) and put it into operation by 2020; and Japan was to build a second plant (Ninh Thuan 2) operational in 2021. Despite the Fukushima accident in Japan, the Government decided to continue with its nuclear power programme and put emphasis on serious safety considerations. The Viet Nam Atomic Energy Commission estimates that nuclear power could provide 15%-20% of the country's energy requirement by 2030.⁶⁴ No further relevant information on the progress of plans (e.g. stages, cost, and beneficiaries) was available from the authorities.

4.4.2.1 Electricity

4.76. Electricity is a restricted investment sector because of its significance to Viet Nam's socio-economic development; the Government has a very important role in operating the network.⁶⁵ Between 2007 and 2012 electricity consumption increased by about 75% to 120.2 billion kWh. In 2012, the majority of Viet Nam's electricity supply was delivered by hydro-power plants, which accounted for 43.9% of total electricity consumption, followed by gas (34.5%), coal (18.9%), and oil (0.5%); the remaining 2.2% consisted of electricity imports, a costly option, that were cut by about 52.3% compared to the 2010 peak year level.⁶⁶ In 2011, Viet Nam imported about 5 billion kWh from China, accounting for 4.6% of domestic power consumption; it plans to import more electricity through its investment in several hydro-power plants in Lao (PDR) and Cambodia.⁶⁷ Despite the rapid pace of growth in demand for power, with demand estimated to increase by an average of 12.3% a year in 2012-20, driven partly by rapid economic growth, mass migration to major cities, rising living standards and expansion of rural demand, the level of electricity consumption per head is expected to remain among the lowest in Asia.⁶⁸ Between January and November 2010, electricity demand for industry and construction rose by 18.7% on a year-on-year basis, while the state-owned company EVN (see below) was only able to increase its electricity production by 14.5% year-on-year.⁶⁹ Furthermore, transmission losses are high, and may range between 10% (as estimated by the EVN) and 20% (according to the World Bank) of total power output.⁷⁰ Reportedly, Viet Nam could face a serious power shortage if it fails to come up with increased power generation, since additions to the grid had reached only

⁶⁰ Prime Minister Decision 1427/QĐ-TTg, 2 October 2012. Viewed at: <http://tietkiemnangluong.com.vn/en/documents/detail.html?id=48> [24 October 2012].

⁶¹ Prime Minister Decision No. 37/2011/QĐ-TTg, 29 June 2012, and MOIT Circular No. 32/2012/TT-BCT, 12 November 2012.

⁶² Low temperatures beneath Viet Nam's soil mean geothermal energy may generate only 200-400 MW by 2020 (Pricewaterhouse Coopers, 2008; and Working Group of Economic and Commercial Counsellors of the EU, 2011).

⁶³ U.S. Commercial Service (2011).

⁶⁴ EIU (2012d), *Energy - Vietnam*.

⁶⁵ *VnEconomy* special report "Forever following", 24 August 2010. Viewed at: <http://news.vneconomy.vn/20100824114222331P0C6/forever-following.htm> [31 August 2012].

⁶⁶ Institute of Energy (2012).

⁶⁷ In October 2010, the state-owned Electricity of Viet Nam Group (EVN) signed purchase power agreements (PPAs) with two build-operate-transfer (BOT) hydropower plants in Lao PDR for importing electricity: the Xekaman 3 Hydropower plant (250 MW), and the Xekaman 1 (322 MW) (*Việt Nam News*, "VN faces serious power shortage", 21 August 2012. Viewed at: <http://vietnamnews.vnagency.com.vn/Economy/229006/vn-faces-serious-power-shortage.html> [30 August 2012]).

⁶⁸ EIU (2012d), *Energy - Vietnam*.

⁶⁹ Working Group of Economic and Commercial Counsellors of the EU (2011).

⁷⁰ EIU (2012d), *Energy - Vietnam*.

69% of the target in the four years to 2010, due to lack of funding⁷¹, low power purchase prices by EVN⁷², red tape, increasing cost of fuel and other inputs, heavy reliance on rainfall-dependent hydro-power, difficulties in land acquisition, and lack of investor capability.⁷³

4.77. Under the 2004 Law on Electricity (effective 1 July 2005) the State holds a monopoly in transmission/distribution and management of the national electricity system, and in the construction and operation of "large" electricity plants of socio-economic, defence or security significance.⁷⁴ The Law envisages a more competitive market for electricity provision and a road map for reform of the power sector. In 2006, Prime Minister Decision 26/2006/QĐ-TTg set out the plan for a competitive power market to be implemented under a three-phase plan with: the first phase (2005-14) focused on creating competition in power generation with a single buyer (EVN); the second phase (2015-22) introducing competition for bulk supply of electricity (wholesale), including supply directly to major industrial customers; and the final phase (after 2022) involving competition at the retail level, i.e. allowing consumers to choose their supplier.⁷⁵ Greater competition and private participation in energy distribution would eventually bring about an improvement in efficiency and a reduction in transmission losses. In the short to medium term, the Government is keen to maintain a degree of control over retail electricity prices.

4.78. Viet Nam's power-generation, transmission and distribution sector is controlled by the state-owned Electricity of Viet Nam Group (EVN)⁷⁶, which in 2010 and 2011 ran into losses of \$8.8 and \$2.6 trillion, respectively. In 2010, EVN's facilities accounted for approximately 70% of Viet Nam's electricity production while the remainder was under the control of some 27 local and foreign independent power producers (IPPs).⁷⁷ Private participation in the industry is limited to the wholesale supply of electricity to EVN by privately owned power plants operating as IPPs selected

⁷¹ In 2010, EVN announced that it was, once more, unable to implement necessary power projects due to a shortage of capital. This shortfall was estimated at US\$4-5 billion for the state-owned EVN, and US\$10 billion for the whole electricity sector each year (Working Group of Economic and Commercial Counsellors of the EU, 2011; and *VnEconomy* special report, "Forever following", 24 August 2010. Viewed at: <http://news.vneconomy.vn/20100824114222331POC6/forever-following.htm> [31 August 2012]).

⁷² It appears that these purchase prices lead to low profit ratios and make it difficult for those who invest and operate in the sector to borrow from domestic and foreign banks.

⁷³ *Việt Nam News*, "VN faces serious power shortage", 21 August 2012. Viewed at: <http://vietnamnews.vnagency.com.vn/Economy/229006/vn-faces-serious-power-shortage.html> [30 August 2012].

⁷⁴ In principle, power generators may be public or private; they are free to sell their output to all electricity purchasers on the wholesale market, under long-term purchase agreements or through spot dealings. The transmission company may charge a transmission fee to be approved by the regulatory authorities. Similarly, distribution companies operate as regulated monopolies charging a distribution fee to be approved by the regulatory authorities; they are obliged to allow licensed retailers access to their network. Wholesalers and retailers may be public or private and have the right to use the transmission and distribution networks. Large electricity users are explicitly given the right to purchase electricity directly from generators and to connect to the transmission grid. However, the authorities indicated that, in practice, there are no private wholesalers or retailers, and the transmission fee has never been set. Currently, EVN takes the role of single wholesaler. Power companies in the form of independent accounting units under EVN manage the distribution network and electricity retail (Law on Electricity, 3 December 2004; World Bank Investing Across Borders online database. Viewed at: <http://iab.worldbank.org/Data/Explore%20Economies/Vietnam#/Investing-across-sectors>; EIU, 2012d, *Energy - Vietnam*; and Asian Development Bank, 2011).

⁷⁵ The Viet Nam Competitive Generation Market (VCGM), was introduced on 1 July 2011 as a Mandatory Cost-Based Pool. After one-year trial operation, the VCGM was officially launched on 1 July 2012. While preparing for the next phase of the plan, the MOIT is conducting a project for developing conceptual design for the electricity wholesales competitive market (WCM), which is to be introduced in 2014 (U.S. Commercial Service, 2011).

⁷⁶ The Viet Nam Electricity Group (EVN), which employs around 80,000 persons, was established in 2006 in the reorganization of the Electricity of Viet Nam Corporation. EVN operates as a corporate group as defined in the 2005 Law on Enterprises; it holds at least 50% of equity in its subsidiaries. It also controls a number of professional units, including education institutions. EVN owns EVN Telecom, which holds a full telecommunication services licence, and An Binh Bank. EVN could become even more diversified as the Prime Minister's decision that established the group provides an impressive list of EVN's lines of business including all possible functions in the electricity industry, in addition to hotels and tourism, production of consumer goods, telecommunications, finance and banking, road and water transportation or exploitation of non-ore raw materials. No information on progress in implementing EVN's diversification plans was available from the authorities (UNCTAD, 2008).

⁷⁷ As EVN's self-financing and other sources of debt financing can meet only about 66% of the total investment requirement, IPPs are expected to carry a large portion of the investment in the power generation sector, including those to be developed by foreign investors (U.S. Commercial Service, 2011).

through domestic or international tender, and the in form of build-transfer (BT) or build-operate-transfer (BOT) schemes; joint venture and shareholding companies may also operate them.⁷⁸ Foreign companies have entered the market in BOT projects; in 2012 there were 8 foreign IPPs producing 2,316 MW (9% of total installed capacity) in Viet Nam⁷⁹ In 2012, 24 local IPPs hydro-power plants accounted for 1,924 MW or 7.5% of total installed capacity. Other players, such as the state-owned firms Vietnam National Coal-Mineral Industries Group (Vinacomin), and PetroVietnam (section 4.4.2.2), have installed capacity of 1,325 MW (5.2% of total installed capacity) and 2,715 MW (10.6%), respectively. Few IPP projects have been realized, seemingly due to obstacles, including EVN's low electricity purchase prices); legal and regulatory issues; the slow introduction of a transparent and competitive electricity market (see below); and poor coordination among government agencies.⁸⁰ In response, the MOIT has taken radical measures in an effort to facilitate IPP development, including signing a financial advisory agreement in 2006 with the World Bank's International Finance Corporation (IFC) aimed at increasing private participation in the power sector through open competitive bidding.

4.79. In line with the 2007 Power Development Plan VI (covering 2006-15 with an overview extending to 2025), Viet Nam is constructing a series of new power plants to boost its capacity; it aims to develop about 135 power plants by 2015.⁸¹ From November 2008, foreign partners have been allowed to work with local companies on 13 power projects that had been given back by EVN and were to be submitted to the Government for consideration in 2011. Currently 29 power plants are under construction, with total capacity of 13,766 MW (20 hydro-power plants and 9 thermal power plants).⁸²

4.80. The July 2011 National Power Development Plan for Period 2011-2020 with Perspective to 2030 (Power Development Plan VII (PDPVII)) provides, *inter alia*, for: development of a competitive electricity market with diversified forms of investment and electricity sale; continuation of the state monopoly in the power transmission network in order to ensure security of the national energy system; the electrification programme in rural, mountainous, and island areas⁸³; priority to the development of hydro-power plants, especially those having multi-purposes such as flood control, water supply, electricity generation; and increasing renewable energy resources from 3.5% of total electricity production in 2010 to 4.5% in 2020 and 6.0% in 2030.⁸⁴ By 2020, total power plant capacity is planned to be about 75,000 MW: coal-fired power 48%; hydro-power 23.1%; gas-fired 16.5%; renewable energy 5.6%; nuclear 1.3%; and imported power 3.1%. The shares of coal-fired, renewable energy, nuclear, and imported power are to increase. It is questionable how environmentally friendly and CDM-consistent is the rise in the share of coal-fired plants. According to PDPVII the total capital investment required for the power sector is about ₫929.7 trillion for 2011-20 (about US\$4.88 billion/year on average), of which two thirds for power-generation development and the rest for power-network development.⁸⁵ The MOIT is set to remove subsidies and end EVN's monopoly as part of its long-term strategy for 2020-50.⁸⁶

4.81. Electricity pricing remains a significant issue. Despite the stated objective of creating a competitive market, the 2004 Law on Electricity does not give market operators full freedom to determine prices.⁸⁷ The Government strictly regulates electricity retail and wholesale prices, with

⁷⁸ UNCTAD (2008).

⁷⁹ Pricewaterhouse Coopers (2008).

⁸⁰ U.S. Commercial Service (2011).

⁸¹ Working Group of Economic and Commercial Counsellors of the EU (2011).

⁸² U.S. Commercial Service (2011).

⁸³ The rural electrification rate was 95% in 2010 and is expected to reach nearly 100% by 2020.

⁸⁴ Prime Minister Decision No. 1208/QĐ-TTg, 21 July 2011. Viewed at: <http://www.ievn.com.vn/en/index.php/thong-tin-tu-lieu/bai-viet/77-approval-of-the-national-power-development-plan-for-period-2011-2020-with-perspective-to-2030> [24 October 2012].

⁸⁵ The primary sources of finance for investment in the power sector are from Official Development Assistance (ODA) grants and loans committed by such international donors as the World Bank, the Asian Development Bank, bilateral funds from various foreign governments, and funds from the Government. Other crucial sources of finance for the next decade include foreign suppliers' credits and EVN's retained earnings (Pricewaterhouse Coopers, 2008).

⁸⁶ EIU (2012d), *Energy - Vietnam*.

⁸⁷ The Government has been hesitant about allowing market forces to determine electricity prices, as this would lead to a significant increase in the cost for firms and households, as well as a knock-on effect on inflation, which has accelerated out of the authorities' control several times in the past few years (section 1.2) (EIU, 2012d - *Energy - Vietnam*).

adjustments oscillating within a given range from a pre-determined price list recommended by MOIT and approved by the Prime Minister.⁸⁸ The 2004 Law stipulates that a "reasonable price subsidy regime among various groups of customers" will remain in place in the future, though the nature of this regime is not defined.⁸⁹ Average urban and rural residential rates are cross-subsidized by higher rates for industry and commerce.⁹⁰ Peak and off-peak prices are differentiated only for industrial and commercial users. Power tariffs are now calculated and checked monthly against changes in foreign exchange, fuel prices, and electricity productivity.⁹¹ In an effort to build a strong power market, between March 2009 and December 2012 the average electricity price was raised six times, by 51.5% overall. Reportedly, the current pricing structure does not allow EVN to cover the full cost of producing and distributing electricity; as a result, the firm has posted large losses in recent years, and its management is now being examined.⁹² Between 2010 and 2011, the average loss from electricity sales dropped from ₫119/kWh to ₫56/kWh (losses of about ₫10.2 trillion and ₫5.3 trillion, respectively, for EVN). In December 2012, the average electricity price was set at ₫1,437/kWh (₫1,061/kWh in 2010, and ₫1,226/kWh in 2011), apparently the lowest in the region. Different voltage-based prices were applicable to consumers using electricity for production/manufacturing (e.g. ₫1,217/kWh), services provision (e.g. ₫2,004/kWh), irrigation (e.g. ₫1,142/kWh), public services (e.g. ₫1,315/kWh hospitals, schools), industrial parks, low-income households (₫993/kWh), and for other purposes in apartment buildings in cities and new urban areas (e.g. ₫1,350/kWh).⁹³

4.82. To attract more investment from the private sector in developing IPP projects, MOIT and EVN have been working on a roadmap for price increases and gradual elimination of government control. Since 2009, it has been possible to increase electricity prices once a year.⁹⁴ According to the authorities, from 2013 the electricity retail prices are to be gradually adjusted under a market-based mechanism so as to make the EVN operations profitable by 2015. Higher but realistic prices, adjusted to regional levels, would enable power businesses to generate operating surpluses to finance capital expenditure, and would allow them to operate on a commercially viable and sustainable level.⁹⁵

4.83. The separation between operational, regulatory, and ownership functions in the electricity sector remains loose.⁹⁶ The MOIT sets the general policy direction, exercises ownership over EVN, and issues Licences for Electricity Operations.⁹⁷ On 1 January 2010 the Institute of Energy, which had been a "self-control, self-responsibility" scientific research organization since 2007, and in charge of preparing national energy strategies, policies, and development plans, was moved under the direct management of MOIT.⁹⁸ The Electricity Regulatory Authority of Viet Nam (ERAV), a non-independent body, has limited regulatory powers, assisting the Minister of Industry in enforcing regulations. According to UNCTAD, the regulatory environment provides little comfort to private investors that conflicts of interests could be avoided.⁹⁹

4.4.2.2 Hydrocarbons

4.84. Viet Nam's oil and gas industry is a major foreign-currency earner. Viet Nam ranked eighth in the production of crude petroleum in the Asia-Pacific region in 2010. It has become a major exporter of crude oil among South-east Asian countries, but remains a net importer of refined oil

⁸⁸ U.S. Commercial Service (2011).

⁸⁹ UNCTAD (2008).

⁹⁰ U.S. Commercial Service (2011).

⁹¹ Prime Minister Decision 24, 15 April 2011 and Decision 854/QĐ-TTg, and an MOIT Circular cited in European Chamber of Commerce in Vietnam (2011).

⁹² EIU (2012d), *Energy - Vietnam*.

⁹³ MOIT Circular No. 38/2012/TT-BCT, 20 December 2012. Viewed at: <http://luatkhaiphong.com/Van-ban-Tieng-Anh/Circular-No.-38/2012/TT-BCT-dated-December-20-2012-7385.html>

⁹⁴ *VnEconomy*, "Counting the cost", 28 April 2010. Viewed at: <http://news.vneconomy.vn/20100504040756160P0C1/counting-the-cost.htm> [31 August 2012].

⁹⁵ European Chamber of Commerce in Vietnam (2011).

⁹⁶ UNCTAD (2008).

⁹⁷ World Bank Investing Across Borders online database. Viewed at: <http://iab.worldbank.org/Data/Explore%20Economies/Vietnam#/Investing-across-sectors>.

⁹⁸ MOIT Decision No. 5999/QĐ-BCT, 1 January 2010, and Governmental Decree No. 115/2005/ND-CP, 1 July 2007. Viewed at: <http://www.ievn.com.vn/en/index.php/qioi-thieu-chung/co-so-phap-ly/83-general-introduction>.

⁹⁹ UNCTAD (2008).

products as demand has nearly doubled in the past decade.¹⁰⁰ It is self-sufficient in natural gas, which is used for power generation (85%), fertilizers (10%), and in industrial and household operations (5%).¹⁰¹ Viet Nam ranks third in terms of proven oil reserves in the Asia-Pacific region; at the end of 2011 these reserves accounted for 0.3% of the global total.¹⁰² Oil production has been fairly volatile in the past few years, but output is set to rise in the medium term as new capacity comes on stream. As a result, and due to rising domestic demand and the start of domestic refining (2009), the share of crude oil in total exports dropped from 17.5% (2007) to 7.5% (2011).¹⁰³ Oil-related tax revenue was estimated at 4.4% of GDP for 2011 (6% in 2008).¹⁰⁴

4.4.2.2.1 Upstream

4.85. The upstream oil sector is operated by the state-owned Vietnam Oil & Gas Group (PetroVietnam), which also has some regulatory responsibilities in the industry.¹⁰⁵ PetroVietnam, the country's biggest company, is under the authority of the MOIT and contributes 25%-30% of the state budget in terms of earnings and tax payments.¹⁰⁶ According to the Oil and Gas Master Plan Toward 2015 and Vision to 2025, the industry will require investment of US\$203 billion to achieve the goals set by the Government for 2006-25, in which PetroVietnam's share will be US\$81.54 billion (40% of the total). The Government began to privatize PetroVietnam's non-oil-related business units in 2006 as part of its goal to raise capital for upstream and downstream projects and increase operational efficiency, although the state's participation in its hydrocarbon activities is retained. PetroVietnam has expanded its activities overseas and holds upstream equity stakes in 15 countries including Algeria, the Bolivarian Republic of Venezuela, the Russian Federation, and Peru. As of 2011, it planned to spend over US\$2.3 billion to develop 25 petroleum projects in former Soviet Union countries and Latin America.

4.86. Viet Nam has opened its oil and gas sector to foreign companies, which are expected to bring in capital, expertise, and technology to help achieve major industry goals. It has increased the frequency of formal international licensing rounds since 2004.¹⁰⁷ Several regulations introduced in 2009-10 clarified the process for investment and outlined bidding-round regulations. Legislation was passed providing greater contract flexibility, by allowing domestic and foreign firms to extend exploration contracts beyond the project deadlines. Recent reforms in the upstream sector were intended to pave the way for exploration of new offshore basins and more technically challenging fields by encouraging foreign investment. All oil production in the country is carried out by PetroVietnam's upstream subsidiary, PetroVietnam Exploration and Production (PVEP), or through joint-ventures or production-sharing contracts in which PVEP has at least a 20% equity interest.¹⁰⁸ Foreign companies must negotiate contracts with PetroVietnam; the contracts must receive approval from the Prime Minister and be effective as stipulated in the investment certificate granted by the MOIT. Russian Federation energy companies are expanding their presence as the two countries seek to form strategic partnerships and expand their overseas equity and production. The largest oil producing company is Vietsovpetro (VSP), a long-standing joint venture between the state-owned PetroVietnam and Zarubezhneft (Russian Federation), which continues to operate the Bach Ho, Rong, and other fields on the Southern continental

¹⁰⁰ Viet Nam needs to import about 70% of refined products and petrochemicals, since domestic output does not satisfy demand. The transport sector drives about 60% of petroleum product demand. FACTS Global Energy forecasts that domestic petroleum product demand will more than double by 2030, to nearly over 830,000 bbl/d from around 375,000 bbl/d in 2011 (U.S. Energy Information Administration, 2012; U.S. Department of Interior/U.S. Geological Survey, 2012; and Masan Group online information. Viewed at: <http://www.masangroup.com/en/vietnam>).

¹⁰¹ Although gas production is to continue to rise over the next decade, PetroVietnam stated that the country may need to start importing gas by 2015, owing to a strong rise in consumption (EIU, 2012d, *Energy - Vietnam*; and U.S. Commercial Service, 2011).

¹⁰² Ongoing exploration activities could increase this figure, as Viet Nam's waters remain relatively underexplored (U.S. Energy Information Administration, 2012; and EIU, 2012, *Energy - Vietnam*).

¹⁰³ UNSD Comtrade data.

¹⁰⁴ IMF (2012), Table 3.

¹⁰⁵ Law No. 10/2008/QH12 amending and supplementing a number of articles of the Petroleum Law; and U.S. Energy Information Administration (2012).

¹⁰⁶ U.S. Commercial Service (2011).

¹⁰⁷ For more information on these developments see U.S. Energy Information Administration (2012).

¹⁰⁸ Decree 115 of December 2009, supplementing the 2008 Petroleum Law and the 2001 Petroleum Bidding Regulation; and U.S. Commercial Service (2011).

shelf.¹⁰⁹ PetroVietnam maintains partnerships with several other international oil companies, national oil companies, and smaller independent energy companies.¹¹⁰

4.87. Similarly to other mining products (section 4.4.1, section 3.3.2, Table 3.8), royalty rates for crude oil are set from a basic "tax frame" (6% to 40%) in the Tariff Schedule for Royalties attached to Resolution No 928/2010/UBTVQH12. They currently range from 7% to 23% for projects eligible for investment promotion¹¹¹, and from 10% to 29% for other projects, depending on the daily output of the facility; their valuation basis is the selling price at the place of delivery or the export price.

4.4.2.2.2 Downstream

4.88. Action is being taken to address Viet Nam's lack of oil-refining capacity, which makes it heavily dependent on imported refined-petroleum products required to fuel its power stations and leaves it vulnerable to fluctuations in global oil prices.¹¹² Its first and only major oil refinery (Dung Quat), officially opened in early 2009, can satisfy around one third of current domestic demand when running at full capacity. A Japanese consultancy was expected to complete a study on the feasibility of expanding the existing plant's capacity by 50% by 2014. In the first half of 2012 PetroVietnam, the plant operator, planned to sell up to 49% of Dung Quat's equity to a foreign investor in order to finance the expansion, and reportedly, PetroVietnam signed agreements in 2012 with JX Nippon Oil (Japan) and PDVSA (Bolivarian Republic of Venezuela) to invest in the expansion. Furthermore, PetroVietnam, in joint ventures with other companies, plans to build two new refineries and increase its total refining capacity by 2015 and 2018. In addition, two joint ventures are under development by other companies involving its subsidiary, Petrolimex (see below). It appears that refinery projects have encountered several delays stemming from financial, contractual, and land clearing challenges.¹¹³

4.89. PetroVietnam is involved in other downstream operations through various subsidiaries, including PetroVietnam Oil Processing and Distribution Company (PV Oil). Petrolimex is the primary company for importing and distributing petroleum products, and accounts for about 60% of the total petroleum distribution market.¹¹⁴ Petrolimex also operates 300 miles of petroleum product pipelines, although much of the country's fuel supply is transported by road. There are plans to sell equity stakes in Petrolimex and provide greater competition for the domestic market. So far, only 3% of the company's shares have been sold off, in a partial privatization to Vietnamese buyers. There are two other state-owned fuel oil distributors, the PV Oil and Saigon Petro.

4.90. As from December 2009, the authorities have allowed different types of enterprises (in addition to state-owned firms) to export and import oil and petrol, provided they meet all regulatory requirements.¹¹⁵ To ensure sufficient supplies to the domestic market, annual minimum import volumes/quantities are set based on the petrol and oil import orientation for the following year, taking into account the economy's demand for foreign and domestically produced petrol and oil; the MOIT may adjust the minimum import volumes/quantities assigned to traders when required (section 3.2.1). No further information (e.g. quota levels and fill ratios) on the operation of this scheme was available from the authorities.

4.91. Viet Nam stabilizes retail petrol and oil (petrol, diesel oil, kerosene, and mazut oil) prices¹¹⁶ through adjustments under market-based mechanisms involving import tariffs changes (section 3.2.2); and since December 2009, under a Petrol and Oil Price Valorization Fund (known

¹⁰⁹ Other important Russian Federation firms in Viet Nam are TNK-BP, Lukoil, and Gazprom.

¹¹⁰ These include: ExxonMobil, Chevron, BHP Billiton, Korea National Oil Corporation (KNOC), Total, India's ONGC, Malaysia's Petronas, Nippon Oil of Japan, Talisman, Thailand's PTTEP, Premier Oil, SOCO International, and Neon Energy.

¹¹¹ Projects eligible for investment promotion include oil and gas activities in deep water and offshore areas, areas with especially difficult geographical conditions and complicated geological conditions, and other projects pursuant to paragraph 2 Article 1 Law No. 10/2008/QH12 amending and supplementing a number of articles of the Petroleum Law.

¹¹² EIU (2012d), *Energy - Vietnam*.

¹¹³ U.S. Energy Information Administration (2012).

¹¹⁴ U.S. Energy Information Administration (2012).

¹¹⁵ Article 23 of Decree No. 84/2009/ND-CP, 15 October 2009.

¹¹⁶ The authorities indicated that key traders freely set their wholesale prices, which are not subject to price stabilization requirements.

as Fuel Price Stabilization Fund) scheme¹¹⁷, set and used individually by key traders (see below, and section 3.4.10).¹¹⁸ Consequently, retail fuel prices have been maintained closer to international market prices to sustain a growing economy, keep inflation from rising, and protect consumers, resulting in revenue losses for distributors and increased risks of fuels being smuggling into neighbouring countries.¹¹⁹ Retail price adjustments are based on the changes of the base/prime price used for setting retail prices.¹²⁰ The interval between two consecutive retail price adjustments is at least ten days for a base/prime price increase, and a maximum of ten days for a decrease. As a result of the base/prime price calculation method, and the interval between adjustments, retail prices may be above or below international prices for some days. Where upward retail-price adjustments of 7% to 12% are necessary, key traders may raise prices up to 60% of the required increase, and the remaining 40% will be covered by price valorization fund account transfers. Where retail price adjustments of over 12% are required, or when important price increases could affect socio-economic development and living conditions, action is taken in the form of tax (e.g. import duty) cuts, price valorization fund account transfers, and other administrative measures. Principal traders set aside funds for price valorization, to be used only for this purpose, and submit quarterly financial statements of their account to the Ministry of Finance (MOF) and the MOIT. The funds are financed with a specific amount (₫300/litre or kg), which is a component of the prime price, collected on the retail sale of petrol and oil. It seems that valorization fund accounts have been in deficit at least since 2011.¹²¹ In response to recent world oil price hikes, in February 2013 the authorized rates for debit from the distributors' fund accounts seem to have increased.¹²² The Government has historically adjusted import tariffs frequently to smoothen retail prices rise; since 2010, import tariffs on oil products have been reduced several times, with those on gasoline and jet fuel abolished in February 2012 and those on diesel and kerosene in March 2012. In October 2012, the MOF and MOIT agreed to keep retail prices and export-import tariffs unchanged for petrol and oil, to minimize the use of the price valorization funding.¹²³

4.92. As from January 2012, an environmental protection tax (Table 3.5) has been levied on items, that can cause a negative environmental impact, including fuels and lubricants. The tax consists of specific rates ranging from ₫300 per litre (fuel oil, petroleum, lubricants) to ₫1,000 per litre (gasoline, aircraft fuel) set from a specific tax frame. The authorities indicated the resulting

¹¹⁷ MOF Circular No. 234/2009/TT-BTC, 9 December 2009, contains the guidance on the mechanism to form, manage and use the Fund for petrol and oil price valorization. Viewed at: <http://lawfirm.vn/?a=doc&id=682>.

¹¹⁸ The Government was to start deregulating prices in May 2007 but stopped because of price volatility. The Government abolished subsidies to importers without them being allowed to raise retail prices without approval from the MOIT and MOF. With increases in retail prices failing to stay in line with rising international prices, importers suffered from negative margins. Online information. Viewed at: https://energypedia.info/wiki/Fuel_Prices_Vietnam.

¹¹⁹ According to a February 2013 MOF document, the domestic retail price for RON 92 petrol is ₫2,000 lower than China's, ₫4,000 lower than Lao PDR's, and ₫5,300 lower than Cambodia's (*talkvietnam*, "Ministry instructs increase of petrol price stabilization fund", 1 March 2013. Viewed at: <http://talkvietnam.com/2013/03/ministry-instructs-increase-of-petrol-price-stabilization-fund/> [5 April 2013]; *STOXPLUS*, "Vietnam Allows to Increase Using Price Stabilization Fund to Petroleum", 27 February 2013. Viewed at: <http://www.stoxplus.com/News/106631/1/188/vietnam-allows-to-increase-using-price-stabilization-fund-to-petroleum.stox> [5 April 2013]; *The Saigon Times*, "Traders told to use stabilization fund to maintain fuel prices", 28 February 2013. Viewed at: <http://english.thesaigontimes.vn/Home/business/other/28034/> [5 April 2013]; and U.S. Energy Information Administration, 2012).

¹²⁰ For the base/prime price calculation, see MOF Circular No. 234/2009/TT-BTC, 9 December 2009, Chapter 1, Article 3. Viewed at: <http://lawfirm.vn/?a=doc&id=682>.

¹²¹ The overall balance of all price valorization fund accounts was estimated to be a ₫703 billion (US\$33 million) deficit in early 2011. In April 2012, the MOIT indicated that outflows from the fund accounts exceeded inflows by more than ₫2.3 trillion (US\$110 million). Online information. Viewed at: https://energypedia.info/wiki/Fuel_Prices_Vietnam.

¹²² They were set at ₫2,000/litre for gasoline (from ₫1,000/litre); ₫800/litre for diesel (from ₫400/litre); ₫1,150/litre for kerosene (from ₫700/litre), and ₫650/litre for mazut oil (for heating) (from ₫600/litre) (*talkvietnam*, "Ministry instructs increase of petrol price stabilization fund", 1 March 2013. Viewed at: <http://talkvietnam.com/2013/03/ministry-instructs-increase-of-petrol-price-stabilization-fund/> [5 April 2013]; and *STOXPLUS*, "Vietnam Allows to Increase Using Price Stabilization Fund to Petroleum", 27 February 2013. Viewed at: <http://www.stoxplus.com/News/106631/1/188/vietnam-allows-to-increase-using-price-stabilization-fund-to-petroleum.stox> [5 April 2013]).

¹²³ *Việt Nam News*, "Ministries try to minimise the use of fuel price stabilisation funds", 31 October 2012. Viewed at: <http://en.baomoi.com/Home/economy/vietnamnews.vn/Ministries-try-to-minimise-the-use-of-fuel-price-stabilisation-funds/314135.epi> [26 November 2012].

price increase will help to limit production and consumption of polluting products, encourage the efficient use of energy, and reduce negative effects on the environment. Tax revenue from environmental protection is expected to allow for more investment in improving and protecting the environment, and for sustainable economic development.

4.4.2.2.3 Natural gas

4.93. PetroVietnam dominates the natural gas sector, with foreign partners involved in the production and development of natural gas resources.¹²⁴ Royalty rates for natural gas are set from a basic tax frame (1% to 30%), and currently range from 1% to 6% for projects eligible for investment promotion, and from 2% to 10% for other projects, depending on the daily output of the facility (section 3.3.2, Table 3.8)¹²⁵; their valuation basis is the selling price at the place of delivery or the export price. PetroVietnam and its joint-venture partners negotiate domestic gas rates directly with power generators and industrial users on a project-by-project basis. Natural gas prices are kept generally low compared with international market rates, mainly because wholesale electricity prices must remain low, thus implying cross-subsidization among these sectors. Transport costs vary by gas pipeline and are approved by the MOIT. Since January 2010, the price of liquefied petroleum gas (LPG) has been decided by the main traders (including those with import-export and manufacturing rights) after payment of all taxes, charges, and fees (if any).¹²⁶

4.5 Manufacturing

4.94. During 1990-2007, the structure of the economy shifted drastically towards industrialization.¹²⁷ However, from 2008, the share of manufacturing to GDP dropped steadily (to 18.4% in 2012) as a result of the rising importance of agriculture, mining, and quarrying activities in the domestic economy (Table 1.2). Nevertheless, the sector's shares in total employment and merchandise exports increased progressively between 2007 and 2011, from 12.5% to 13.8%, and from 54.4% to 64.2%, respectively. In 2011, machinery and equipment, and clothing accounted for 19.4% and 13.6% of total merchandise exports respectively.¹²⁸ Labour productivity, which grew by 39.9% in 2008-11, is 39.4% (or 85.5%, based on Table 1.2 data) greater than the average level of the economy.¹²⁹ In 2012, the industrial sector continued to be the leading tax contributor among the 1,000 leading corporate taxpayers in Viet Nam, accounting for 66% of total tax payments, of which more than half was paid by state-owned enterprises.¹³⁰ Foreign-invested enterprises account for the largest part of total manufacturing output, and their share rose steadily from 39.8% in 2007 to 42.8% in 2010. In the same period, the share of SOEs was reduced to 18.8% (23.2% in 2007) while that of domestic private enterprises grew to 38.4% (36.99%).

4.95. Under Prime Minister's Decision No. 604/QĐ-TTg of May 2012, on raising productivity, Viet Nam's latest overall manufacturing policy is aimed at increasing the domestic value-added (localization ratio) of industrial products, and helping Vietnamese products to join a global value chain.¹³¹ The project provides, *inter alia*, for: setting 500 national technical standards (between 2015 and 2020); 40% of enterprises producing core industrial goods to prepare and implement projects to raising efficiency and quality by 2015 and 100% of enterprises by 2020; 2,000 enterprises to apply advanced technology; of domestic quality testing centres to be raised to international level 20% by 2015, and 50% by 2020; and raising total factor productivity to 35% (by 2015) and 40% (by 2020). Priority activities relating to this project cover the textiles, shoes, leather and plastic industries (by 2015) as well as chemical and mechanical industries (by 2020).

¹²⁴ Its main foreign partners are TNKBP, Chevron, KNOC, Gazprom, Petronas, Thailand's PTTEP, Talisman, ExxonMobil, Total and Neon Energy (U.S. Energy Information Administration, 2012).

¹²⁵ Tariff Schedule for Royalties attached to Resolution No 928/2010/UBTVQH12.

¹²⁶ Decree No. 107/2009/ND-CP, 26 November 2009.

¹²⁷ The share of manufacturing in the GDP increased from 12.3% in 1990 to 21.1% in 2007.

¹²⁸ UNSD Comtrade data.

¹²⁹ In principle, if manufacturing's share of GDP is falling and its share of employment rising, then its labour productivity must be declining relative to the rest of the economy (General Statistics Office of Vietnam, 2011).

¹³⁰ *Viet Nam News*, "Industry still leading tax contributor", 3 December 2012. Viewed at: <http://vietnamnews.vn/Economy/233574/industry-still-leading-tax-contributor.html> [12 December 2012].

¹³¹ Global value chain refers to the different processes in different parts of the world that add value to the goods or services being produced. By joining a global value chain, small enterprises have the ability to transform their business into an international operation offering greater opportunities (Prime Minister Decision No. 604/QĐ-TTg, 25 May 2012. Viewed at: <http://lawfirm.vn/?a=doc&id=2478>).

Sub-sectoral plans are in place for some manufacturing industries (see below). Other prioritized activities including production of new materials, high-tech products, bio-technology, information technology, and chemical and mechanical engineering (section 3.4.1, Table A3.6) as well as "support industries" (see below); a 2010 list contains 46 high technologies prioritized for development investment, and 76 high-tech products eligible for development promotion.¹³²

4.96. Between 2007 and 2013 Viet Nam's average applied MFN tariff on industrial products (HS25-97) was reduced significantly, from 17% to 9%, and the peak *ad valorem* tariff rate dropped from 150% to 100% (HS630900 worn clothing) and 75% (vehicles other than railway/tramway) (Table 3.1). In 2013, 11 two-digit HS product groups (e.g. articles of leather, manufactures of straw, articles of apparel and clothing, footwear, ceramic products, articles of base metal, vehicles other than railway/tramway) were subject to average applied MFN tariff rates at twice the average rate for industrial products; these ranged from 19.5% (apparel) to 30.3% (vehicles other than railway/tramway).

4.97. Viet Nam has also applied non-tariff measures on certain manufactures. Between 1 June 2011 and 28 December 2012, all imports of mobile phones, cosmetics, and certain categories of cars had to enter through one of three international seaports (Ho Chi Minh City, Hai Phong, and Da Nang), and additional customs documentation with consulate approval in exporting countries was required (section 3.2.1).¹³³ As from January 2011, reference prices for risk-assessment purposes have been set for imports of numerous commodities (apparently covering more than 20 product categories) (section 3.2.8).¹³⁴ The authorities indicated that these prices are not used to determine the customs value of imported goods as an alternative value or a mechanism for setting the minimum prices, and that Viet Nam's customs valuation practices are in line with its WTO commitments. As from April 2010, the MOIT has maintained and expanded a long list of "non-essential" imported commodities and consumer goods not encouraged for import (section 3.2.7). Export taxes and prohibitions of raw materials (sections 3.3.2, 3.3.3, and 4.4.1) are used to raise domestic value-added and ensure supplies to the local processing industry that are cheaper than elsewhere, thus constituting assistance to domestic downstream processing of these materials. Furthermore, government procurement is used to support domestic goods, materials, and equipment by allowing international bidding for state-funded projects to take place only if local suppliers or sponsors of official development assistance (ODA) cannot meet specific requirements (section 3.4.7).¹³⁵

4.98. Domestic support to manufacturing activities is provided in the form of tax incentives (including duty concessions, temporary corporate and personal income tax exemption or breaks) and non-tax incentives (e.g. preferential land rental rates, exemption from payment of land-use fees for the land area), available to firms operating in industrial zones, high-tech zones, and export-processing zones (sections 3.4.1 and 3.4.5, Table A3.6).¹³⁶ Concessional loans for production and business development, and infrastructure projects and export contracts have been available since 2009 (Box 1.1 and section 3.3.4). The authorities indicated that support is, *inter alia*, focused on protecting the infant industries in line with WTO commitments, and no prohibited subsidies or other incentives contingent on localization and/or export performance are being implemented. No data on budgetary outlays and tax expenditure in support of manufacturing activities were available from the authorities.

4.99. Since February 2011, efforts have been made to boost "support industries" in some key sectors, such as mechanical engineering, information technology (IT), electronics, textile and

¹³² Prime Minister Decision No. 49/2010/QĐ-TTg, 19 July 2010; and U.S. Commercial Service (2011).

¹³³ MOIT Notice No. 301/TB-BCT, 28 December 2012; Notice No. 197/TB-BCT, 6 May 2011 (in force 1 June 2011), cited in European Commission (2011).

¹³⁴ These products included frozen poultry meat; fresh fish; frozen fish; fresh fruit; wine and beer; textile fabrics; construction glass; sanitary equipment; tiles; iron and steel; power generating sets with compression ignition internal combustion piston engines; telephones for cellular networks; passenger motor vehicles (HS headings 8702, 8703, 8704, 8705), motorcycles, electric motorcycles (HS heading 8711); some electrical appliances (refrigerators, washing machines, electric fans, dishwashers, kitchen hood, vacuum cleaners, iron); and gas cookers (Article 6, Decree 40/2007/ND-CP, 16 March 2007; Official Letter No. 348/TCHQ-TXNK, 21 February 2011, "List of Administrated Imported Goods at Risks and Reference Prices"; and Official Letter No. 2334/TCHQ-TXNK, 23 May 2011, cited in European Commission (2011); and Decree No. 40/2007/ND-CP, 16 March 2007.

¹³⁵ Prime Minister Directive No. 494/CT-TTg, 20 April 2010 cited in European Commission (2012).

¹³⁶ Decree No. 29/2008/ND-CP, 14 March 2008, cited in Pricewaterhouse Coopers (2008).

garments, leather footwear, and technology, through advertisement, investment and trade promotion programmes, distribution networks, land lease, and technical support alongside the existing tax breaks. The development of "support industries" is important and urgent for, *inter alia*, improving "localization", as many local industries, especially producers of export products, rely overwhelmingly on imported feedstock and parts.¹³⁷ From 2009, a Politburo campaign "Vietnamese people use Vietnamese products" has allegedly created positive effects and competitiveness for local products in the domestic market; according to a survey conducted by the Institute for Public Opinion, an agency under the Party Central Committee's Commission for Publicity and Education, the popularity of foreign products has declined.¹³⁸ Furthermore, in line with the same campaign and as the volume of inventory items (e.g. coal, iron, steel, cast iron, fertilizers, plastic products, cars, motorbikes) remained high, in October 2012 more than ten large state-owned groups belonging to the MOIT signed a voluntary cooperation agreement to use each other's products. The authorities indicated that MOIT publishes the list of goods produced domestically for its enterprises to "freely decide" whether to purchase or not, rather than promoting the consumption of more domestic goods in order to solve difficulties in production and business.¹³⁹

4.5.1 Textiles and garments

4.100. Textiles and garments remain important pillars of the manufacturing sector; Viet Nam was the world's 7th largest textile and apparel exporter in 2011.¹⁴⁰ The textiles and garments industry is Viet Nam's largest, with 5,982 enterprises (2011) mostly located in industrial parks or craft villages (mostly SMEs), and around 2.3 million workers, equivalent to 25% of all industrial employment.¹⁴¹ In 2010, foreign-invested companies and SOEs accounted for 42.7% and 13% of total textiles and garment-sector output respectively.¹⁴² In 2010, the industry was the second-highest foreign-exchange earner (18.6% of total merchandise trade) after agriculture.¹⁴³ According to the Viet Nam Textile and Apparel Association, WTO membership enabled many garment companies to diversify their markets and to benefit from MFN status in Members' markets.¹⁴⁴ On the other hand, the global recession has had a severe impact on the industry, with prices and orders declining significantly, and the long-time advantage of cheap human resources mostly evaporating. In line with the campaign "Vietnamese people use Vietnamese goods" (section 4.5.), textile and garment firms, including the state-owned Vietnam National Textile

¹³⁷ The country had to import as much as 80% of these items. The automotive industry uses only 5% to 10% of local parts, while for motorbikes the ratio is 40% or more (section 4.5.2). Though foreign companies were potentially interested in local procurement, the domestic support industries could not supply them (*Việt Nam News*, "Incentives urged to boost support industries", 10 October 2011. Viewed at: <http://vietnamnews.vn/agency.com.vn/Industries/216360/incentives-urged-to-boost-support-industries.html> [31 August 2012]).

¹³⁸ Reportedly, consumers prefer to buy domestic: garment and textile products (80%); foods, fruits, and vegetables (58%); household products (49%); building materials and interior furniture (38%), toys and learning tools for children (34%); stationery (33%); electronic products (26%); pharmaceuticals and medical devices (26%); cars and motorcycles (18%); and, cosmetics (10%) (*IntellAsia.net*, "Fifty ninepct of consumers prefer Vietnamese products", 22 February 2011. Viewed at: <http://www.intellasia.net/fifty-ninepct-of-consumers-prefer-vietnamese-products-148717> [30 August 2012]; and *Business-in-Asia-Com*, "Vietnamese Use Vietnamese Goods - What are the Problems?", August 2011. Viewed at: http://www.business-in-asia.com/vietnam/vietnam_use_vietnamese_goods.html [18 December 2012]).

¹³⁹ The state-owned groups included Viet Nam National Oil and Gas Group, Viet Nam National Coal-Mineral Industries Group, Viet Nam Garment and Textiles Group, Viet Nam Paper Corporation, and Viet Nam Industrial Construction Corporation (*Việt Nam News*, "Gov't deal to boost use of local products", 11 October 2012. Viewed at: <http://vietnamnews.vn/Economy/231229/giant-groups-join-hands-to-increase-consumption-of-domestic-goods.html> [26 November 2012]).

¹⁴⁰ WTO (2012).

¹⁴¹ *Vietrade* factsheet, "Investment opportunities in Textiles and garments", 10 December 2011. Viewed at: http://www.vietrade.gov.vn/en/index.php?option=com_content&view=article&id=1044:investment-opportunities-in-textiles-and-garments&catid=272:investment-opportunities&Itemid=250 [31 August 2012]; and OSEC (2011).

¹⁴² General Statistics Office of Vietnam (2011), Tables 202, 204, 206 and 208.

¹⁴³ UNSCD Comtrade data.

¹⁴⁴ *Việt Nam News*, "WTO boosts garment trade", 20 August 2012. Viewed at: <http://vietnamnews.vn/agency.com.vn/Economy/228989/wto-boosts-garment-trade.html> [30 August 2012].

Garment Group (Vinatex)¹⁴⁵ have tackled the domestic market and made efforts to expand their domestic sales networks.¹⁴⁶

4.101. Under the 2008 Master Plan for the Textile Sector until 2015 with orientation to 2020, textiles and garments would become a key industry, and efficient, export-oriented development would be encouraged.¹⁴⁷ In line with the "support industries" promotion objective (section 4.5), the industry is expected to focus on producing cloth and materials for tailoring apparel for export, and to invest to improve high-quality cotton, fibre, and fabric production facilities so as to decrease imports of these items.¹⁴⁸ The Plan targets an increase of the local content of domestic products from 32% (2006) to 50% (2010), 60% (2015) and 70% (2020); in 2011, the local content ratio stood at 48%.¹⁴⁹ The Plan also sets an export revenue target of US\$18 billion for 2015, and US\$25 billion in 2020; in 2011, exports were US\$14 billion.¹⁵⁰ The textiles and clothing industry labour force is to increase to 2.75 million by 2015 and 3 million by 2020.

4.102. In 2013, applied MFN tariff protection for the textile and garment sector ranged from zero to 30% (HS Chapters 50-63), and was 100% for worn clothing (Table A3.1 and above). Average MFN tariff protection, by double-digit HS chapter, ranged from 5.5% (HS54 man-made filaments) to 19.8% (HS61 apparel and clothing). Since January 2011, minimum reference prices for risk-assessment purposes have been used by Customs for valuation of imports of textile and apparel items (section 4.4).

4.5.2 Motor vehicles

4.5.2.1 Automotive

4.103. Although the domestic economy has expanded rapidly in recent years, vehicle demand remains low. Viet Nam's automotive industry is small and underdeveloped by regional standards. The assembly industry, which is dominated by foreign-invested joint ventures, is heavily reliant on imported parts and is focused solely on serving the domestic market; foreign-invested firms account for 76% (2010) of motor vehicles, trailers and semi-trailers (value terms), while state-owned firms account for 10.6%.¹⁵¹ In 2012, car sales dropped progressively by an overall 37.5% (domestically assembled vehicles) and about 63% (imported vehicles) compared to the peak years of 2008 and 2009, respectively. By October 2012, Viet Nam's slowing market had made some companies consider shutting down assembly plants and shifting to automobile imports; domestically assembled completely-knocked-down (CKD) vehicles accounted for more than 70% of overall domestic car sales (including fully assembled imports), according to the Vietnam Automotive Manufacturers' Association (VAMA).¹⁵² High car prices, the heavy tax burden (see below), and a widespread preference for motorcycles constrain the growth in car sales.¹⁵³ In

¹⁴⁵ Vinatex, which resulted from a merge of all SOEs in textiles and garments, is one of the largest and the most competitive textile/garment corporations in Asia. Its export value has accounted for over 20% of the total export turnover of the Vietnamese textile and garment industry (Vinatex online information. Viewed at: <http://www.vinatex.com/Portal/Page.aspx?PageID=44>).

¹⁴⁶ Vietnamese brands primarily concentrate on middle-priced segments, while high-price segments are served by western brands. Chinese mass goods target the low-price segments (Working Group of Economic and Commercial Counsellors of the EU, 2011).

¹⁴⁷ Decision 42/2008/QĐ-BCT, 19 November 2008; Decision No. 36/2008/QĐ-TTg, 10 March 2008 (Vietrade factsheet, "Investment opportunities in Textiles and garments", 10 December 2011. Viewed at: http://www.vietrade.gov.vn/en/index.php?option=com_content&view=article&id=1044:investment-opportunities-in-textiles-and-garments&catid=272:investment-opportunities&Itemid=250 [31 August 2012]).

¹⁴⁸ Vinatex set up a joint-venture with PetroVietnam (PetroVietnam-Vinatex Dinh Vu Joint Stock Company (PVTex)) to build Vietnam's first polyester fibre plant. The factory will be located in Haiphong and use by-products from oil-refining. It will help to reduce the Vinatex' dependence on imported materials by meeting around 40% of the domestic apparel industry's demand for synthetic fibre.

¹⁴⁹ Communist Party of Viet Nam online data. Viewed at: http://www.cpv.org.vn/CPV/Modules/News/NewsDetail.aspx?co_id=30066&cn_id=502845.

¹⁵⁰ General Statistics Office of Vietnam data.

¹⁵¹ General Statistics Office of Vietnam (2011), Tables 202, 204, 206 and 208.

¹⁵² In January 2012, when the import tariff was reduced for pick-ups, all CKD operators stopped assembly and switched to imports from Thailand (Vietnam Investment Review, "Auto-makers hit judder bars in a slowing market", 31 October 2012. Viewed at: <http://www.vir.com.vn/news/business/auto-makers-hit-judder-bars-in-a-slowing-market.html> [26 November 2012]).

¹⁵³ Reportedly, a car in Viet Nam is subject to 9 kinds of tax and fees, leading to very high prices. According to the Vietnamese Automobile Association the average income of a Vietnamese is 1/50th of a U.S. citizen's, while car prices are 365% higher (Vietnam Economic Forum, "Automobile market - getting sick

response to VAMA's request, the registration fees for new vehicles in Ho Chi Minh City and Hanoi were reduced as of April 2013 in a bid to encourage more consumers to buy their first car.

4.104. The 2002 Development strategy until 2010 with orientation until 2020, set ambitious targets for common-type, special-purpose, and high-class vehicles with local-content of up to 60% and meeting over 80% of domestic demand in 2010, depending on the type of vehicle.¹⁵⁴ At end-April 2013, none of these targets had been reached. The auto and spare parts production subsectors are entitled to special investment incentives. In the context of Viet Nam's auto development strategy to 2020, with a vision to 2030, in May 2013 the MOIT and MOF were working on proposals to submit to the Prime Minister regarding tax breaks and land-lease incentives for making auto production a key industry by 2020.¹⁵⁵ Several crucial targets, including increasing exports and setting up an auto manufacturing and support hub in central Viet Nam, with total investment of \$30 trillion (US\$1.46 billion), form part of this strategy. The strategy also aims to boost sales of cars made in Viet Nam, and expand the domestic industry's production capacity to 398,000 vehicles per year by 2020. The localization rate is expected to reach 50%-60% by the same year. The auto industry is expected to export 65,000 vehicles per year by 2020, along with a total export turnover of US\$4 billion from auto parts. The MOIT suggested, *inter alia*, a corporate income tax rate of 10% for the entire life of the project, and a 50% reduction of special consumption tax for auto projects that meet criteria on local-content ratios.¹⁵⁶

4.105. Domestic producers of motor vehicles are protected by an average MFN tariff more than three times the average for all industrial products (Table A3.1), which encourages "tariff jumping" by foreign-owned car makers.¹⁵⁷ Nevertheless, the share of the sales of domestic vehicles assembled by foreign-invested firms dropped from 48.8% in 2007 to 42.5% in 2012. Between 2007 and 2013, the average MFN applied tariff rate was reduced from 43% to 30.3% (HS87 vehicles other than tramway and railway), and peak rates from 150% to 75% (Table A3.1).¹⁵⁸ Preferential tariffs were implemented as from 2009 for certain types of vehicles originating in ASEAN countries and Japan. Import duties on used cars (HS items 8702 and 8703) were increased on 29 June 2011.¹⁵⁹ In August 2011, new duties ranging from US\$3,000 to US\$17,000 per unit, depending on the engine size, were applied to imports of used cars; this increase prompted imports of used cars to fall by 70% year-on-year in that month, to just 199 vehicles.¹⁶⁰ In addition, between 1 June 2011 and 28 December 2012, imports of motor vehicles for transport of up to nine persons were subject to additional customs documentation and approval requirements (sections 3.2.1 and 4.5).¹⁶¹ Since April 2009, motor vehicles have been

with government policies", 28 September 2012. Viewed at: <http://vef.vn/2012-09-28-oto-met-moi-ngong-chinh-sach> [26 November 2012]; EIU, 2012d), *Automotive – Vietnam*).

¹⁵⁴ Decision No. 186/2002/QĐ-TTg, 26 December 2012. Viewed at: http://moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=9684.

¹⁵⁵ *Viet Nam News*, "Incentives to boost auto industry", 27 July 2011. Viewed at: <http://vietnamnews.vnagency.com.vn/Economy/213767/incentives-to-boost-auto-industry.html> or <http://www.dztimes.net/post/business/incentives-to-boost-auto-industry.aspx> [31 August 2012].

¹⁵⁶ EIU (2012d), *Automotive – Vietnam*.

¹⁵⁷ The term "tariff jumping" refers to the establishment of a production facility within a foreign country, through FDI or licensing, in order to avoid a tariff (Hong Hwang and Chao-cheng Mai, 2002).

¹⁵⁸ Under Viet Nam's WTO commitments, within 11 or 13 years of joining the WTO import duties on completely built-up (CBU) cars must be cut to rates ranging from 47% to 70%, depending on engine size.

¹⁵⁹ Upon its WTO accession Viet Nam confirmed that it would eliminate the import prohibition on used motor-vehicles and replace it with increased import duties from the date of accession. Following the issue of Joint Circular Joint Circular No 03/TTLT-BTM-BGTVT-BTC-BCA of 31 March 2006, importation of used motor vehicles has been allowed for used vehicles whose manufacturing date does not exceed 05 years from the date of import to Viet Nam; importation of used motor vehicles had effectively been allowed as from 1 May 2006. Viet Nam was developing a system of quality standards for traffic, environment, and human health/safety applicable to means of transportation in compliance with WTO rules. Regulations in this regard would be issued promptly. Viet Nam would only apply technical measures to second-hand motor vehicles in compliance with the TBT Agreement. In May 2013 the authorities indicated that no technical barriers have applied to second-hand motor vehicles less than 5 years from the date of manufacture to the date of import (WTO document WT/ACC/VNM/48, 27 October 2006; and Global Trade Alert online information. Viewed at: http://www.globaltradealert.org/measure?tid=All&tid_1=500&tid_3=All).

¹⁶⁰ The authorities indicated that it is impossible to appraise the effectiveness of a policy measure by using one-month data but no data on imports of used cars from August 2011 onwards were made available to the Secretariat. Viet Nam's WTO binding commitments for used motor vehicles are contained in Chapter 98 of the Loose-leaf Schedule CLX, and consist of a compound duty, i.e. an *ad valorem* rate plus a specific duty of US\$7,000, US\$10,000 or US\$15,000 depending on the type of vehicle (EIU, 2012), *Automotive – Vietnam*).

¹⁶¹ Circular 20/2011/TT-BCT cited in European Commission (2011).

subject to special consumption taxes ranging from 10% to 60% depending on the number of seats and cylinder capacity (Table 3.4).¹⁶² Reduced special consumption tax rates apply to hybrid and bio-fuel vehicles (Table 3.4). Furthermore, local taxes vary, and include a 10%-15% (down from 20%) registration fee for a passenger car of under 10 seats, and a fee for registration papers and number plates.¹⁶³

4.106. As of March 2012, a series of special incentives were under consideration under the Key Mechanical Programme (sections 4.5 and 3.4.1), for the US\$206 million Chu Lai-Truong Hai Automobile Engine Manufacturing Plant, which was to receive technology transfer from the Hyundai Group.¹⁶⁴ They included: the possibility of investment loans from the state-owned Viet Nam Development Bank for up to 85% of total investment capital during 12 years; zero import duty for imported inputs not produced locally; a 10% corporate income tax rate during the plant's lifetime; corporate income tax exemption during the first four years of profit and half the suggested corporate income tax thereafter for nine years; and a peppercorn rent of US\$1 for 10 ha of land with upgraded infrastructure during the life of the project (estimated at 70 years) (a virtual freehold). In May 2013, the authorities indicated that these measures had not been approved. Corporate tax incentives for investment aimed at expanding capacity were eliminated in 2009, therefore tending to impede the achievement of scale economies, which are especially important for the automobile industry (and other industries, such as steel) and an important source of improvement in TFP.

4.5.2.2 Motorcycles

4.107. Viet Nam is the world's fourth largest market for motorbikes after China, India, and Indonesia.¹⁶⁵ Motorcycles are estimated to serve on average over 60% of travel needs in a market of over 30 million motorcycles. Viet Nam's dynamic and high-growth motorcycle market was initially based on foreign direct investment from Japan and Chinese Taipei. In general, the local-content rate in motorcycle products is relatively high, at up to 70%-80%, even amounting to 90% at some enterprises, as a result of the development of "support industries" (section 4.4) at a very early stage.¹⁶⁶ Viet Nam's motorcycle industry can fully meet the demand of the domestic market for normal motorcycles and scooters. In 2013, there were 7 (6 in 2007) foreign-invested and 13 (44 in 2007) domestic enterprises producing/assembling motorbikes; however, only about 10 of them, including firms from Japan (Honda, Suzuki, Yamaha) and Chinese Taipei (SYM), are strong enough to compete in the domestic market.¹⁶⁷ The number of domestically assembled motorcycles rose steadily from about 2 million in 2005 to 3.5 million units in 2010, and was expected to attain 4.2 million units in 2011.¹⁶⁸ Between 2009 and 2011, completely built-up (CBU) motorcycle imports dropped from 111,466 units to 54,621, whereas those of completely knocked down (CKD) kits rose from US\$621.3 million to US\$1.1 billion.¹⁶⁹ Sales of imported motorcycles peaked in 2008 (137,316 units) before dropping gradually by an overall 73.4% in 2012. Sales of

¹⁶² Article 7, Law No 27/2008/QH12 on Excise Tax, effective from 1 April 2009.

¹⁶³ The registration fee is calculated as follows: registration fee rate multiplied by the registration fee valuation basis comprising the import tax, the excise (special consumption) tax, and VAT. The fee for granting registration papers and number plates cars ranges from ₫100.000 to ₫1 million; cars under 10 seats registered in Hanoi and Ho Chi Minh City are subject to rates ranging from ₫2 million to ₫20 million. In 2010, the fee for papers and plates was adjusted for cars of fewer than 10 seats in order to reduce traffic congestion and accidents (Decree No. 23/2013/ND-CP, 25 March 2013; Decree No 45/2011/ND-CP, 17 June 2011; MOF Circular No. 212/2010/TT-BTC, 21 December 2010; and *Vietnam Economic Forum*, "Automobile market - getting sick with government policies", 28 September 2012. Viewed at: <http://vef.vn/2012-09-28-oto-met-moi-ngong-chinh-sach> [26 November 2012]).

¹⁶⁴ *Viet Nam News*, "Province suggests incentives for new auto assembly plant", 28 March 2012. Viewed at: <http://vietnamnews.vnagency.com.vn/Economy/222752/province-suggests-incentives-for-new-auto-assembly-plant.html> [31 August 2012].

¹⁶⁵ European Chamber of Commerce in Vietnam (2013).

¹⁶⁶ Limitations on the importation of CBU motorcycles and high tariff barriers over a long period prior to WTO accession helped to encourage the formation of domestic motorcycle assembly and production but also to the low quality of domestic products, the increasing traffic accidents and environmental pollution, the rampant infringement of intellectual property rights, the infringement of consumers' interests, etc. (Ministry of Industry/Institute for Industry Policy and Strategy, 2007).

¹⁶⁷ European Chamber of Commerce in Vietnam (2013).

¹⁶⁸ General Statistics Office of Vietnam (2011), Table 212.

¹⁶⁹ General Statistics Office of Vietnam online information. Viewed at: http://www.gso.gov.vn/default_en.aspx?tabid=472&idmid=3&itemID=13209; and MOF/General Department of Vietnam Customs, Table 15B/TCHQ. Viewed at: <http://www.customs.gov.vn/EngLish/Lists/SupportOnline/ThongKeHaiQuan.aspx>.

domestically assembled motorbikes ranged from about 2.9 million units (2008, 2009) to 3.7 million (2011), and their market share rose from 96% (2007) to 98.9% (2012).

4.108. The Master Plan for the Development of Viet Nam's Motorcycle Industry in the period 2006-15 with a vision to 2020, envisages that by 2015, the country will become a centre for the design, manufacture, and assembly of motorcycles on a large scale, have competition capability in the region, and integrate fully in regional and international markets.¹⁷⁰ By 2020, "support industries" for motorcycle assembly are expected to "support" other assembly industries.

4.109. Despite tariff reductions since 2007, when a single 100% rate applied to all CBU and CKD motorcycles (HS8711), in 2013 tariff protection for the motorcycle industry remains particularly high with rates ranging from 55% (motorcycles with cylinder capacity exceeding 800cc) to 75% (most items regardless cylinder capacity, including CKD kits) presumably to partly encourage "tariff jumping" as sales of domestic motorbikes assembled by foreign-invested firms rose from 60.2% (2007) to 96.5% (2012). The authorities indicated that the peak tariff rate is to be reduced to 40% by 2015. Prior to WTO accession, importation, registration, and circulation of motorcycles with engine capacity exceeding 175 cm³ was prohibited, to ensure traffic safety. Imports of these motorcycles have been allowed since May 2007 subject to automatic import licensing for statistical and administration purposes¹⁷¹; imports of used 2-wheel and 3-wheel motorbikes is prohibited (Table 3.7). As from April 2009, motorbikes with an engine capacity exceeding 125 cm³ have been subject to a 20% special sales/consumption tax (Table 3.4). Seemingly, in an effort to address traffic jams in big cities, as of January 2012 registration-plates fees were set at three levels depending on the value of the motorbike, and increased to ₫4 million for motorcycles of a value exceeding ₫40 million.¹⁷²

4.5.3 Other manufacturing activities

4.110. In recent years Viet Nam's steel sector has faced difficulties due to the slowdown of sales, high inventories, production outstripping demand, and cheap imports (e.g. from China).¹⁷³ Between 2007 and 2010, domestic production of steel rose 43% to 5.7 million tonnes, followed by a minor drop to 5.5 million tonnes. Imports peaked in 2009, and have fallen gradually by almost 15%, to an estimated 6 million tonnes. Steel exports varied from 300,410 tonnes to an estimated 1.7 million tonnes. As a result, steel consumption (production plus imports minus exports) peaked in 2009, dropping gradually by 11.2% to an estimated volume of 9.7 million tonnes (2011). In 2013, average MFN tariffs on iron and steel products were 3.5% (6.9% in 2007) with rates ranging from zero to 15% (40% in 2007). Action has been taken to increase border protection for sensitive steel items. In 2009, upon request of the Vietnam Steel Association, the MFN import tariffs on several construction alloy steel products were temporarily increased from 5% to 10%.¹⁷⁴ In January 2012, import duties on cold-rolled stainless steel products were increased from zero to 5%; tariffs on the same products were further raised from 5% to 10% in October 2012.¹⁷⁵ Between mid-2010 and 31 December 2011, automatic import-licensing requirements were applied for eight four-digit HS steel products, and reinstated as from mid-September 2012 (section 3.2.7).¹⁷⁶ Further, in August 2012, domestic support to local production and business was envisaged upon entry into force of Resolution No 13/NQ-CP.¹⁷⁷ To address the huge surplus in

¹⁷⁰ Ministry of Industry/Institute for Industry Policy and Strategy (2007).

¹⁷¹ Circular No 06/2007/TT-BTM, 30 May 2007.

¹⁷² European Chamber of Commerce in Vietnam (2013).

¹⁷³ Viet Nam has 30 large-scale steel mills under Vietnam Steel Association and hundreds of small-scale units (*Intellasia*, "Vietnam steel sector continues to face difficulties ahead: Ministry", 10 August 2012. Viewed at: <http://www.intellasia.net/vietnam-steel-sector-continues-to-face-difficulties-ahead-ministry-224144>).

¹⁷⁴ HS items 7227900000, 7228301000, 7228309000, 7228401000, and 7228409000, MOF Circular 75/2009/TT-BTC, 13 April 2009, and Circular 216/2009/TT-BTC, 12 November 2009, cited in European Commission (2012).

¹⁷⁵ Domestic firms' total annual output of stainless cold-rolled steel reached 3.47 million tonnes annually, while domestic demand was only 1.3 million tonnes per year (*talkvietnam*, "Import buffer to help struggling steel firms", 23 October 2012. Viewed at: <http://talkvietnam.com/2012/10/import-buffer-to-help-struggling-steel-firms/> [31 October 2012]; and Circular 193/2012/TT-BTC, 15 November 2012).

¹⁷⁶ HS items 7209, 7210, 7211, 7212, 7213, 7321, 7323, 7324, Circular No 23/2012/TT-BCT, 7 August 2012; and Global Trade Alert online information. Viewed at: http://www.globaltradealert.org/measure?tid=All&tid_1=500&tid_3=All.

¹⁷⁷ *Intellasia*, "Vietnam steel sector continues to face difficulties ahead: Ministry", 10 August 2012. Viewed at: <http://www.intellasia.net/vietnam-steel-sector-continues-to-face-difficulties-ahead-ministry-224144>.

domestic production capacity, as of October 2012 the MOIT requested new steel projects to be in line with the subsector's Master Plan targets or otherwise be approved by the Prime Minister.¹⁷⁸ An August 2012 proposal to provide a new US\$1 billion Kobelco Viet Nam Co Ltd sponge iron factory project with a 50% corporate income tax reduction for 15 years from commencing operation, and waive import duties for equipment and material used during its first five years of operation was approved.¹⁷⁹

4.111. Viet Nam seems to represent a high-reward, high-risk market for pharmaceutical firms.¹⁸⁰ In 2013, tariff protection for pharmaceuticals ranged from zero to 14% (waste pharmaceuticals); almost 89% of tariff lines are subject to rates of zero or 5%. Efforts were made to improve the quality of pharmaceutical products, promote patient safety, and sustainable access to pharmaceutical and biological products. The authorities indicated that there has also been a complete alignment with the ASEAN Common Technical Dossier (ACTD) and the ASEAN Common Technical Requirement (ACTR) in drug registration, and implementation of Good Manufacturing Practices standards as recommended by WHO.

4.112. For registration of new products (new chemical entities)¹⁸¹ foreign-invested companies are required to conduct clinical trials if the product has been available in their country of origin for less than five years¹⁸²; this requirement is being considered for amendment in the revision of the Pharmaceutical Law, so as to ensure better access to new medicines, while ensuring their safe and effective use. Systematic quality tests and safety tests on animals are required on all batches of vaccines and biological products that are serum-containing antibodies for prevention and treatment of human diseases, prior to release from the importer's stores. As from April 2010, guidelines have applied for reporting data of bioavailability/bioequivalence study for generic medicines with conventional dosage form and all medicines with modified release dosage form, for drug registration purposes.¹⁸³ Parallel importation of medicines for the prevention and treatment of human diseases is authorized; concerns in this area relate to the safe use of these medicines due to possible repackaging errors, lack of traceability of parallel imported products, observance of requirements, and the absence of transparency on details of the authorized importers and distributors.¹⁸⁴ In February 2011, the updated guidelines entered into effect for the export and import of drugs and primary packaging, including a list of 178 active pharmaceutical ingredients (for medicines for human use) that are banned from import into Viet Nam.¹⁸⁵ A foreign-invested manufacturer that has a certificate of satisfactory drug business conditions may directly import raw materials for the company's own drug manufacturing. No new MOH guidelines related to the

¹⁷⁸ According to the Vietnam Steel Association, in 2012 local demand was only around 5 million tonnes a year, but annual supply has already reached 7.8 million tonnes (*talkvietnam*, "Cancel overdue steel projects, government advised", 23 October 2012. Viewed at: <http://talkvietnam.com/2012/10/cancel-overdue-steel-projects-government-advised/> [31 October 2012]).

¹⁷⁹ *Việt Nam News*, "PM considers incentives for sponge iron factory", 1 August 2012. Viewed at: <http://vietnamnews.vnagency.com.vn/Economy/228211/pm-considers-incentives-for-sponge-iron-factory.html> [31 August 2012].

¹⁸⁰ *SBWire*, "Vietnam Pharmaceuticals & Healthcare Report Q2 2013 - New Report Available", 29 April 2013. Viewed at: <http://www.sbwire.com/press-releases/vietnam-pharmaceuticals-healthcare-report-q2-2013-new-report-available-243503.htm> [14 May 2013].

¹⁸¹ In 2012, the scope was extended to include new indications, new pharmaceutical forms and a new route of administration for already approved drugs (Circular 03/2012/TT-BYT, 2 February 2012; see also European Chamber of Commerce in Vietnam, 2013).

¹⁸² This requirement is considered as a duplication of clinical trials as the products already had to meet stringent rules and rigorous protocols abroad (e.g. the United States Food and Drug Administration, and the European Medicines Agency).

¹⁸³ Circular No.08/2010/TT-BYT, 26 April 2010.

¹⁸⁴ The authorities indicated that this statement is not in line with the provisions of Ministry of Health Decision No.1906/2004/QĐ-BYT, 28 May 2004, promulgating the Regulation on parallel import of medicines for prevention and cure of human diseases (European Chamber of Commerce in Vietnam, 2013).

¹⁸⁵ These guidelines supersede: (i) Circular No. 06/2006/TT-BYT regarding the export/import of drugs and cosmetics; (ii) Circular No. 13/1998/TT-BY regarding the receipt, management and use of drug donations from abroad, and (iii) the regulations on vaccines and biological products in Circular 08/2006/TT-BYT stipulating the importation of vaccines and biological products, chemical, insecticidal or germicidal preparations for household and medical use, and medical equipment. Ministry of Health Circular No. 47/2010/TT-BYT, 29 December 2010; and *Baker & McKenzie Asia Pacific Pharmaceutical Newsletter May 2011*. Viewed at: http://www.bakermckenzie.com/files/Publication/b880682d-734e-4386-889f-33baa88eed2f/Presentation/PublicationAttachment/4ee7bf7a-5171-42e8-bfe0-5fbd9167d156/nl_ap_pharmaceutical_may11.pdf.

export/import of finished products by such companies have been issued though drafting allegedly began in 2008.¹⁸⁶

4.113. Information technology hardware and electronics industries have grown rapidly, and in 2010 were in the top five industries for export revenue. Their share in total merchandise exports more than doubled from 2007 to 2011, to 11.6%.¹⁸⁷ In the same period, employment and labour productivity in the information and communication technology (ICT) industry increased by 49% (269,000 persons) and 32.3% respectively.¹⁸⁸ Nevertheless, local content accounted for only 10% of the total value added, as most domestic enterprises operate in manufacturing and assembling desktop computers; the modest local-content ratio reflects the need to import most accessories and parts due to high production costs and underdeveloped R&D affecting the industry's competitiveness.¹⁸⁹ The 2010 National Strategy on Transforming Viet Nam into an Advanced ICT country has as objectives: to build the ICT industry, especially software industry, digital content industry and IT services¹⁹⁰, to become a leading economic sector, so as to contribute significantly to GDP growth and exports; to set up a countrywide broadband information infrastructure; and to apply IT effectively in all socio-economic aspects, national security, and defence.¹⁹¹ According to the Strategy, annual growth in ICT industry income is forecast to reach at least two- to three-fold the growth rate of GDP; and by 2020, its contribution to GDP should grow from 8% to 10%.

4.6 Services

4.6.1 Features

4.114. Although services is the largest sector of the economy and the biggest contributor to overall growth, several services' sub-sectors remain in the early stages of development, seemingly due to certain weaknesses, including comparably low growth rates, non-availability and inefficiency of modern services, a sometimes inadequate legal and regulatory environment, and outdated administrative practices for services markets.¹⁹² To address these weaknesses, since 2011 a Master Plan for the Development of Services Sector to 2020 has promoted the role of the sector in the economy.¹⁹³ The Plan's general objective consists of raising the services sector up to international standards in terms of quality and competitiveness, and developing subsectors with great potential, high competitiveness and high added value; this is expected to serve the national industrialization and modernization process so as to ensure sustainable development and a gradual shift to a knowledge-based economy. General and subsector-specific growth targets are set and the Ministry of Planning and Investment submits a government programme of action for attaining them.

4.115. The share of services (excluding construction, energy, electricity, and water supply) in GDP remains relatively small and stable at about 37.2% (2012) compared with neighbouring countries

¹⁸⁶ Under Viet Nam's WTO accession commitments, since 1 January 2009, certain types of drugs are allowed for import by foreign-invested companies; however, it seems that the Ministry of Health's lack of guidance effectively impedes implementation of this commitment (*Baker & McKenzie Asia Pacific Pharmaceutical Newsletter May 2011*. Viewed at: http://www.bakermckenzie.com/files/Publication/b880682d-734e-4386-889f-33baa88eed2f/Presentation/PublicationAttachment/4ee7bf7a-5171-42e8-bfe0-5fbd9167d156/nl_ap_pharmaceutical_may11.pdf).

¹⁸⁷ UNSD Comtrade database.

¹⁸⁸ General Statistics Office of Vietnam data.

¹⁸⁹ *Vietnam+*, "IT firms struggle in their market", 6 October 2012. Viewed at: <http://en.vietnamplus.vn/Home/IT-firms-struggle-in-their-market/201210/29056.vnplus> [31 October 2012]; and *Vietnam Economic Forum*, "Electronic industry at the edge of breaking down", 25 September 2012. Viewed at: <http://vef.vn/2012-09-25-nganh-cong-nghiep-dien-tu-chuc-cho-pha-san> [26 November 2012].

¹⁹⁰ A US\$70 million programme on development of Vietnam's software industry was envisaged in 2007, to be funded from the central government budget (30%), local budgets (30%), and enterprises, associations, ODA, etc. (40%). At the same time, a \$1.3 trillion fund was approved for a programme on development of Viet Nam's digital content industry to 2010, to be funded from the state budget (40% from the central budget, 30% from local budgets) and contributions of domestic and foreign organizations, enterprises and individuals (30%) (Prime Minister Decision No: 51/2007/QĐ-TTg, 12 April 2007; and Prime Minister Decision No. 56/2007/QĐ-TTg, 3 May 2007).

¹⁹¹ Decision No. 1755/QĐ-TTg, 22 September 2010, cited in NSCIT/ MIC (2011).

¹⁹² World Bank (2011); WTO document WT/ACC/VNM/48, 27 October 2006; and Ministry of Industry and Trade and European Commission (2007).

¹⁹³ Decision No. 175/QĐ-TTg approving the overall strategy on the development of Viet Nam's service sector through 2020, 27 January 2011.

(Table 1.2); the sector's share in total employment rose slightly from 26.9% in 2007 to 30% in 2011, but the lack of adequate manpower with tertiary education and appropriate skillsets seems to be the main constraint to growth, exposing the long-term limits of a services-led growth process in Viet Nam.¹⁹⁴ Between 2007 and 2011, labour productivity grew by 6.6%; in 2011, it was 40% above the overall average level of the economy but 25% less than in manufacturing.¹⁹⁵ In GDP terms, wholesale and retail trade (including repair of motor vehicles/motorcycles), public administration and defence, and accommodation and food services are the leading activities; other important activities are transport, and education and training.

4.116. Services facilitate all economic activities, including production and trade of goods.¹⁹⁶ While not always producing a direct export, the performance of the services subsectors remains a key component of overall international competitiveness. Viet Nam is the world's 56th largest exporter and 53rd importer of services (2011).¹⁹⁷ Trade in services remains a minor component of Viet Nam's foreign trade: in 2011 and 2012, exports of commercial services represented about 8.4% and 7.6% of total exports of goods and services, respectively (Table 1.3); and imports (payments) of commercial services accounted for 10.9% and 9.6% of total imports of goods and services respectively. Between 2007 and 2011, the services trade deficit grew almost fourfold, while the merchandise trade deficit was drastically reduced.

4.6.2 Overall commitments under the General Agreement on Trade in Services

4.117. Viet Nam's services market has been liberalized as a result of its WTO accession, creating opportunities for rapid expansion across a range of sectors including retail and transportation.¹⁹⁸ Its commitments under the GATS cover 11 major services sectors (out of 12 services categories) and 105 (or more than 110 according to the authorities) subsectors (out of 155 subsectors categories) (section 2.3.1).¹⁹⁹ In some cases, Viet Nam reserves the right to limit foreign ownership of service companies operating in the domestic market; for example, in some telecommunications services, the limits may be 49% or 65%, depending on the service. The authorities indicated that, 100% foreign ownership is permitted in most of the services sectors and subsectors under Viet Nam's GATS Schedule. The list of Article II (MFN) exemptions covering preferences extended under Viet Nam's bilateral investment treaties, as well as under agreements in audiovisual services, maritime transport, and certain services related to sea transport remains unchanged.²⁰⁰

4.118. Upon accession to the WTO Viet Nam adjusted, modified, supplemented or promulgated relevant domestic laws and regulations to meet its commitments.²⁰¹ The authorities indicated that they do not have any pending legislation in this area and there is no delayed implementation of

¹⁹⁴ World Bank (2011).

¹⁹⁵ Estimates based on the ratio of the services sector's part of GDP (in 1994 prices) divided by its employment figures.

¹⁹⁶ Ministry of Industry and Trade and European Commission (2007).

¹⁹⁷ WTO Trade Profile of Viet Nam, September 2012. Viewed at: <http://stat.wto.org/CountryProfile/WSDBCountryPFView.aspx?Language=E&Country=VN>.

¹⁹⁸ Certain services subsectors that used to be closed to or restricted from foreign investment (such as distribution, transport, telecommunications, finance, etc.) were largely liberalized (despite some limited conditions and transitional periods of 3 or 5 years after WTO accession) (Pricewaterhouse Coopers, 2008, *Viet Nam - A Guide for Business and Investment*, May 2008. Viewed at: http://vietnam.polpred.com/upload/pdf/vietnam_guide.pdf [29 August 2012]; and McKinsey Global Institute, 2012, *Sustaining Vietnam's growth: The productivity challenge*, February. Viewed at: http://www.mckinsey.com/insights/mgi/research/asia/sustaining_growth_in_vietnam [19 December 2012]).

¹⁹⁹ Sector-specific commitments cover: business services; communication services; construction and related engineering services; distribution services; educational services; environmental services; financial services; health-related and social services; tourism and travel-related services; and, recreational, cultural and sporting services (Schedule CLX, WTO document GATS/SC/142, 19 March 2007; and WTO Trade Profile of Viet Nam, September 2012. Viewed at: <http://stat.wto.org/CountryProfile/WSDBCountryPFView.aspx?Language=E&Country=VN>. See also WTO documents WT/ACC/VNM/48/Add.2, 27 October 2006, and GATS/EL/142, 19 March 2007).

²⁰⁰ WTO document GATS/EL/142, 19 March 2007.

²⁰¹ These changes relate, *inter alia*, to: Law No 12/2008/QH12, 3 June 2008 containing amendments and supplements to Publishing Law; Law 10/2008/QH12, 3 June 2008 containing amendments and supplements to a number of articles of the Law on Oil and Gas; Law on Telecommunications No. 41/2009/QH12, 23 November 2009; Law No. 31/2009/QH12 containing amendments and supplements on a number of articles of the Law on cinematography; Law on Minerals No. 60/2010/QH12, 17 November 2010; Law No. 20/2012/QH13 providing amendments for the Law on Lawyers No. 65/2006/QH11, 29 June 2006.

GATS commitments. Despite the absence of new legal documents or amendment of existing laws and regulations in some sectors where commitments were undertaken, Viet Nam considers that it has fully complied with its undertakings through the legal text ratifying its Protocol of Accession.²⁰² According to the authorities, in general, Viet Nam's laws and regulations in services sectors are consistent with the WTO and the GATS commitments. The effect of the GATS commitments depends on domestic implementing regulations.²⁰³ The authorities indicated that the complexity of Viet Nam's legal system does not affect its ability to comply with WTO commitments.

4.6.3 Regional and bilateral agreements on services

4.119. Services are covered in Viet Nam's regional trade agreements (RTAs) within the ASEAN framework (Australia and New Zealand; China; and Korea, Rep. of, and with Japan, and the bilateral trade agreement with the United States, which pre-determined WTO accession commitments in this area (sections 2.3.2, 2.3.3 and 2.3.4, Table 2.1).²⁰⁴ All services chapters or agreements under these RTAs, which refer to GATS Article XV, follow the positive listing approach. The authorities indicated that Viet Nam went beyond its GATS commitments in some sectors and subsectors e.g. business services, healthcare services, tourism and travel-related services, and transport services. To some extent, Viet Nam's GATS+ commitments in regional trade agreements may be relatively more limited, as it undertook more commitments than other Members at the same level of development upon WTO accession; this is not shared by the authorities.²⁰⁵ In addition to the ASEAN Framework Agreement on Trade in Services (AFAS) (section 2.3.2), Viet Nam has signed eight services-related mutual recognition arrangements (MRAs) with ASEAN countries, on engineering services (2005), nursing services (2006), architectural services (2007), surveying qualifications (2007), dental practitioners (2009), medical practitioners (2009), accountancy services (2009), and tourism professionals (2009).

4.6.4 Financial services

4.6.4.1 Banking and finance

4.120. The financial services industry, which was progressively liberalized in line with the bilateral trade agreement with the United States (section 2.3.4) and GATS commitments, has grown rapidly in recent years.²⁰⁶ Banking has played a major role in supporting the rapid growth of the economy, showing average annual growth in loans and deposits of 35% and 32%, respectively, over 2003-10.²⁰⁷ Although accessibility to banking services has increased significantly in recent years²⁰⁸, Viet Nam has one of the lowest banking penetration levels among ASEAN nations, reaching less than 30% of its citizens.²⁰⁹ It also has a higher loan-to-deposit ratio than

²⁰² Resolution No 71/2006/QH11, 29 November 2006.

²⁰³ Presentation by Dr. Dietrich Barth (under the Multilateral Trade Assistance Project Vietnam II (MUTRAP II), "Implementing the WTO Commitments in the Area of Trade in Services: International Experience and Challenges for Vietnam", 23 January 2008, Hanoi. Viewed at: http://www.moit.gov.vn/vsi_portlets/UserFiles/Docman/Upload/GATS_intl.experience%20VN%20challenges.pdf; and Pricewaterhouse Coopers (2008).

²⁰⁴ Prior to its WTO accession and as an ASEAN and APEC member, Viet Nam offered certain commitments in some services sectors such as telecommunications, tourism, transportation, and financial services under the ASEAN Framework Agreement on Services (AFAS). More information on Viet Nam's commitments under these regional agreements are available on the WTO RTAs database. Viewed at: <http://rtais.wto.org/UI/PublicSearchByMemberResult.aspx?MemberCode=704&lang=1&redirect=1>; WTO document WT/ACC/VNM/48, 27 October 2006; and Ministry of Industry and Trade and European Commission (2007).

²⁰⁵ Roy (2012).

²⁰⁶ Equivalent to an estimated 357% of GDP in 2011, Viet Nam's financial asset base is smaller relative to its economy than in Malaysia (459%), China (612%) and Singapore (951%), but larger than those of Thailand (348%), Indonesia (110%) and the Philippines (285%) (EIU, 2012d, *Financial services – Vietnam*).

²⁰⁷ Banks have a critical role in economic development, providing payments services that make it cheaper and less risky to trade goods and services (State Bank of Viet Nam, 2010).

²⁰⁸ The authorities indicated that: around 54.2 million bank cards had been issued by end 2012, up from 14 million at the end of 2008; there were around 14,200 ATMs and 104,500 POS, up 6.8% and 50%, respectively, from end 2011; and the number of banking accounts had increased to 42 million, from around 100,000 in 2000.

²⁰⁹ A significant part of the population maintains its savings outside the banking system. Thus, there is a large untapped reservoir of domestic funding in Viet Nam. The authorities indicated that according to a World Bank study, banking penetration is more a factor of GDP per capita rather than of any other factor, and that Viet Nam's banking penetration is above the level of most African countries, more than double the level of

neighbouring Indonesia, Malaysia, the Philippines, and Thailand. Although not severely affected by the 2008-09 global financial crisis, in recent years the sector has been affected by the succession of asset price bubbles, monetary tightening, and growth slowdown (Chapter 1).²¹⁰

4.121. Viet Nam's banking market is highly concentrated at the top, and fragmented at the bottom.²¹¹ In May 2013, the country was over-supplied, with 103 banks and numerous credit institutions, of which 5 are state-owned commercial banks (SOCBs) or are majority state owned, 2 state-owned policy banks (Social Policy Bank of Vietnam, Vietnam Development Bank), 34 joint-stock commercial banks, 4 joint-venture banks, 5 wholly foreign-owned banks with locally incorporated subsidiaries²¹², 53 foreign bank branches (excluding 4 foreign bank branches in the process of terminating activities), 12 financial leasing companies, 18 financial companies, 49 representative offices of foreign credit institutions, 1 Central People's Credit Fund, 1,122 local People's Credit Fund, and 2 microfinance institutions.²¹³ Many of the credit institutions remain small and urban-based, and their loan portfolios have grown briskly (see below); banking networks and services have been expanding rapidly. At end 2012, the country's four largest banks (Vietcombank, Vietinbank, Viet Nam Bank for Agriculture and Rural Development²¹⁴, and Bank for Investment and Development of Viet Nam) were SOCBs or majority state-owned, and their share of total banking sector assets was slowly shrinking, accounting for 48% of domestic lending (65% in 2009), 45% of capital mobilization (62% in 2009), and 40% of the total assets of the sector (58% in 2009). Several domestic banks are seeking opportunities abroad; in September 2011, the Vietinbank opened the first European branch of a Vietnamese bank in Germany, while others have opened branches in Cambodia and Lao (PDR).²¹⁵

4.122. Some progress has been made in transforming SOCBs into financial institutions capable of competing with the more efficient private commercial banks.²¹⁶ Despite government intentions to partially privatize (equitize) all SOCBs, plans have moved slowly, missing target dates for full privatization (sections 1.4.2.2 and 3.4.8).²¹⁷ The 2006 "equitization" programme, originally scheduled for completion in 2010, covered four of the five SOCB's (VietinBank, Vietcombank, Mekong Housing Bank (MHB), Bank for Investment and Development of Viet Nam (BIDV)); the process of bringing in private ownership began in 2008.²¹⁸ By May 2013, 22.9% of shares in Vietcombank, 19.7% in Vietinbank, 4.2% in BIDV, and 8.7% in MHB had been sold to domestic institutional and individual investors. Reportedly, many of these shares are held by employees rather than outside investors and the Government still holds the remaining shares in the "equitized" banks.²¹⁹ In 2011, the Postal Savings Service Company, a Viet Nam Post and Telecommunications Company (VNPost) subsidiary, was merged with Lien Viet Joint Stock Commercial Bank and renamed Lien Viet Post Joint Stock Commercial Bank (LPB). LPB is authorized to provide limited banking services (e.g. savings and a number of payment services) at the post offices of VNPost.²²⁰ On 22 April 2011, the State Bank of Viet Nam issued a regulation

Pakistan and Egypt, comparable to most Central American countries (e.g. Honduras, Panama, Guatemala), above the level of Indonesia, and only slightly below the level of Mexico and the Philippines (State Bank of Viet Nam, 2010; and Demircuc-Kunt and Klapper, 2012).

²¹⁰ World Bank (2011).

²¹¹ U.S. Commercial Service (2011).

²¹² These foreign banks are: ANZ Bank (of Australia), Shinhan Bank (South Korea), Hong Leong (Malaysia), along with HSBC and Standard Chartered (UK). The largest, HSBC, ranked as the 18th biggest bank by assets at end 2011 (EIU, 2012d), *Financial services - Vietnam*, June, London).

²¹³ World Bank (2011); and Working Group of Economic and Commercial Counsellors of the EU (2011).

²¹⁴ The Viet Nam Bank for Agriculture and Rural Development is the largest, with total assets of \$470 trillion (US\$24 billion).

²¹⁵ EIU (2012d), *Financial services - Vietnam*.

²¹⁶ State Bank of Viet Nam (2010).

²¹⁷ U.S. Commercial Service (2011).

²¹⁸ The fifth SOCB under the programme, the Viet Nam Bank for Agriculture and Rural Development (Agribank) was transformed into a 100% state-owned limited liability company on 30 January 2011.

²¹⁹ According to the initial plan, up to 10% of the shares Vietcombank would be sold in 2006 and up to 49% during 2007 to 2010; the State would retain a majority stake. The valuation process for Vietinbank was launched on 31 December 2005, and shares issued in the fourth quarter of 2006; it was to be equitized along the same lines as the Vietcombank. Vietcombank's pilot initial public offering (IPO), took place in December 2007 after years of delays. Vietinbank conducted an IPO in December 2008. Both banks plan to list on Viet Nam's stock market. They have not yet identified a strategic investor due to unresolved obstacles in IPO pricing and the State remains the controlling shareholder (WTO document WT/ACC/VNM/48, 27 October 2006; and State Bank of Viet Nam, 2010).

²²⁰ Any individual or organization that is not a credit institution is strictly prohibited from performing banking activities, except for the transaction of security deposit, securities dealing of a securities company.

setting the selection criteria for domestic and foreign strategic investors for "equitized" SOCBs.²²¹ Under these criteria, the investor should, *inter alia*, be a foreign credit institution or foreign financial institution, with total assets of at least US\$20 billion in the year prior to application, rated by an international independent credit rating organization, and not be a strategic shareholder, major shareholder or founding shareholder in any credit institution in Viet Nam.

4.123. From 2007, legislative changes have been undertaken in line with the banking sector strategic goal of reaching parity with leading ASEAN countries by 2020, and for fully implementing GATS commitments on banking services by 2011.²²² As from 1 April 2007, foreign credit institutions have been permitted to establish a commercial presence in Viet Nam in a number of forms including representative offices, branches of foreign commercial banks, commercial joint-venture banks with foreign capital contribution not exceeding 50% of charter capital, and banks with 100% foreign-owned capital.²²³ Restrictions on deposit-raising activities in local currency (VND) of foreign bank branches were removed on 1 January 2011, giving foreign bank branches national treatment. A 100% foreign-owned bank is accorded full MFN and national treatment with respect to establishment of commercial presence. Since accession, foreign credit institutions have been allowed to issue credit cards on a national treatment basis. The authorities indicated that the remaining restrictions are in line with the reservations in the WTO, including restrictions on the equity participation of foreign investors in commercial banks of Viet Nam²²⁴, and restrictions on the opening of transaction offices outside the head office of a foreign bank. The authorities consider that the presence of foreign financial institutions contributes not only to expanding and deepening its financial market, but also to enhancing competitiveness. In this context, domestic financial institutions are expected to adjust, innovate, and strengthen operational management and corporate governance. The prospect of greater competition from foreign banks should also improve the quality of banking in Viet Nam although the transition to a fully competitive market may take time.²²⁵

4.124. Upon its WTO accession, Viet Nam progressively brought its regulatory regime for foreign bank branches, including minimum capital requirements, into line with commonly accepted international practice. The same legal capital requirements for foreign and domestic bank branches were set in 2008, and revised 2010 and end 2011.²²⁶ A key condition for establishing a branch of a foreign commercial bank in Viet Nam is that the parent bank should have total assets of more than US\$15 million at the end of the year prior to application; this threshold has been raised to ₫3 trillion (about US\$154 million) from ₫1 trillion (about US\$50 million) for a joint-venture bank, an SOCB, a cooperative or investment bank, and ₫5 trillion for development and social policy banks; minimal capital requirements for non-bank credit institutions range from ₫0.1 billion (Local People's Credit Fund) to ₫3 trillion (Central People's Credit Fund). As required by SBV regulations, small banks have been raising additional charter capital to meet the increased minimum capital requirement of ₫3 trillion since the end of 2011, a deadline extended one year because 18 smaller

Article 8 of the Law on Credit Institutions; Deposit Insurance of Vietnam online information. Viewed at: <http://www.div.gov.vn/Default.aspx?tabid=175&News=2042&CategoryID=4>.

²²¹ State Bank of Viet Nam Circular No. 10/2011/TT-NHNN, 22 April 2011.

²²² Document titled *Diagnostic Report on the Banking Sector in Viet Nam* prepared for the State Bank of Viet Nam, June 2010.

²²³ The State Bank of Viet Nam granted licences to wholly foreign owned banks for the first time in 2008. For more information on market access issues see WTO document WT/ACC/VNM/48, 27 October 2006; Vo Tri Thanh and Pham Chi Quang (2008); and U.S. Commercial Service (2011).

²²⁴ The shareholding of a single strategic investor and affiliated persons of foreign strategic investors is limited to 15% of the charter capital of a joint-stock Vietnamese bank, or 20% if specific approval is given by the Prime Minister, and the combined share of all foreign investors to 30% (Decree No. 69/2007/ND-CP on the share buying of foreign investors in Vietnamese commercial banks (Paragraph 1, Article 4). Some Vietnamese banks have already sold up to 20% of their charter capital to foreign strategic investors (e.g. HSBC, MayBank, Société Générale, United Overseas Bank, Standard Chartered Bank, ANZ, Sumitomo Mitsui Financial Group, Deutsche Bank) under the Prime Minister's approval (State Bank of Viet Nam, 2010; World Bank Investing Across Borders online database. Viewed at: <http://iab.worldbank.org/Data/Explore%20Economies/Vietnam#/Investing-across-sectors>; and Working Group of Economic and Commercial Counsellors of the EU, 2011).

²²⁵ EIU (2012d), *Financial services - Vietnam*.

²²⁶ Decree No. 141/2006/ND-CP on the list of legal capital of credit institutions, as amended and supplemented by Decree No. 10/2011/ND-CP, 26 January 2011.

banks were unable to meet the requirement.²²⁷ These conditions are considered to be prudential in nature.

4.125. The central bank, the State Bank of Viet Nam (SBV), is the main financial regulatory agency and the sole supervisory agency; the SBV, a ministerial-level agency of the Government, does not seem to be entirely independent, as it continues to operate under government oversight.²²⁸ A June 2010 Law on the State Bank of Viet Nam (effective 1 January 2011), which confirms its independence in the implementation, administration, and the selection of monetary instruments, is considered a big leap by the authorities. The duties and power of the central bank were adjusted and expanded to be more in line with practical requirements, thus increasing the authority of the SBV in monitoring monetary policy instruments. More specifically, the 2010 Law expanded SBV's independence in some key areas of operation, such as the provision of liquidity support, monetary policy, the management of foreign currency reserves and foreign exchange rates and issuance of banking licences, though its actions are subject to prime ministerial approval. It also confirmed its authority in overall banking inspection and supervision involving the whole process of monitoring the secured operations of credit institutions, i.e. from licensing to the development of safety regulations, monitoring, performance supervision, and intervention when problems arise, and handling institutions in danger of collapse.²²⁹ It specified the SBV's accountability to the National Assembly, a step towards increased transparency in the decision-making process. Supervisory and inspection functions over the financial sector are shared between the SBV, in charge of the monetary and banking sector, and the MOF for securities and insurance (section 4.6.4.2).²³⁰ A National Financial Supervisory Commission provides advice to the Prime Minister for coordinating the national financial market supervision (banking, insurance, securities) and assistance for monitoring the national financial market.

4.126. To ensure the stability of the financial sector and promote its effectiveness, the IMF, the World Bank, and other international donors assist Viet Nam to implement reforms (see below) focused on the restructuring of joint-stock banks, restructuring and privatization of the SOCBs, improving the regulatory framework, and enhancing transparency.²³¹ The SBV has introduced more transparency in the system and to the public, as seen by the amount of data and information provided on its website and media coverage. However, it still lags behind its peers in the region.²³² In 2011, an independent auditing company (Ernst & Young) assisted the SBV in its self-assessment of compliance with the 25 Basel Core Principles (BCPs). In 2012, the Government signed an agreement with the IMF and the World Bank on the implementation of the Financial Sector Assessment Program (FSAP) of Viet Nam in 4 phases (from October 2012 to May 2013).²³³ One of the main components of the FSAP is to assess the compliance with the 25 BCPs. Regarding Basel II standards, an SBV schedule provides for all standardized norms to be implemented by 2015. By May 2013 the SBV was examining the feasibility of applying some Basel III rules/standards (e.g. the liquidity coverage ratio already included in a draft Circular on prudential ratios) while the implementation of other standards/rules would depend on the capacity of credit institutions, supervisory capability of the SBV and the readiness of the stakeholders in the market.

²²⁷ World Bank (2011).

²²⁸ The authorities indicated that it is necessary to separate independence in terms of mechanism and organizational structure, from independence in terms of operation (U.S. Commercial Service, 2011).

²²⁹ Until recently the concept of bank supervision as a tool for promoting the "safety and soundness" of the banking sector through managing risk was not enshrined in the legal/regulatory framework largely due to over-emphasis on compliance with laws and regulations, particularly those related to achieving monetary policy objectives (e.g. interest rates controls and lending limits). Until 2010, the SBV controlled interest rates on loans and deposits; a primary function of bank supervision activities was to verify compliance with these controls (State Bank of Viet Nam, 2010).

²³⁰ Until recently it seems that there was a lack of clarity and information regarding how different bodies involved in supervision activities should coordinate, collaborate, and share information. The authorities clarified that the responsibilities of the Deposit Insurance Agency of Viet Nam (DIV), a state-run financial institution protecting the legitimate right and interests of depositors and contributing to the sound operation of banking system, were supplementing rather than overlapping the operations of the SBV (State Bank of Viet Nam, 2010; and Prime Minister Decision No.218/1999/QĐ-TTg, 9 November 1999).

²³¹ Other ongoing projects aim to modernize the interbank market, create an international accounting system, and allow outside audits of major Vietnamese banks.

²³² World Bank (2011).

²³³ According to the BIS this self-assessment has proven helpful for authorities "to identify regulatory and supervisory shortcomings and set priorities to address them". The FSAP has been a useful analytical tool to understand strengths, weaknesses, and risks in the financial sector; it has been carried out in over 120 countries (State Bank of Viet Nam, 2010).

4.127. Since 2012, action has been taken in several areas (e.g. restructuring of the financial-banking system, financially weak banks, dealing in bad loans) to address the banking sector's safety and soundness issues.²³⁴ The June 2010 Law on Credit Institutions (effective 1 January 2011) contains provisions to enhance the operational soundness of credit institutions in line with international standards and practices. A new capital adequacy ratio (CAR) requirement of at least 9% was introduced in October 2010.²³⁵ According to the authorities, most of the credit institutions have complied with this requirement, and in 2012 the overall CAR was 13.7% (SOCBs at 10.28%, joint-stock commercial banks at 14%, joint-venture banks at 31.7%, foreign bank branches 30.7%, entirely foreign-owned banks at 20.4%).²³⁶ By May 2013, the SBV was developing a Circular for regulating prudential ratios in operations of credit institutions based on Basel I and II regulations; they include 6 prudential ratios (the minimum CAR, the credit limit, the affordability rate, the maximum rate of short-term funds for loans, the capital contribution limit, and the outstanding loans to total amount of deposits) and 5 management items related to the safety ratings. Banks are required to guarantee all dong deposits; the maximum insured amount is ₫50 million (nearly US\$3,000) per account or individual per bank. The effectiveness of deposit insurance has not yet been tested. Vietnamese banks do not have BIS-tier ratings. All banks are required to establish controlling committees and institute internal audit functions, though it seems that, in practice, prudent banking practices are not always followed.²³⁷ Increasingly, more SOCBs are audited by independent auditing firms.

4.128. Efforts have been made to address the unusually rapid growth in bank lending intended to finance economic expansion, as well as issues relating to the supervision of credit extension.²³⁸ According to Government data, between 2008 and 2011 the share of total outstanding loans to GDP rose from 90.2% to 111.6%, while according to SBV estimates based on Vietnamese accounting standards and loan classification, the share of NPLs to total outstanding lending increased²³⁹ from 2.1% to 4.1%.²⁴⁰ In 2012, NPLs accounted for 20% (3.6% in 2008) of outstanding loans of financial companies and financial leasing companies, 4.7% (1.9% in 2008) of those of joint-stock commercial banks, 3.2% (2.5% in 2008) of those of SOCBs, and 2.3% (0.6% in 2008) of joint-venture foreign banks and 100% foreign-owned banks. Many of the NPLs were, *inter alia*, due to the economic slowdown of 2011, slow growth of industry and private consumption, a significant increase of inventories, weak financial capabilities of firms, losses from property speculation, inefficient SOEs, the high interest-rate regime put in place in 2011, and lack of experience in dealing with a surge in NPLs.²⁴¹ Deterioration might have been worse without the 2009 fiscal stimulus measures (including interest rate subsidies), which made it easier to refinance existing loans (Box 1.1). In 2007, the SBV introduced rules for NPLs classification²⁴², which

²³⁴ Circular No. 13/2010/TT-NHNN, 20 May 2010; and World Bank (2011).

²³⁵ World Bank (2011).

²³⁶ Furthermore, the ratio of short-term capital used as long-term loans rose from 7.58% (April 2012) to 16.81% (September 2012). The credit-to-deposit ratio was 90.9% in September 2012, down from 94.7% in late April 2012 (*Saigon Times*, "Banking system health declining", 11 November 2012. Viewed at: <http://english.thesaigontimes.vn/Home/business/financial-markets/26485/> [26 November 2012]).

²³⁷ U.S. Commercial Service (2011).

²³⁸ State Bank of Viet Nam (2010).

²³⁹ This rise was partly due to the near bankruptcy and subsequent default of the Vietnam Ship Building and Industry Group (Vinashin), which may represent as much as 4% of outstanding loans in the banking system (U.S. Commercial Service, 2011).

²⁴⁰ In 2012, the authorities acknowledged that they had no reliable estimate of the magnitude of NPLs. Should the SBV loan classification regulation be upgraded to international standards and provisioning rules, and enforced effectively, the NPL ratio of the banking sector would be significantly higher. Some analysts estimate that NPLs could account for 15-20% of outstanding loans (<http://exporthelp.vn/index.php/financial-banking/item/251-trade-and-project-financing>). By 2011, only three commercial banks were accredited by the SBV to apply Article 7 of Decision 493 on loan classification, which is closer to international method of calculating NPLs (World Bank, 2011; IMF, 2012; U.S. Commercial Service, 2011; EIU online information, "The authorities turn their attention to the banking sector", 21 June 2012. Viewed at: <http://country.eiu.com/article.aspx?articleid=1279133712&Country=Vietnam&topic=Economy> [12 July 2012]; and *Reuters*, "Vietnam cbank says 8.82 pct of loans are bad, pledges action", 13 November 2012. Viewed at: <http://www.reuters.com/article/2012/11/13/vietnam-bank-loans-idUSL3E8MD0VT20121113> [7 February 2013]).

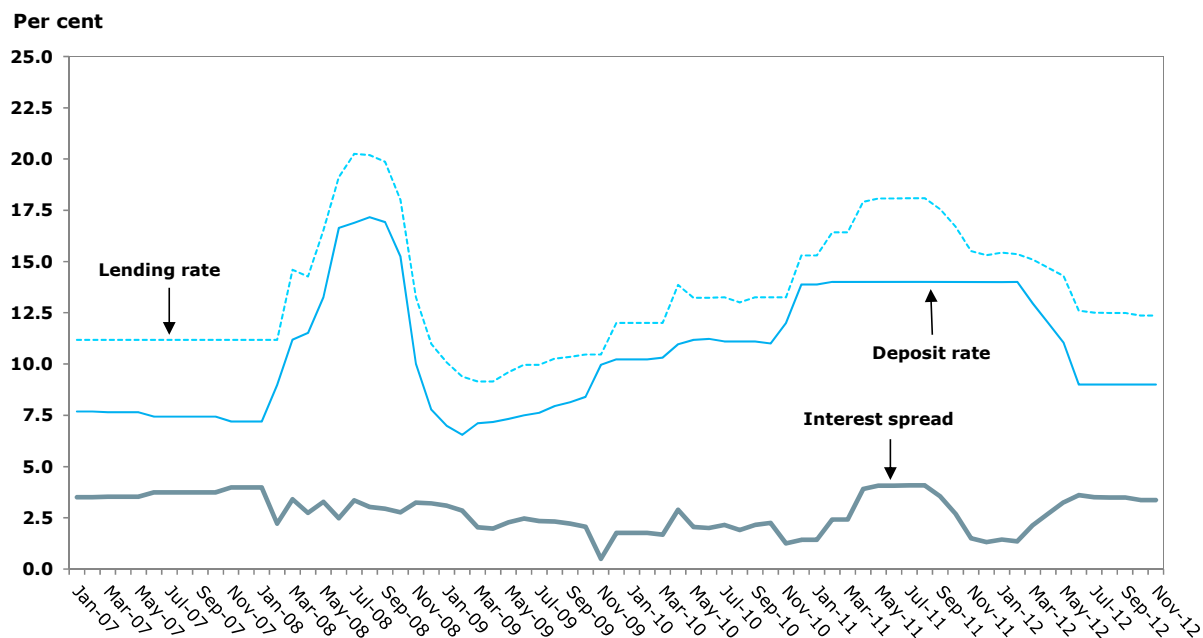
²⁴¹ EIU online information, "The authorities turn their attention to the banking sector", 21 June 2012. Viewed at: <http://country.eiu.com/article.aspx?articleid=1279133712&Country=Vietnam&topic=Economy> [12 July 2012].

²⁴² Viet Nam has one of the highest levels of non-performing loans in Southeast Asia (*Reuters*, "Vietnam cbank says 8.82 pct of loans are bad, pledges action", 13 November 2012. Viewed at:

approach international standards; it also allowed banks to accelerate loan terms and gave them more discretion in setting penalty interest rates on overdue debts.²⁴³ Since December 2008, all financial institutions have instituted internal credit rating and risk-assessment mechanisms. As from 2011, the authorities have aimed to slow the growth in domestic credit; in 2011, they set a target ceiling of 20% for credit growth, which was revised in 2012, to 17% for healthy institutions, 15% for "average operation" institutions, 8% for "below average operation" institutions, and zero for weak institutions.

4.129. According to IMF data, Viet Nam's interest rate spread ranged from 0.5 percentage points (November 2009) to 4.1 (July 2011) or from 2.7% (2009) to 4.9% (10 first months of 2012) on a yearly basis according to the authorities (Chart 4.4). The authorities indicated that the interest spread fluctuates without sudden rises or drops, depending on business conditions, operating costs, risk-management capabilities of each credit institution to ensure secured and efficient operations. Since early 2010, the SBV has allowed commercial banks greater flexibility in setting lending interest rates, but it seems that banks do not have completely free rein (Chapter 1), and this impedes their ability to fully price-in risk. The authorities indicated that the State does not intervene in the lending activities of credit institutions and that, due to the limited development of the currency market in Viet Nam, the difficult context of the world economy, and the domestic macro-economy in recent years, direct monetary policy tools have been used to ensure the smooth currency market operations, and liquidity for banks, contributing to the achievement of the objectives of macroeconomic stability and inflation control. In addition, the rights of credit institutions on fixing interest rates for raising capital are stipulated in the Law on credit institutions (Article 91, paragraph 1), but in extraordinary cases the SBV has the right to impose interest rates temporarily (section 1.4.1.1). State-directed lending under non-commercial criteria remains a source of concern for state-owned commercial banks (SOCBs), which are licensed to operate as commercial banks (sections 3.3.4 and 3.4.1).²⁴⁴ The authorities indicated that only two state-owned banks implement the preferential credit policies directed at supporting economic policies (Viet Nam Development Bank) and social policies (Viet Nam Bank for Social Policy) for, *inter alia*, the poor, remote areas, and agriculture (section 3.4.1).

Chart 4.4 Interest rate spread, January 2007–November 2012



Source: International Monetary Fund online information. Viewed at: <http://elibrary-data.imf.org/> [16/04/2013].

<http://www.reuters.com/article/2012/11/13/vietnam-bank-loans-idUSL3E8MD0VT20121113>

[7 February 2013].

²⁴³ U.S. Commercial Service (2011).

²⁴⁴ U.S. Commercial Service (2011).

4.130. The March 2012 Scheme for Restructuring the System of Credit Institutions in the Period 2011–2015 envisages the development of a modern, sound, and efficient operation of the financial sector, compliant with international banking standards and practices.²⁴⁵ The plan prescribes specific measures for SOCBs and commercial banks, as well as for sound temporary liquidity shortage, and weak banks. Concerning SOCBs it, *inter alia*, provides for raising their capital (including from the Government) to meet Basel II requirements by 2015, and reducing their NPL ratio to less than 3%, according to domestic standards. The Plan also lists ways to strengthen credit institutions, financially and operationally via, *inter alia*, the write-off of bad debts stemming from directed loans through the budget, reduction of the credit-to-deposit ratio to 85% at most by 2015, and the gradual withdrawal of SOEs' shareholdings in the financial sector. In 2012, comprehensive inspections of commercial banks were conducted, and nine were identified as priority for restructuring; so far, three banks have been merged, one bank incorporated, three banks have had their restructuring plans approved, one bank will be merged, and the restructuring plan of one remaining bank was being considered in May 2013. In 2013, the SBV was continuing work to, *inter alia*, prepare a scheme for dealing with bad debt, establish a Viet Nam Asset Management Company (VAMC), and finalize a proposal on Banking Development Strategy up to 2020, for the Prime Minister's approval.

4.131. Viet Nam's capital markets, although still relatively under-developed, have grown in importance as sources of finance in recent years. However, the country's two stock exchanges, Ho Chi Minh City (HOSE, formerly HOSTC), and Hanoi (HNX, formerly HASTC), have suffered a boom-and-bust cycle since 2007 that has hit investor confidence. Foreign-invested enterprises now have the right to transform into local shareholding companies and be listed on the local stock market. There are around 100 brokerage firms in Viet Nam. The leading firms, in terms of brokerage market share, include Sai Gon Securities (10.9% market share as of 3rd quarter 2012) and Ho Chi Minh City Securities (12.5%).²⁴⁶ At the end of 2012, 308 (275 in 2010) stocks were listed in the HOSE with total market capitalization of over ₫678 trillion, and 395 (363 in 2010) companies were listed in the HNX with total market capitalization of approximately ₫86 trillion.²⁴⁷ The majority of listed firms are former SOEs that have undergone partial privatization (equitization). In 2009, a formal over-the-counter (OTC) equity market were established for unlisted firms that are deemed to be "public" (unlisted public companies, UPCOM), as well as a separate trading floor for government bonds. Foreign equity in listed and UPCOM Vietnamese companies is limited to 49%, except for banks, which are subject to 30% ownership limit. The State Securities Commission (SSC) under the MOF is, *inter alia*, in charge of direct regulation and supervision of activities in securities and securities market, and management of public services in securities and the securities market, in accordance with applicable laws.²⁴⁸

4.132. Corporate governance in the banking sector remains at an early stage as, *inter alia*, banks' Boards of Directors do not provide a strong framework for effective oversight of company management and protection of stakeholder rights.²⁴⁹

4.6.4.2 Insurance

4.133. Viet Nam's insurance market has made great progress both in quantity and quality. Although still small compared with that in many other Asian countries, since WTO accession it has been growing rapidly from a low initial base, driven by the growing presence of foreign companies, which has spurred local firms to become more competitive.²⁵⁰ Between 2007 and 2013 (May)

²⁴⁵ For more information on the banking reform plan see IMF (2012), Box 6.

²⁴⁶ EIU (2012d), *Financial services - Vietnam*.

²⁴⁷ U.S. Commercial Service (2011).

²⁴⁸ State Securities Commission online information. Viewed at: http://www.ssc.gov.vn/portal/page/portal/ssc_en/int/fd.

²⁴⁹ There seems to be a lack of clarity regarding the roles of boards of directors, supervisory boards and boards of management. The accountability of bank boards and management are limited by many SBV regulations, decrees, decisions, and directives, which prescribe policies and procedures over a wide range of banking operations and leave little initiative or discretion to individual bank managers (State Bank of Viet Nam, 2010).

²⁵⁰ A series of state-owned insurance firms like the Vietnam Insurance Corporation (Bao Viet), Bao Minh, PetroVietnam Insurance (PVI) have performed initial public offerings (IPO) and sold their stocks to foreign strategic partners (Pricewaterhouse Coopers, 2008; Working Group of Economic and Commercial Counsellors of the EU, 2011; EIU, 2012d, *Financial services - Vietnam*; and online information. Viewed at: http://blog.doingbusinessinvietnam.com/2007/10/revolution-in-insurance-market_05.html).

licences were provided to eight new non-life insurance companies, nine new life insurance companies, and four brokerage firms. At end 2011, there were 29 non-life insurance enterprises, of which 2 SOEs, 15 joint stock (with former SOEs), and 10 foreign-invested; domestic firms, led by Bao Viet (74.2% of shares with MOF), the state-owned PetroVietnam Insurance (PVI), and the joint-stock Bao Minh (64.7% state-owned), control the bulk of the market. There were 32 representative offices of foreign insurance firms in 2012.²⁵¹ At end 2011, 14 life insurance firms were operating in Viet Nam. There is a relatively high concentration in the insurance market.²⁵² According to the authorities, between 2003 and 2010 the total revenue of the industry grew by an average annual of 18.5%, and revenue from premiums and investment activities by 16.7% and 33.3%, respectively. In 2010, insurance premiums accounted for 1.98% of GDP; life and non-life insurance account for a roughly even shares of premiums. During 2007-12, the operations of all insurance companies were profitable.

4.134. There has been significant regulatory change in the insurance sector. Foreign-invested insurance companies are accorded access to information on measures relating to or affecting the supply of insurance services in Viet Nam on a national-treatment basis.²⁵³ In the event that the licensing criteria are inconsistent or incompatible with Viet Nam's GATS commitments, the commitments would prevail. Since January 2008, foreign-invested companies have been allowed to supply compulsory insurance services (including motor third-party liability coverage). The amended Law on Insurance Business, effective 1 July 2011, aims to align the current insurance legislation more closely with international practices and to codify some of Viet Nam's GATS commitments.²⁵⁴ A December 2011 Decree, effective 15 February 2012, covers the provision of cross-border insurance services, establishment and operation of foreign insurance branches in Viet Nam, and legal capital requirements (see below).²⁵⁵ A range of regulations, circulars, and guidelines were issued to promote insurance in new sectors (e.g. compulsory fire and explosion insurance). The authorities indicated that life (or other) insurance purchased from domestically owned companies does not involve preferential personal tax treatment for contributions and benefits.

4.135. Insurance companies (particularly the foreign-invested ones) have set up strict risk-management and internal control process.²⁵⁶ The Insurance Supervisory Authority under the MOF, which ensures supervision and implementation of operational requirements of the sector, conducts an average of nine inspections each year to detect and deal with violations in the insurance industry; the main violations include appointment of unqualified personnel, capital investment, and off-the-book reserved funds. Legal capital requirements are: ₫300 billion for non-life and for health insurance companies; ₫400 billion for non-life and for health re-insurance enterprises; ₫600 billion for life insurance enterprises; ₫700 billion for life and for health re-insurance enterprises; and ₫1.1 trillion for enterprises operating life, non-life, and health re-insurance simultaneously.²⁵⁷

4.136. Under the national strategy for the development of the insurance market between 2012 and 2020, the legal framework is to be gradually completed to help insurers raise governance to international standards.²⁵⁸ Weak firms are to be restructured by 2015, and proper policies issued to help firms ensure capital security, risk control, and information transparency between 2016 and 2020. Insurers are urged to restructure investments and products, supplement capital to match risk levels, and assure payment capacity in every phase of their operation process. The MOF plans to further restructure the insurance sector by, *inter alia*, classifying insurers into four groups: those with good liquidity and profitable business, those meeting prescribed solvency ratios but

²⁵¹ *Talkvietnam*, "State insurers muddle through in tough times", 20 March 2012. Viewed at: <http://talkvietnam.com/2012/03/state-insurers-muddle-through-in-tough-times/> [13 November 2012].

²⁵² In 2011, the five largest non-life insurers, Bao Viet, PetroVietnam Insurance, Bao Minh, PJICO, and Post and Telecommunication Insurance (PTI) accounted for 23.9%, 20.6%, 10.4%, 9%, and 5.3% of total non-life insurers' premiums, respectively. The three largest life insurers, Prudential Vietnam Assurance, Bao Viet Life, and Manulife Vietnam, accounted for 37.5%, 28.2%, and 11.1% of total life insurers premiums, respectively (MOF, Association of Vietnamese Insurers and Axco/Insurance Information Institute data cited in EIU, 2012d, *Financial services – Vietnam*).

²⁵³ WTO document WT/ACC/VNM/48, 27 October 2006.

²⁵⁴ A.M. Best Company (2012).

²⁵⁵ Decree 123/2011/ND-CP of December 2011 cited in A.M. Best Company (2012).

²⁵⁶ Section 9, Chapter II of Circular 125/2012/TT-BTC.

²⁵⁷ Decree No 46/2007/ND-CP and Decree 123/2011/ND-CP.

²⁵⁸ *Talkvietnam*, "State insurers muddle through in tough times", 20 March 2012. Viewed at: <http://talkvietnam.com/2012/03/state-insurers-muddle-through-in-tough-times/> [13 November 2012].

facing challenges, those unlikely to meet minimum solvency levels, and insolvent companies. On 6 December 2012, the Prime Minister signed Decision No 1826/QĐ-TTg on approving the Project Restructuring Securities Market and Insurance Enterprises. Under the national strategy, the sector is to contribute 3%-4% of GDP by 2020.

4.6.5 Communications

4.6.5.1 Telecommunications

4.137. Viet Nam has made great strides in upgrading its telecommunications systems.²⁵⁹ However, market growth is expected to slow as the industry begins its transition to a mature market, bringing a new set of challenges to operators, including increasing usage, upselling (e.g. moving customers from pre-paid (95% of subscriptions) to post-paid), and increasing media/data-rich services.²⁶⁰ Information (media) and telecommunications services account for 1.2% of GDP and 0.5% of total employment, indicating that labour productivity in the sector is more than double the national average (Table 1.2); labour productivity increased by 32.3% between 2007 and 2011.²⁶¹ Following a period of fairly rapid growth, almost all communes now have at least limited access to the fixed-line network, compared with less than 60% a decade ago. Mobile phone services continue to contribute to most of the revenue of local telecommunication companies.²⁶² The mobile penetration rate is estimated to be around 70-75%; mobile-phone service providers have been cutting tariffs and subscription fees in the face of rising competition, making it harder to raise sufficient funds to develop their networks.²⁶³ Broadband penetration is low (7% in 2011), but by 2016, more than 16% of the population is expected to be connected to the Internet via broadband.

4.138. The Government has a strong interest in the telecoms sector, which is seen as a public service that the State should control to ensure equal and affordable access for its citizens.²⁶⁴ According to the authorities, participation in all market segments is open except for: listed telecommunications services with network infrastructure in which the State has dominant share-ownership or capital contribution; services subject to cross-ownership regulations; and areas with foreign investment limitations set in accordance with Viet Nam's commitments under relevant international treaties.²⁶⁵ The market, which is gradually opening, in line with Viet Nam's GATS commitments, is dominated by two state-owned operators, the Vietnam Post and Telecommunications (VNPT), and the Ministry of Defence-owned Viettel; jointly they control more than 80% of the market in each of the telecoms subsectors. In May 2013, the relevant Ministries were preparing plans in line with Prime Minister's Decision No. 929/QĐ-TTg approving the scheme of restructuring the state-owned enterprises, focusing on economic corporations and groups for 2011-15. VNPT holds the largest market share in both fixed-line and mobile networks, and is the parent company of two mobile-phone operators; in 2010, its revenues accounted for 64.8% of total net revenue of the post and telecommunications sector.²⁶⁶ More specifically, out of eight licensed operators, VNPT remains the major landline telephone carrier in this market with a market share of about 71% as of end 2012 (and the country's second-largest company, just after the Vietnam Bank for Agriculture and Rural Development in 2007), followed by Viettel with almost 28%. As of end 2012, there were six licensed mobile-phone network operators in Viet Nam, as well as virtual and infrastructure-leased service providers²⁶⁷; nearly 90% of the mobile phone

²⁵⁹ Between 2010 and 2011, Viet Nam's ranking in the ITU Development Index rose from 86th to 81st out of 155 countries (International Telecommunication Union, 2012).

²⁶⁰ The mobile phone market was saturated in 2010 with a penetration rate of 174.4% (Pricewaterhouse Coopers, 2011; and EIU, 2011), *Telecoms and technology - Vietnam*.

²⁶¹ General Statistics Office of Vietnam (2011), Table 20.

²⁶² According to General Statistics Office of Vietnam data, as of December 2010, Viet Nam had approximately 170.1 million telephone subscribers (90.5% mobile and 9.6% fixed line) (U.S. Commercial Service, 2011).

²⁶³ EIU (2011), *Telecoms and technology - Vietnam*.

²⁶⁴ Chun Lee (2011).

²⁶⁵ Decision No. 55/2011/QĐ-TTg, 14 October 2011; Article 3 of Decree No. 25/2011/ND-CP, 6 April 2011, providing implementation guidelines for a number of articles of the Law on Telecommunications; and Ministry of Information and Communications Circular No. 10/2012/TT-BTTTT.

²⁶⁶ U.S. Commercial Service (2011).

²⁶⁷ These mobile phone operators were: Viettel Mobile (owned by Viettel Corporation); MobiFone (VNPT subsidiary); Vinaphone (VNPT subsidiary); Vietnamobile (owned by Hanoi Telecom, Hong Kong-based Hutchison Telecommunications International Limited); Beeline, GTTEL Mobile Joint Stock Company; and S Fone (owned by state-owned SPT). At end 2012, main companies' market share were: Viettel 45.5%; Viet Nam

market is divided between three major state-owned network operators, Viettel Mobile, MobiFone, and Vinaphone. This oligopoly situation makes it difficult for small players, as they lack the market scale or volume to compete effectively on low average revenue per user (ARPU) and narrow margins.²⁶⁸

4.139. The Ministry of Information and Communications (MIC) is the sector's policy-making and regulatory body; it, *inter alia*, sets consumer tariffs for telecommunications services and interconnection charges between operators.²⁶⁹ No independent regulatory authority is in place.

4.140. The 2001 Development Strategy for Viet Nam Post and Telecommunications Industry by 2010 with a vision toward 2020, backs development of modern infrastructure and services to match the achievements and performance levels of other advanced countries in the region.²⁷⁰ Its objectives include the supply of modern, high flux, high quality, diversified, and abundant telecoms services nationwide. The authorities mobilized large investment for the construction and development of telecommunication networks. Viet Nam's first communications satellites, Vinasat-1 and Vinasat-2 (US\$250 million and US\$206 million, respectively) were launched into orbit in April 2008 and May 2012, enhancing the capability to provide wireless transmission, broadcasting, telephone, and other services for the development of the economy. As from 2007, Viet Nam has allowed joint ventures with foreign partners to provide telecommunications services related to network infrastructure, such as telephone services, packet-switched data transmission services, circuit-switched data transmission services, telex services, telegraph services, facsimile services, and private leased circuit services.²⁷¹ Non-discrimination is guaranteed in granting access to and use of public telecommunications transport networks; public telecom services providers have an obligation to allow other public telecom services providers to interconnect with their network under equitable and reasonable conditions.²⁷² Vietnamese enterprises that are not state-owned or state-controlled are eligible for licences to provide non-facilities-based services in Viet Nam and to form joint ventures with foreign firms. The equity caps applicable to foreign investment in both fixed and mobile communications as well as virtual private networks are set at 49% in facilities-based services (i.e. infrastructure), and 70% (from 2010) only if they have passed the initial three-year investing period in Viet Nam in non-facilities-based services (i.e. telephony services with no network infrastructure).²⁷³

4.141. The November 2009 Law on Telecommunications and Radio Frequency, which entered into force in July 2010, constitutes a framework for telecommunications regulations, with many specific implementing rules and regulations to be developed in the future. The Law contains provisions for a pro-competition regulatory regime, covering abuse of market power regulation, interconnection rules, and access to essential facilities; it is expected to open up potential new opportunities for trade and investment by foreign firms, and control the aggressive promotional campaigns by mobile operators.²⁷⁴ The authorities indicated that competition in the telecommunications market should be in accordance with the provisions of both the 2004 Law on Competition and the 2009 Law on Telecommunications. Mobile phone operators may no longer own particular prefixes, and the policy could reduce the quantity of idle or discarded numbers. In May 2013, the MIC was also

Mobile Telecom Services Company (VMS-MobiFone) 22.1%; Telecom Services Company Vinaphone 20.5%; Hanoi Telecom Joint Stock Company 7.74%; and Gtel Mobile Joint Stock Company 4%. Five run global systems for mobile communications (GSM) networks (VinaPhone, MobiFone, Viettel, Vietnamobile, and Beeline), and one runs code division multiple access networks (CDMA, no longer used). Out of 87 licensed firms, the broadband market is shared amongst three major Internet service providers (ISPs): VNPT (74%), FPT Telecom (11.2%), and Viettel (9.4%) (December 2010) (U.S. Commercial Service, 2011).

²⁶⁸ EIU (2011), *Telecoms and technology - Vietnam*; and Pricewaterhouse Coopers (2011).

²⁶⁹ MIC online information. Viewed at: <http://english.mic.gov.vn/intro/Trang/MainFunctions.aspx>; and Pricewaterhouse Coopers (2011).

²⁷⁰ Pricewaterhouse Coopers (2011).

²⁷¹ Chun Lee (2011).

²⁷² Ordinance on Posts and Telecommunications enacted in October 2002, cited in WTO document WT/ACC/VNM/48, 27 October 2006.

²⁷³ Decree 121/2008/ND-CP, 3 December 2008 cited in World Bank Investing Across Borders online database (<http://iab.worldbank.org/Data/Explore%20Economies/Vietnam#/Investing-across-sectors>); and Pricewaterhouse Coopers (2011).

²⁷⁴ Working Group of Economic and Commercial Counsellors of the EU (2011); and U.S. Commercial Service (2011).

studying the possibility of mobile number portability with a set of guidelines that were to be released initially in 2011.²⁷⁵

4.142. Under the 2009 Law, the Government retains control over fixed telephone service charges but operators have the freedom to determine retail tariffs for other services. Nevertheless, dominant operators for "important" services, such as mobile services and the Internet, must pre-register their proposed tariffs with the Department of Telecommunications under the MIC before applying them.²⁷⁶ In this way, the MIC controls the retail tariff of significant market power (SMP) operators in each segment (e.g. VNPT, Viettel). All other operators set their own retail tariff, based on the market mechanism, but the MIC decides on the basic and important interconnection charges which greatly affect the telecom market.²⁷⁷ In 2010, the MIC required all mobile service providers to apply no more than a 15% discount over their previous year's tariffs; while it approved a proposal by the top three SMP mobile phone operators (Viettel, Mobifone, Vinaphone) to reduce their tariffs by up to 15%.²⁷⁸ In 2008, the average mobile phone communications tariff was US\$0.07 per minute, lower than in the Philippines, Chinese Taipei, and Malaysia, but higher than in Pakistan; Thailand; China; India; and Hong Kong, China.²⁷⁹ As of May 2013, the average rate for mobile services was approximately ₫1,280/minute while the local phone service charge is ₫200/minute. Overall, the affordability of telecommunication services seems to have improved in recent years.²⁸⁰

4.143. To meet universal services obligations (USO), since 2004 the Viet Nam Public Utility Telecommunication Service Fund (VTF) has supported the development and provision of public-utility telecommunications services (i.e. universal and compulsory telecommunications services) in regions where market mechanisms fail to deliver them on a cost-effective basis.²⁸¹ The VTF financial support consists of direct funding for the development and maintenance of public-utility telecoms services in designated regions, and soft financing to assist enterprises in building, upgrading, and expanding telecommunications infrastructure, Internet, and other facilities. All eligible operators contribute to the VTF fund.²⁸² Since 2007, their contribution has been collected at the following rates: 3% (down from 5%) on revenue from mobile telecommunications services; 2% (down from 4%) on revenue from international long-distance telephone services and international long-distance leased line services; 1% (down from 3%) on revenue from domestic long-distance telephone services, domestic long-distance leased line

²⁷⁵ Pricewaterhouse Coopers (2011).

²⁷⁶ The authorities indicated that the floor price for international calls and the system of allocation of calls by quota among six Vietnamese carriers were eliminated in January 2006. Each company has the right to decide its own international telephone service charges and must notify them to the Department of Telecommunications (Articles 54 and 55 of the 2009 Law on Telecommunications and Article 38 of Decree No. 25/2011/ND-CP on 06 April 2011; and Chun Lee, 2011).

²⁷⁷ Tariff regime under Prime Minister Decision 39/2007/QĐ-TTg cited in Ministry of Information and Communications (2009).

²⁷⁸ Pricewaterhouse Coopers (2011).

²⁷⁹ Ministry of Information and Communications (2009).

²⁸⁰ In 2011, Viet Nam ranked 106th (out of 161 countries) in the ITU Information Communications Technology Price Basket (IPB); between 2010 and 2011, its IPB value dropped from 6.4 to 6.0. ITU's IPB indice is a composite affordability measurement based on fixed telephone, mobile cellular, and fixed broadband Internet services. The IPB provides an indication of how affordable services are, across countries, and over time (International Telecommunication Union, 2012; and ITU press release, "Broadband prices drop by more than 50%; high-income economies of Europe and Asia-Pacific are most affordable markets; fast Internet still out of reach in developing world", 16 May 2011. Viewed at: http://www.itu.int/net/pressoffice/press_releases/2011/15.aspx [15 November 2012]).

²⁸¹ Traditionally, VNPT has been the only operator to meet the USO in both the cities and rural areas; new operators have been chosen to provide services only in areas that are profitable (e.g. Hanoi and Ho Chi Minh City). VNPT has always cross-subsidized domestic services with revenues from international and domestic long-distance services, including USO, but with the declining price trend and emerging competition from new entrants, there has been concern about the gradual 'drying-up' of funding sources for universal services. The new operators, however, were concerned about being overcharged for universal services because their USO contribution was collected as a mark-up of the interconnection charges payable to VNPT (Prime Minister's Decision No. 191/2004/QĐ-TT, 8 November 2004; and Chun Lee, Roy, 2011).

²⁸² The 12 enterprises that have been obliged to contribute financially to the VTF since 2005 are: VNPT; Viet Nam Mobile Telecom Services Company; Viettel Group; EVN Telecom; Saigon Post and Telecommunications Joint Stock Company; Dong Duong Telecom Joint Stock Company; CMC Telecom Infrastructure Joint Stock Company; Gtel Mobile Joint Stock Company; FPT Telecom Joint Stock Company; Viet Nam Multimedia Corporation; and Viet Nam Maritime Communication and Electronics LLC (VISHIPEL).

services. The VNPT, Viettel, EVN Telecom, VISHIPEL receive financial support from the VTF, which, by and large, completed its specific objectives and targets during 2005-10.

4.144. Despite Viet Nam's success in telecommunications structural reform, there are still matters to be addressed, including continuing structural reform through market liberalization, state dominance in the sector, creation of an independent regulator, and reducing regional development disparity in access to telecommunication services.²⁸³

4.6.5.2 Postal services

4.145. Viet Nam's postal sector has undergone considerable regulatory and structural improvements. The 2002 Ordinance on Posts and Telecommunications constitutes the basic legal framework for a stable and developed postal market, stimulating other operators beside Viet Nam Post to run a postal service business. The 2010 Postal Law, based on market-oriented economic principles, promotes international integration, creating more opportunities to new operators. Postal operators are either specialized in postal services or doing business in several sectors (mostly in transportation); at end 2012, there were 74 licensed or certified postal operators, of which 24 providing international postal services, 3 foreign-invested enterprises, and 5 foreign postal enterprises hiring domestic enterprises as agencies.²⁸⁴ Although the postal market was open, in 2012 it was dominated by Viet Nam Post (36.3% of the market), DHL-VNPT (15.4%), SPT (8.9%), Viettel Post (8.2%), and TNT-Viettrans Express Worldwide Ltd (8.2%); Viet Nam Post, a VNPT subsidiary, also provides the USO postal services. Besides Viet Nam Post, other postal operators mainly offer express delivery services focusing on developed regions, big cities, and industrial parks. Cross-border services of international couriers (e.g. FedEx, OSC, Airborn) are provided under agent contract with domestic postal operators. The authorities envisage promoting fair competition and gradual deregulation, as well as passing a new legal framework ensuring a stable and orderly postal market.

4.6.5.3 Broadcasting and film industry

4.146. The Government controls, *inter alia*, the programming of all broadcast media, through the MIC. The state-controlled national television provider, Vietnam Television (VTV), operates a network of nine channels with several regional broadcasting centres. VTV's film production company, the Vietnam Television Film Center (VFC), makes television movies and mini-series; it seems that only about 30% of its entertainment programming is made locally and the rest is imported and dubbed in Vietnamese. Vietnam Multimedia Corporation or Vietnam Television Corporation (VTC), state-owned corporation under the MIC (previously Ministry of Post and Telematics), operates five national channels and is the only provider of digital terrestrial television (DTT), a subscription service. In 2010, about 3.3 million satellite dishes were installed (or 18% of households with television set).²⁸⁵ Most people in large cities subscribe to a cable network; the largest network is VCTV (a division of VTV), followed by Ho Chi Minh City Television (HTV), Hanoi TV (HCTV), and Saigon Tourist Cable Service (SCTV) - a joint venture between VTV and Saigon Tourist company.

4.147. Viet Nam's pay television policy is, *inter alia*, aimed at: facilitating the transmission of radio and television channels to serve the political, information, and propaganda tasks of the Party and the State; encouraging the development of domestic programmes and channels to contribute to raising people's intellectual level, meeting their "healthy" cultural and spiritual needs, conserving the nation's historical and cultural traditions, and building and protecting the socialist Vietnamese Fatherland; closely managing the contents of pay television programmes channels under the press law; managing technical infrastructure for pay television under the telecommunications law; and ensuring the development of the pay television market with fair competition while meeting people's diversified needs for entertainment suitable to Viet Nam's

²⁸³ Chun Lee (2011).

²⁸⁴ Operators specialized in providing postal services include: Viet Nam Post (VNPost), P&T Express (PT-EMS), Viettel Post Jsc (Viettel Post), Hop Nhat Viet Nam Jsc, Noi Bai trading and express delivery (Netco), etc. Those doing business in several sectors include: Hai Phong Bus Transportation Ltd; Hoang Long Transportation Ltd, Mai Linh Express Transportation Jsc, Viet Duc Transportation Ltd, etc. (NSICT/MIC, 2011).

²⁸⁵ NSICT/MIC (2011).

"practical conditions".²⁸⁶ In line with these policy objectives as from 15 May 2013, a Prime Minister's Decision has required pay television broadcasters (movie channels; news channels; channels offering scientific and education programmes and documentaries; and channels offering entertainment, sport, and music) to provide translation into Vietnamese by a licensed press agency before airing, with the exception of live sporting events. The Government indicated that international news channels were also exempt from the translation requirement.²⁸⁷ Nevertheless, it seems that all foreign news channels are currently broadcast with a half-hour delay, to allow sensitive content to be blocked, if necessary. The Decision also states that commercials running on foreign channels must be made in Viet Nam. Pay television groups consider the Decision's requirements as, *inter alia*, impractical, and prohibitively expensive. Vietnam Satellite Digital Television Company (VSTV), a pay-tv operator launched by French broadcaster Canal+ and VTV, suspended retransmission of 21 TV channels including CNN, BBC, and Star World as soon as the 2013 Decision took effect.

4.148. Viet Nam's film industry has failed to deliver competitive products in a foreign-dominated market, despite substantial investment.²⁸⁸ The 2006 Cinematography Law was amended in 2009 to, *inter alia*, remove certain conditions tied to film imports.²⁸⁹ Since July 2010, the Amended Cinematography Law has required local film showings to be at least 20% of local cinemas' total film showings, and have priority during the popular 6 pm to 10 pm sessions every day.²⁹⁰ According to the Law, cinema owners must screen at least two Vietnamese films in a week, but Vietnamese filmmakers often only make ten films a year (17 in 2007); in the first 6 months of 2010, local filmmakers released only 8 films, while 60 foreign films were screened at the cinemas. In line with the provisions of the Cinematography Law, the National Film Board under the Department of Cinema of the Ministry of Culture and Information (MOCI) censors or bans movies due, *inter alia*, to their sensitive and violent scenes. Between 2008 and 2011, former entirely state-owned film production and distribution enterprises were "equitized" and transformed into joint-stock or limited liability companies with state capital. The largest film importer representing 55% of total foreign films imports, is a joint-stock company. The 30% state-owned FAFILM Vietnam²⁹¹ and another two companies are now the main importers and distributors of foreign film videos.²⁹²

4.6.6 Transport

4.149. The physical infrastructure of the transport sector has been much improved in recent years, albeit trailing the rate of economic growth. Further improvements in road and port facilities

²⁸⁶ Prime Minister Decision No. 20/2011/QĐ-TTg, 24 March 2011 (<http://asemconnectvietnam.gov.vn/lawdetail.aspx?lawid=1927>) and No. 18a/2013/QĐ-TTg, 29 March 2013; *Straits Times*, "Vietnam satellite TV provider drops foreign news channels", 16 May 2013. Viewed at: <http://www.straitstimes.com/breaking-news/se-asia/story/vietnam-satellite-tv-provider-drops-foreign-news-channels-20130516>; and *Associated Press*, "Vietnam provider drops foreign news TV channels", 16 May 2013. Viewed at: <http://news.yahoo.com/vietnam-provider-drops-foreign-news-tv-channels-075347225.html>.

²⁸⁷ According to the authorities, the provisions on management of pay television do not apply to foreign broadcasting companies, therefore these companies do not have to implement any legal procedures set under the Prime Minister Decision No. 20/2011/QĐ-TTg and No. 18a/2013/QĐ-TTg. Only the press agencies holding licences of "press operation in the television industries" and satisfying the conditions set in Article 14 of Decision No. 18a/2013/QĐ-TTg are responsible for editing foreign programme channels broadcasted on pay television.

²⁸⁸ *Việt Nam News*, "Film industry tries to break Hollywood's hold on audiences", 28 November 2008. Viewed at: <http://vietnamnews.vn/Life-Style/Film/182795/film-industry-tries-to-break-hollywoods-hold-on-audiences.html> [15 November 2012].

²⁸⁹ These conditions required that the number of imported films each year by film production enterprises, Vietnam Television, and provincial-level radio-television stations should not exceed two times that of films produced by these enterprises (Cinematography Law No. 62/2006/QH11, 29 June 2006, and Law Amending the Law of Cinematography No. 31/2009/QH12, 18 June 2009).

²⁹⁰ *Việt Nam News*, "Gov't regulation supports local films", 28 June 2010. Viewed at: <http://vietnamnews.vn/Life-Style/Film/200965/govt-regulation-supports-local-films.html> [15 November 2012].

²⁹¹ FAFILM, previously the country's largest film distributor with a monopoly over video importation and distribution until 2011, imported 120 foreign films in 2011 and 170 in 2012 (until October) (*Việt Nam News*, "Foreign films fuel cinema expansion", 31 October 2012. Viewed at: <http://vietnamnews.vn/Life-Style/232112/foreign-films-fuel-cinema-expansion.html> [15 November 2012]).

²⁹² WTO document WT/ACC/VNM/48, 27 October 2006; and Motion Picture Association of America, Inc. requesting public comment on the proposed Trans-Pacific Partnership Agreement, 11 March 2009. Viewed at: <http://www.mpa.org/Resources/8bca1d1c-2d0f-443c-8ae4-25fefb96ec40.pdf> [15 November 2012].

are expected, as transport infrastructure deficiencies remain one of the key issues for steady economic and social development in Viet Nam.²⁹³ In 2012, transportation and storage accounted for 3.9% of GDP and 2.9% of total employment (Table 1.2). Labour productivity in transportation and storage increased by 87.9% during 2007-11.²⁹⁴ In the same period, Viet Nam's freight transport increased by 49.7% (volume); cargo is mostly transported by road (74.3%) and inland waterways (17.6%), and to a lesser extent by sea (7.2%) and railways (0.8%).²⁹⁵ Passenger transport grew by 54.2%.

4.150. The March 2009 "Adjustments to the Transport Development Strategy up to 2020 with a Vision toward 2030" follows an ambitious, forward-looking, and top-down planning strategy.²⁹⁶ To implement this strategy, specific policies were to be formulated for transport development; raising capital; transport industrial development; international integration and competition; reform; new sciences and technologies; and human resources development.

4.151. The authorities indicated that some new WTO-consistent regulations have been promulgated in maritime transport services business (2007), and multimodal transport services (2009).²⁹⁷ In 2007, the Ministry of Transport (MOT), together with the Ministry of Planning and Investment, developed a list of transport infrastructure projects calling for investment, especially foreign investment.²⁹⁸ Financing has been one of the main problems for developers of transport infrastructure, as conditions offered for private investors (BOTs, PPP schemes) still seem less favourable or attractive than those in other countries. Nevertheless, between October 1993 and December 2011, transport and ICT were the major beneficiaries of ADB concessional sovereign loans; they accounted for 21 projects (out of 114) and 30.7% of the financing made available by the ADB.²⁹⁹

4.152. According to the MOT, the sector's five core problems, which arise mainly from insufficient resources and inputs as well as policy, institutional, and operational inefficiencies, comprise: an incomplete and disintegrated institutional system and development plans; unsatisfactory quality and capacity of transport service; lack of quality and quantity of transport infrastructure in both urban and rural areas; insufficient state budget and other financial sources; and complications from the regional and global economy.³⁰⁰

4.6.6.1 Maritime services

4.153. Viet Nam has the highest density of vessel traffic globally; it is a gateway to the sea for landlocked neighbouring countries such as Lao PDR and the hinterlands, including north-western Thailand and south-eastern China.³⁰¹ The total tonnage of the Vietnamese fleet more than doubled between 2005 and 2010 (from 3.4 million DWT to 7.2 million DWT) making it the world's 20th largest fleet; it consisted of 579 vessels, of which 335 cargo, 142 bulk carriers, 48 petroleum tankers, and 23 chemical tankers.³⁰² The overwhelming majority of these ships are small (under 10,000 DWT each) and lack modern technology (scarcity of skilled professionals also constitutes a problem).³⁰³ The state-owned shipping company, Vinalines, accounts for close to half of the fleet's total tonnage. The average age of Vietnamese ships was about 12 years. At end 2010, several hundred ships of the Vietnamese fleet served on international routes, but few reached regions outside East and South-east Asia. The overseas cargo shipping market is dominated by foreign firms (90% cargo, 100% passengers, in 2011), which have steadily increased their shipping fees and surcharges, thus adversely affecting the international competitiveness of, *inter alia*, seafood

²⁹³ Pricewaterhouse Coopers (2008); and Working Group of Economic and Commercial Counsellors of the EU (2011).

²⁹⁴ General Statistics Office of Vietnam (2011), Table 20.

²⁹⁵ General Statistics Office of Vietnam online data (http://www.gso.gov.vn/default_en.aspx?tabid=473&idmid=3&ItemID=12778), and http://www.gso.gov.vn/default_en.aspx?tabid=473&idmid=3&ItemID=12787) as of October 2012.

²⁹⁶ Asian Development Bank (2012).

²⁹⁷ Decree No.115/2007/ND-CP, 5 July 2007, and Decree No.87/2009/ND-CP, 19 October 2009.

²⁹⁸ Decision No.1290/2007/QD-TTg, 26 September 2007.

²⁹⁹ IMF (2012).

³⁰⁰ Asian Development Bank (2012).

³⁰¹ Bharat Book Bureau (2010).

³⁰² Central Intelligence Agency online information, *World FactBook*. Viewed at: <https://www.cia.gov/library/publications/the-world-factbook/geos/vn.html>.

³⁰³ Working Group of Economic and Commercial Counsellors of the EU (2011).

companies, cashew nut exporters, and wooden furniture manufacturers. According to the Vietnam Ship owners' Association, only 8% of foreign trade is carried by the domestic fleet, and to ease the reliance on foreign fleets, it is necessary to upgrade the domestic fleet so as to handle up to 30% of imports and exports in the near future.³⁰⁴ The Master Plan on Development of Vietnam's Ocean Shipping Up to 2020 and Orientations Towards 2030 stipulates that by 2020 the Vietnamese fleet's total tonnage should reach 11.8-13.2 million DWT and the volume of goods transported should increase to 215-260 million tonnes.³⁰⁵

4.154. According to the authorities, all policies and laws concerning support (e.g. subsidies) to domestic transport companies were removed upon Viet Nam's accession to the WTO.

4.155. The Vietnam Maritime Bureau (Vinamarine) is committed to removing the Vietnamese fleet from the foreign ports' black list of ships that do not meet the safety standards and need to be examined.³⁰⁶ The October 2011 MOT Instruction No. 09 emphasized the need to strengthen measures to minimize the number of ships detained at foreign ports under PSC (Port State Control). Though the number detained dropped in 2011-12, partly due to tightened control by the state management agencies and the economic downturn, the number of Vietnamese ships examined did not (434). Vietnamese ships were mostly examined at Chinese ports (87 examined, 18 detained) and Indonesian ports (101 and 6).

4.156. Ships flying the Vietnamese flag have been given the opportunity to regain part of the domestic container shipping market, which in certain ship categories is apparently controlled by foreign shipping firms. According to the authorities, in 2011 36% of overall inland cargo transportation was undertaken by foreign vessels while the all passenger transportation was ensured by vessels flying the Vietnamese flag.³⁰⁷ Under the 2005 Viet Nam Maritime Code, priority is granted to Vietnamese ships in the carriage of cargo and of passengers and luggage between Vietnamese seaports; foreign sea-going ships may be permitted to perform this carriage whenever Vietnamese ships are not in a position to do so.³⁰⁸ A June 2012 MOT document stipulated the temporary halt of the presence of ships under foreign flags in the domestic container shipping market.³⁰⁹ From 1 January 2013, extension of expired licences and the granting of new licences to the ships under foreign flags have been suspended. In 2012, foreign-flag fleets serving inland routes included 20 ships with a total tonnage of 500,000 DWT. According to Vinamarine, there were some 1,700 ships flying the Vietnamese flag running on domestic routes; only 30 were container ships that could satisfy 30% of the demand.³¹⁰

³⁰⁴ *Việt Nam News*, "High shipping fees eat businesses' profits", 6 April 2012. Viewed at: <http://talkvietnam.com/2012/04/high-shipping-fees-eat-businesses-profits-2/> [19 November 2012].

³⁰⁵ Dynamic development of the Vietnamese shipbuilding sector was to facilitate this growth, but in 2010 the state-owned shipbuilding company Vinashin (section 4.6.4.1) ran into serious financial difficulties and failed to meet payments to some international creditors. This was a serious setback to the Government's shipbuilding development plans (Decision No. 1601/QĐ-TTg cited in Working Group of Economic and Commercial Counsellors of the EU, 2011).

³⁰⁶ According to Vinamarine, in the first six months of 2012, only 30 Vietnamese ships were detained at foreign ports (14 fewer than that of the same period of 2011). During this period 457 defects were discovered, including 92 serious defects, leading to the decisions to detain the ships; 68.82% related to equipment and facilities, 15.05% to papers and documents, and 16.13% to the crew regulations. Ship owners and crew have not been following the provisions of the International Safety Management Code (ISM) well; and some captains do not know the IMO convention (*Việt Nam News*, "Vietnamese fleet vows to escape from the black list", 20 July 2012. Viewed at: <http://talkvietnam.com/2012/07/vietnamese-fleet-vows-to-escape-from-the-black-list/> [19 November 2012]).

³⁰⁷ *Việt Nam News*, "Domestic fleet content with new regulation on container shipping market", 12 July 2012. Viewed at: <http://talkvietnam.com/2012/07/domestic-fleet-content-with-new-regulation-on-container-shipping-market/> [19 November 2012].

³⁰⁸ Foreign-flagged ships are allowed to operate in domestic routes only for: carriage of over-length cargo, over-weight cargo or other types of cargo by specialized sea-going ships; prevention of and aid in natural disasters, epidemics or for urgent humanitarian relief; and carriage of passengers and luggage from tourist passenger ships to shore and vice versa (Article 7 of Law No: 40/2005/QH11 (Viet Nam Maritime Code), 14 June 2005).

³⁰⁹ Document No. 5036/BGTVT-VT, 28 June 2012.

³¹⁰ Nevertheless, it seems that the service quality of domestic fleet is lower than that of the ships under foreign flags, especially the container ships of international well known shipping groups like Maersk or NYK Lines. Domestic ships charge higher fees than foreign ones, and most Vietnamese vessels cannot satisfy delivery-time requirements (*Việt Nam News*, "Domestic fleet content with new regulation on container shipping

4.157. Vietnamese ports have developed rapidly in recent years, and their official growth forecasts (in terms of throughput) are impressive.³¹¹ In 2009, Viet Nam's ports moved nearly 197 million tonnes of cargo (2.7 times the level in 1999), including over 5 million 20-foot equivalent (TEU) container units (5.3 times more than in 1999).³¹² Cargo handled in Viet Nam-based seaports expanded more than 20% a year during 2001-08, of which the vast majority was handled in ports in Hai Phong, Quang Ninh, and Ho Chi Minh City. Port container handling productivity is reportedly not comparable with international seaport productivity.³¹³

4.158. Most of the 80 seaports and river ports are state-owned and none has contracted port operations to international seaport management companies through a leasing contract as a result of international tender.³¹⁴ Two ports handling containers are privately owned and managed. Vietnamese seaports are subject to the supervision of the MOT, Vietnam Maritime Administration, and provincial governments. They are also subject to a diversified system of management by provincial governments and large state-owned companies such as Vinalines, Vinashin, and PetroVietnam (sections 4.4.2.2, 4.5.1, and 4.6.4.2 insurance). Some ports also operate under joint-venture agreements, but foreign companies never hold controlling stakes.

4.159. The December 2009 Master Plan on Development of Vietnam's Seaport System Through 2020, with Orientations Toward 2030 delineates a detailed and very ambitious schedule for the improvement and expansion of the country's seaports; it aims to meet market demand on cargo volume and vessel size from/to ports while maintaining the country's competitiveness in the global integration process.³¹⁵

4.160. New modern ports are incurring big losses, and problems persist in the programming of the seaport system in Viet Nam, including "unreasonable" (inefficient, irrational) investment allocation.³¹⁶ Critical decisions, like total port capacity, have been continuously altered with little regard to market supply and demand.³¹⁷ The problem of capacity under-utilization has been exacerbated by the Government's failure to complete the necessary supporting infrastructure.³¹⁸ The licence to develop multiple container terminals was allocated on administrative grounds, decoupled from market principles. Since there has been no investment to develop the ports in the north, the seaports in Hai Phong City have become overloaded. Meanwhile, the newly developed modern ports in the south, including the container port complex Cai Mep – Thi Vai opened in 2008, have not run at full capacity (up to 40% capacity) due to the lack of goods and insufficient road infrastructure.

4.161. To address competitiveness, Viet Nam's general policy has been to try to reduce port fees to facilitate trade and investment activities.³¹⁹ Port user charges (i.e. tonnage charges, maritime assurance fees, pilotage charges, charges for anchoring and mooring at quay or roadstead, charges for use of piers and mooring buoys in seaport areas, clearance fee) are decided by the facility operators in line with the relevant regulations (sections 3.2.5 and 3.4.9).³²⁰ According to these regulations, discounts are available depending on factors including the cargo capacity of the vessel and the frequency of voyages at the same port. From January 2012, ships of over 50,000 DWT that dock at the international transit ports of Cai Mep – Thi Vai have benefited from a 40% reduction in the maritime security fee and tonnage charge, and a 50% reduction in the pilotage fee (from levels in place since January 2009); this is an extension of the decision on

market", 12 July 2012. Viewed at: <http://talkvietnam.com/2012/07/domestic-fleet-content-with-new-regulation-on-container-shipping-market/> [19 November 2012]).

³¹¹ Working Group of Economic and Commercial Counsellors of the EU (2011).

³¹² Bharat Book Bureau (2010).

³¹³ Tomczyk et al. (2011).

³¹⁴ Tomczyk et al. (2011).

³¹⁵ Decision No. 2190/QĐ-TTg of December 2009 cited in Working Group of Economic and Commercial Counsellors of the EU (2011); and Bharat Book Bureau (2010).

³¹⁶ *Việt Nam News*, "Vietnam puzzled about how to develop port system", 3 October 2012. Viewed at: <http://talkvietnam.com/2012/10/vietnam-puzzled-about-how-to-develop-port-system/> [19 November 2012].

³¹⁷ VDR (2012).

³¹⁸ Shortcomings include: insufficient access to deep-water terminals and container-servicing facilities; insufficient connectivity with other transportation networks; inadequate logistic and auxiliary facilities; mediocre service quality; shortage of skilled professionals; substandard harbour management and excessive administrative burdens (Working Group of Economic and Commercial Counsellors of the EU, 2011).

³¹⁹ WTO document WT/ACC/VNM/48, 27 October 2006.

³²⁰ MOF Decision No. 98/2008/QĐ-BTC, 4 November 2008, and accompanying regulation. Viewed at: www.gdt.gov.vn/wps/wcm/.../148735_QD98_08_BTC.doc?

preferential fees and charges released by MOF in October 2010.³²¹ No data were available from the authorities on the budgetary cost of preferential fees and the competitiveness of Vietnamese ports compared with other ports in the region.

4.6.6.2 Air transport

4.162. Aviation is a top priority for development, since a strong aviation market is viewed as a prerequisite for rapid economic growth.³²² The distance between Hanoi and Ho Chi Minh City (1,760 km), coupled with the country's geography and its comparatively poor road and rail infrastructure, makes domestic demand for air travel very high.³²³ The overall aviation market returned to double-digit growth in 2010, with cargo shipments and passengers surging up to 30% and 20%, respectively, year-on-year; the trend continued in 2011 and 2012 with increases of 3.2% and 12.6%, respectively, compared to 2010, and 11% and 7% compared to 2011. Total air cargo throughput was nearly 530,000 tonnes in 2012 (460,000 tonnes in 2010). The national flag carrier, Vietnam Airlines, accounted for over two thirds of the domestic passenger market and over 40% of international flights. According to IATA, Viet Nam will become the world's third-fastest-growing market for international passengers and freight by 2014, and the second-fastest in the number of domestic passengers.³²⁴

4.163. Vietnam Airlines (VNA), the state-owned national flag carrier, owns 100% of Vietnam Air Service Company (VASCO), a regional airline in southern Viet Nam; 70% of the low-cost carrier Jetstar Pacific Airlines (JPA)³²⁵; and 49% of the Cambodian national airline Cambodia Angkor Air. VNA also holds a 23% stake in Vietnam Air Leasing Company (VALC), a joint venture. VNA and its affiliate, VASCO, make up 71% of the domestic aviation market. As of February 2013, VNA operated a fleet of 80 aircraft (69 in 2011) with an average age of 5.9 years (6.9 in 2011). Between 2012 and early 2013, VNA domestic and international networks spread significantly, with 7 international and 3 domestic routes launched to increase its daily flights to approximately 300. With the core activity of the airline being passenger transportation, VNA also earns revenue from catering and the maintenance and overhaul of aircraft, through a number of subsidiaries (see below).³²⁶ VNA, VASCO, and JPA are the three major air carriers in Viet Nam; in 2012, VNA accounted for more than 40% of international passenger traffic and 69.4% of domestic passengers, while JPA accounted for 14.8% of passengers carried on domestic flights. In May 2013, VNA was preparing for "capitalization" ("equitization", privatization), and the first stage of the process had been agreed and signed.

4.164. Viet Nam has reduced regulation for air transport and developed its market by opening it through bilateral and multilateral agreements. The sector is governed by the 2006 Law on Aviation (effective 1 January 2007). A cap of 49% is set for foreign ownership of aviation businesses.³²⁷ The authorities indicated that they encourage foreign airlines to operate in Viet Nam in order to create a dynamic and competitive air transport environment. Viet Nam has been offering incentives to encourage local and foreign airlines to increase their frequencies and open new routes by: reducing airport charges and fees by 25% over (a maximum of) 36 months for new

³²¹ MOF Decision No 98/2008/QĐ-BTC, 4 November 2008, effective 1 January 2009; MOF Circular No. 41/2012/TT-BTC, 9 March 2011; and MOF Circular No. 164/2010/TT-BTC effective 5 January 2012; and *Việt Nam News*, "MOF accepts preferential fees to rescue Cai Mep – Thi Vai port developers", 27 March 2012. Viewed at: <http://talkvietnam.com/2012/03/mof-accepts-preferential-fees-to-rescue-cai-mep-thi-vai-port-developers/> [19 November 2012].

³²² U.S. Commercial Service (2011).

³²³ Lamond (2011).

³²⁴ IATA Press Release No. 1, "Aviation Opportunities for Vietnam", 14 January 2011. Viewed at: <http://www.iata.org/pressroom/pr/pages/2011-01-14-01.aspx> [20 November 2012].

³²⁵ In February 2012, VNA boosted its stake in the low-cost carrier Jetstar Pacific Airlines to 70%, with Qantas holding the balance (CAPA Centre for Aviation, "Jetstar Pacific to become Vietnam Airlines' low-cost carrier in salutary move to both", 23 February 2012. Viewed at: <http://centreforaviation.com/analysis/jetstar-pacific-to-become-vietnam-airlines-low-cost-carrier-in-salutary-move-to-both-68641> [4 December 2012]).

³²⁶ The maintenance and overhaul of aircraft is handled by Vietnam Airlines Engineering Company (VAECO) (100% owned subsidiary); catering by Noibai Catering Services Joint-Stock Company (100% owned subsidiary) and Vietnam Air Caterer (65% owned joint venture), who cater airlines that use VNA's hubs. VNA also controls and operates Vietnam Airlines Cargo, using the airline's luggage hold on its passenger fleet, as well as a number of dedicated aircraft.

³²⁷ Law on Aviation, 29 June 2006, and Decree No. 76/2007/ND-CP, 9 May 2007, cited in World Bank Investing Across Borders database. Viewed at: <http://iab.worldbank.org/Data/Explore%20Economies/Vietnam#/Investing-across-sectors>.

airlines or airlines introducing new routes; lessening capacity entitlement controls to the major international airports; opening up secondary international airports; and adjusting air traffic routes in order to shorten flight times. The duration and discount rates depend on the location of the airport.³²⁸ Between 2007 and 2012, Viet Nam issued licences for eight new carriers. Vietnamese airlines/sale agents can freely choose computer reservation system (CRS) providers for their operation. As of May 2013, there are 41 foreign passenger airlines and 10 cargo airlines with regular scheduled flights to and from Viet Nam; another 30 air carriers are expected to enter the market over the next ten years. Cabotage is allowed in air transport services under certain conditions and upon approval of the Minister of Transport; no such approval has been granted so far.

4.165. There are 22 airports in operation throughout Viet Nam, including three major international airports, the Noi Bai Airport in the north (Hanoi), Danang in the centre, and Tan Son Nhat in the south (Ho Chi Minh City).³²⁹ Six further international airports (Can Tho, Chu Lai, Da Lat, Hai Phong, Hue, Nha Trang) are planned. Comprehensive development plans, under the Master Plan 2020 include an upgrade of most airports³³⁰, to include buildings (terminal) and runways, as well as modern navigation equipment and security protection, to raise standards to acceptable international levels. At present, the government budget can only meet about 20% of the total investment required for airport development; for 2005-10, there were calls for investment of more than US\$1.3 billion for airport modernization, expansion, and rehabilitation in order to have an efficient network of 20 airports. Most investment in airport projects is expected to come from ODA loans from foreign governments, such as Japan, as well as financing from the private sector. So far, there have been few foreign investors due, *inter alia*, to limited profits.³³¹ From 15 January 2011, foreign investors have been allowed to participate in these projects in the form of BOT, BT, build-operate-own (BOO), or public-private partnerships (PPPs). A three-year discount scheme was implemented in April 2011, to provide relief on charges to airlines at Viet Nam's major airports.³³² According to IATA, it is important to have a cost-efficient infrastructure following ICAO principles of consultation with users, transparency, cost recovery, and non-discrimination in order to maximize the full potential of aviation.

4.166. All of Viet Nam's air service agreements (ASA) seem to remain restrictive; many have limits on capacity, designated airports, and pricing, although the authorities view most as leading to progressive liberalization in these fields.³³³ None of the 61 ASAs in place can be considered open skies.³³⁴ In the ASEAN context, Viet Nam has signed five agreements on air services.³³⁵

4.167. VNA is increasingly becoming involved in the maintenance, and overhaul of aircraft. Maintenance work is carried out by its subsidiary VAECO, established on 1 January 2009, which is capable of performing maintenance and technical services on many aircraft types for VNA and other airlines. Self-handling, mutual handling, and/or third-party handling are allowed without restriction at major airports, and national carriers may have their aircraft repaired/maintained abroad at their discretion.

4.168. According to IATA, to attain its growth objectives and maintain competitiveness, Viet Nam's aviation industry policy should focus on global standard technology for air traffic

³²⁸ In the last quarter of 2010 a number of foreign airlines launched new services, including Turkish Airlines, LOT Polish Airlines, and Qatar Airways (MOF Decision No. 3031/QD-BTC, 27 November 2012; Decision No. 426/QD-BTC, 25 February 2010; Decision No. 2604/QD-BTC, 31 October 2011; and U.S. Commercial Service, 2011).

³²⁹ The Tan Son Nhat airport is the largest in the country, handling about 70% of international passenger traffic (U.S. Commercial Service, 2011).

³³⁰ Working Group of Economic and Commercial Counsellors of the EU (2011).

³³¹ Lamond (2011).

³³² IATA Press Release No. 1, "Aviation Opportunities for Vietnam", 14 January 2011. Viewed at: <http://www.iata.org/pressroom/pr/pages/2011-01-14-01.aspx> [20 November 2012].

³³³ InterVISTAS-EU Consulting Inc. (2009).

³³⁴ Viet Nam signed a cargo open-skies agreement with the United States in 2008. Governments typically require reciprocity when negotiating the terms of an ASA, therefore, it is possible that restrictions within an ASA are not due to the policies of the Vietnamese Government but to those of the partner country.

³³⁵ The ASEAN Framework Agreement on Services and its Packages of Commitments on Air Transport Services; the ASEAN Multilateral Agreement on the Full Liberalisation of Air Freight Services; the ASEAN Multilateral Agreement on Air Services; the ASEAN Multilateral Agreement on the Full Liberalisation of Passenger Air Services; and the Air Transport Agreement between the Governments of the Member States of the ASEAN and the Government of the People's Republic of China.

management (i.e. ADS-B and performance-based navigation (PBN)), more cost-efficient airports and air navigation services, and greater efficiency through IATA's Simplifying the Business programme (e.g. in e-freight).³³⁶ The authorities indicated that the 1999 Convention for the Unification of Certain Rules for International Carriage by Air (Montreal Convention), on compensation for the victims of air disasters, has been reviewed by ministries, and it is expected to be approved during 2013.

4.169. The aviation industry is under the principal jurisdiction and management of the Civil Aviation Administration of Vietnam (CAAV), a government agency reporting to the MOT.³³⁷ Its functions include: formulating plans and programmes to develop civil aviation; drafting legal normative documents, regulations, and standards relating to civil aviation; information dissemination and education on aviation law; aviation safety and security; airport, aircraft, and flight management; environmental protection; search and rescue; flood prevention; ratifying air fares proposed by airlines operating in Viet Nam; research and development; handling complaints and/or violations of aviation law; administrative reform; and financial and personnel affairs. Under the existing regulations, slot allocation is carried out by the CAAV in accordance with the principles of: publicity, transparency, and non-discrimination; observance of the physical capacity of the airports; convenience and effectiveness; and alignment to international experience. Following the merger of the Northern, Middle, and Southern Airports Corporations into the $\text{đ}14.7$ trillion Airports Corporation of Vietnam (ACV), a single state-owned entity has been responsible for a variety of tasks since February 2012, including the use and development of airport facilities and equipment (e.g. land and buildings, the security and safety of aviation activities, and the collection of airport-related revenue), and importing and exporting aviation equipment.³³⁸ Air traffic control is provided by Vietnam Air Traffic Management (VATM).

4.6.6.3 Land transport

4.170. Road transport is Viet Nam's most common means of moving around (section 4.6.6). Viet Nam has an extensive road network and a relatively high overall road density.³³⁹ The vast majority of the network (84%) is local roads, classified as district, commune, or urban roads. Domestic and regional connectivity is also limited by the network's limited capacity. Overall, the road network consists predominantly of unpaved, narrow, local road sections; therefore, traffic is greatly affected by environmental and weather conditions. Viet Nam made significant progress during 2006–10 in improving the efficiency of its road and highway networks, including links connecting to Cambodia, Lao PDR, and China, and is beginning to improve the expressway network with the assistance of the ADB and other development partners. A recent major reorganization of the roads and expressways subsector within the MOT, including the replacement of the Vietnam Road Administration (VRA) by the Directorate for Roads of Vietnam (DRVN), and the establishment of the Expressway Management Office in April 2011. An exclusive expressway administration agency to be created under the DRVN, tentatively called the Vietnam Expressway Administration (VEA), will be responsible for the development of the expressway network, administration of expressway projects, and execution of state management tasks over the expressway network.³⁴⁰ As road management becomes increasingly decentralized, local governments will require countrywide capacity development and additional local government budgets.

4.171. The railway sector is particularly small compared with other modes of transport (section 4.6.6) and is apparently losing competitiveness against road transport. In 2007, the railway system carried only 6.5% of all passengers. The number of passengers declined from 2006 to 2007, while the freight tonne-kilometres ratio increased by about 34%, reflecting an increase in longer-haul traffic, in which rail is more cost-efficient than trucking, given the state of the roads.³⁴¹ Since 2003, the Vietnam Railways Administration (VNRA) has been responsible for planning and supervising all railway projects while the Vietnam Railways Corporation (VRC) is in charge of

³³⁶ IATA Press Release No. 1, "Aviation Opportunities for Vietnam", 14 January 2011. Viewed at: <http://www.iata.org/pressroom/pr/pages/2011-01-14-01.aspx> [20 November 2012].

³³⁷ Lamond (2011).

³³⁸ Decision No. 238/QĐ-BGTVT of February 2012 cited in CAA Press Release, "Establishment of a new Airports Corporation in Vietnam", 28 February 2012. Viewed at: <http://www.caa.gov.vn/eDefault.aspx?tabid=8&catid=506&articleid=8569> [21 November 2012]; and Lamond (2011).

³³⁹ Asian Development Bank (2012).

³⁴⁰ Decision No. 892/QĐ-BGTVT, 24 April 2012.

³⁴¹ Asian Development Bank (2012).

business operations; both entities are under the MOT.³⁴² VRC pays 10% of its gross revenues to VNRA as a track-access charge. These funds are generally used for infrastructure maintenance. The sector is governed by the 2005 Law on Railways, effective 1 January 2006.³⁴³ A foreign party must enter into a joint venture with VNRA or VRC to operate in the sector; the foreign party's capital contribution may not exceed 49%. No foreign firms operate in the railways sector. The Master Plan on Railway Transport Development of Vietnam up to 2020 with a vision towards 2030 contains several objectives on railway transport, industry, infrastructure, and safety.³⁴⁴ It aims at, *inter alia*, increasing passenger usage and freight transport to 13% (20% by 2030) and 14% (20% by 2030) each by 2020. The railway industry is anticipated to manufacture and assemble 50-60% (50,000-53,000 coaches and freight wagons) of domestically required new wagons and locomotives for local use and export, to be funded via ODA, government bonds, the state budget, and private investment.

4.6.7 Distribution services

4.172. The Vietnamese distribution market has caught up very quickly with global markets, progressing from a simple, rudimentary market to a key economic sector contributing 15% to GDP (approx. US\$11 billion). This is largely due to WTO accession, which increased the activity's growth four-fold from 2006.³⁴⁵ The number of supermarkets increased 20% in the five years following WTO accession, while the number of shopping centres rose by 72%. Following the recent opening of the market (see below), the number of foreign-owned retail outlets has been on the rise; there are five big foreign retailers with a minimal, albeit growing, market share.³⁴⁶ Foreign-invested firms have to compete with domestic brands; in 2012 ten domestic retailers were in the top 500 largest retailers in Asia.³⁴⁷ According to the MOIT, in 2012 there were 638 supermarkets and 117 shopping centres.³⁴⁸ In 2011, there were more than 8,500 traditional markets accounting for 80% of the total retail market³⁴⁹; the retail sales of goods and services remained dominated by non-state firms (86.9%), while state-owned and foreign-invested enterprises, respectively, accounted for 14.6% and 2.5% of the market.³⁵⁰

4.173. Under the November 2012 MOIT fast-track growth master plan for modern shopping facilities to become the main channel for boosting retail sales, retail growth at these facilities should reach 26%-27% annually by 2015 and around 29%-30% by 2020, while the share of retail

³⁴² Working Group of Economic and Commercial Counsellors of the EU (2011).

³⁴³ Law on Railways, 4 June 2005, cited in World Bank Investing Across Borders online database. Viewed at: <http://iab.worldbank.org/Data/Explore%20Economies/Vietnam#/Investing-across-sectors>.

³⁴⁴ *Master Plan (revised) on Railway Transport Development of Vietnam up to 2020 with a vision toward 2030*, October 2012. Viewed at: <http://www.houston.org/uploadedFiles/Railway.pdf> [22 November 2012].

³⁴⁵ In 2007, Viet Nam ranked 4th (after India, the Russian Federation, and China) out of the world's 30 most attractive retail markets; in 2008, it surpassed India to become the most attractive retail market in the world but fell progressively to 32nd in 2012 (European Commission online market access database. Viewed at: http://madb.europa.eu/madb_barriers/barriers_details.htm?barrier_id=105361&version=2; AT Kearney Global Retail Development Index lists. Viewed at: <http://www.atkearney.com/consumer-products-retail/global-retail-development-index>; and *Intellasia* online information. Viewed at: <http://www.intellasia.net/foreign-retailers-leave-vietnam-but-still-eyeing-the-market-246716>).

³⁴⁶ These foreign suppliers include wholesaler Metro, general retailer BigC, industrial commodities specialist Parkson, supermarkets & retail stores operator Lotte, and own-brand-name seller Luis Vuitton (European Commission online market access database. Viewed at: http://madb.europa.eu/madb_barriers/barriers_details.htm?barrier_id=105361&version=2).

³⁴⁷ *Saigon Daily*, "Ten Vietnamese businesses among top 500 retailers in Asia-Pacific", 17 September 2012. Viewed at: <http://www.saigon-qpdaily.com.vn/business/2012/9/102750/> [23 November 2012]; *Intellasia*, "Vietnam's retail market was degraded to 14th position globally", 20 January 2011. Viewed at: <http://www.intellasia.net/vietnams-retail-market-was-degraded-to-14th-position-globally-146516> [27 August 2012]; and *Vietnamnet*, "Fahasa among Top 500 Asia-Pacific retailers", 28 August 2012. Viewed at: <http://talkvietnam.com/2012/08/business-in-brief-288/> [23 November 2012].

³⁴⁸ *Việt Nam News*, "Struggling supermarkets face fierce foreign rivalry", 27 August 2012. Viewed at: <http://vietnamnews.vnagency.com.vn/Economy/229310/struggling-supermarkets-face-fierce-foreign-rivalry.html> [30 August 2012].

³⁴⁹ *Việt Nam News*, "VN to expand modern retail system", 16 December 2011. Viewed at: <http://vietnamnews.vnagency.com.vn/Economy/218725/vn-to-expand-modern-retail-system.html> [30 August 2012].

³⁵⁰ General Statistics Office data. Viewed at: <http://www.gso.gov.vn/default.aspx?tabid=393&idmid=3&ItemID=13183>.

sales should be 27%-30% by 2015 and 43%-45% by 2020.³⁵¹ Grade one trade centres must be located 20 kilometres apart, while second-grade and third-grade supermarkets must be six and one kilometre apart, respectively.³⁵² The authorities indicated that there is no provision in the legislation for a minimum distance of supermarkets or shopping malls away from traditional markets. Investors will be encouraged to develop supermarkets, shopping malls, warehouses, logistics centres away from city centres, and from marketplaces, exhibitions, and product-introduction centres in the rural areas; investors building such facilities in provinces where the GDP per capita is lower than the national average will benefit from additional incentives.³⁵³

4.174. Foreign participation in distribution services, including commission agents, wholesale and retail services, and franchising were opened to fully foreign-owned businesses as of 1 January 2009. Certain products, including rice, sugar, tobacco (cigarettes and cigars), crude and processed oil, pharmaceuticals, explosives, newspapers and magazines, precious metals and gemstones, are excluded from WTO distribution services commitments. Distribution of alcohol (wines and spirits), cement and concrete, fertilizers, iron and steel, paper, tyres, and audiovisual equipment were opened to foreign investors in 2010. The local investment management agencies grant licences on distribution rights upon written approval from the MOIT, which, according to the authorities, has already granted licences for items that met specific management regulations.³⁵⁴ An economic needs test (ENT), apparently applicable to foreign investors only, is compulsory for any retail outlet to be established beyond the first one; it appears that there is no nationwide implementing legislation to clarify the ENT criteria, which may result in non-uniform interpretation by different local authorities, thus creating legal uncertainty for investors.³⁵⁵ In May 2013, the MOIT was working on mechanisms and institutions for considering and appraising the ENT; a new nationwide Circular replacing Circulars No. 09/2007/TT-BTM and No. 05/2008/TT-BCT is to be issued on this matter, but the ENT content, standards, and criteria would differ in each locality due to the uneven economic conditions between regions, and rural and urban areas. Foreign importers without distribution rights are not allowed to distribute the goods they import, should use third-party warehousing services, and provide information proving that the warehouses they use possess all necessary governmental authorizations. This requirement does not seem to apply to local distributors.³⁵⁶

³⁵¹ *Saigon Times*, "Ministry sets fast-track growth for modern shopping", 6 November 2012. Viewed at: <http://english.thesaigontimes.vn/Home/business/vietnam-economy/26424/> [26 November 2012].

³⁵² According to MOIT regulations, the retail outlets are classified as follows: multifunctional/general supermarkets (>5,000m² and >20,000 items, >2000m² and >10,000 items, >500m² and >4,000 items); specialized supermarkets (>1,000m² and >2,000 items, >500m² and >1,000 items, >250m² and >500 items); and, commercial centres (>50,000m², >30,000m², >10,000m²). For more information see Decision No. 1371/2004/QĐ-BTM, 24 September 2004. Viewed at: <http://www.trade.hochiminhcity.gov.vn/data/vbpg/docs/20041025-qd-tm-in-1371.htm>.

³⁵³ Decree No. 108/2006/ND-CP, 22 September 2006, and Decree No. 61/2010/ND-CP, 4 June 2010.

³⁵⁴ Paragraphs 1 and 2 of Article 5 of Decree No. 23/2007/ND-CP.

³⁵⁵ The authorities indicated that each province and city has different needs for economic development and a uniform ENT system of criteria is impossible as it depends on the different characteristics of local economic development needs. However, the local investment management agencies rely on socio-economic development plans when considering to license retail establishments in addition to the first retail establishment of foreign investors (European Commission market-access database. Viewed at: http://madb.europa.eu/madb_barriers/barriers_details.htm?barrier_id=105361&version=2; and *Intellasia*, "Vietnam's retail market was degraded to 14th position globally", 20 January 2011. Viewed at: <http://www.intellasia.net/vietnams-retail-market-was-degraded-to-14th-position-globally-146516> [27 August 2012]).

³⁵⁶ Ministry of Industry and Trade Circular No. 09-2007-TT-BTM, 17 July 2007, and Circular No. 05-2008-TT-BCT, 14 April 2008; and European Commission market-access database. Viewed at: http://madb.europa.eu/madb_barriers/barriers_details.htm?barrier_id=105361&version=2.

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5 APPENDIX TABLES

Table A1. 1 Merchandise exports by product group, 2007-11

(US\$ million and %)

	2007	2008	2009	2010	2011
Total exports (US\$ million)	48,561.3	62,685.1	57,096.3	72,236.7	96,905.7
	% of total				
Total primary products	44.8	44.3	39.1	35.4	35.1
Agriculture	23.3	23.2	23.5	23.3	22.9
Food	19.5	19.9	20.7	19.3	18.6
0423 Rice, milled, semi-milled	3.1	4.6	4.7	4.5	3.7
0711 Coffee, not roasted	3.9	3.4	3.0	2.6	2.8
0344 Fish fillets, frozen	2.2	2.5	2.5	2.1	2.1
0361 Crustaceans, frozen	2.9	2.2	2.3	2.2	1.8
0577 Edible nuts fresh, dried	1.3	1.5	1.6	1.6	1.6
Agricultural raw material	3.8	3.3	2.8	4.1	4.4
2312 Natural rubber excluding latex	2.3	2.2	1.7	2.5	2.7
Mining	21.5	21.1	15.6	12.1	12.2
Ores and other minerals	0.5	0.5	0.5	0.4	0.4
Non-ferrous metals	0.3	0.4	0.3	0.6	0.4
Fuels	20.7	20.2	14.9	11.0	11.4
3330 Crude oils of petroleum and bituminous minerals	17.5	16.5	10.8	7.0	7.5
3211 Anthracite, not agglomerated	2.1	2.2	2.3	2.1	1.6
Manufactures	54.4	54.4	58.8	64.0	64.2
Iron and steel	1.1	3.1	0.9	1.9	2.3
Chemicals	2.1	2.3	2.2	2.6	3.0
Other semi-manufactures	4.1	4.1	4.3	4.9	4.5
Machinery and transport equipment	11.5	11.8	13.0	15.9	19.4
Power generating machines	0.8	0.7	0.9	1.0	1.2
Other non-electrical machinery	1.0	1.0	1.1	1.2	1.1
Agricultural machinery and tractors	0.0	0.0	0.1	0.0	0.0
Office machines & telecommunication equipment	4.0	5.3	6.1	7.9	11.6
7643 Radio or television transmission apparatus	0.0	0.0	0.5	2.2	5.9
7513 Photo copying apparatus with optical system, thermo-copying	0.0	2.0	2.1	2.3	1.8
Other electrical machines	4.1	3.0	3.4	3.8	3.5
7731 Insulated wire, cable etc.; optical fibre cables	1.8	1.6	1.6	1.8	1.6
Automotive products	0.9	0.7	0.6	0.7	0.7
Other transport equipment	0.8	1.1	0.9	1.3	1.4
Textiles	2.7	2.5	3.5	4.2	3.9
Clothing	15.2	13.9	15.0	14.4	13.6
8453 Jerseys, pullovers, cardigans, etc., knitted/crocheted	1.7	1.7	2.0	2.0	1.6
8414 Trousers, bib and brace overalls, breeches and shorts	1.4	1.3	1.3	1.2	1.3
8454 T-shirts, singlets and other vests, knitted or crocheted	1.2	1.2	1.3	1.2	1.1
Other consumer goods	17.7	16.7	19.9	20.1	17.6
8514 Other footwear, leather or composition leather uppers	2.6	1.6	3.1	3.1	2.6
8973 Jewellery of gold, silver or platinum metals (except watches)	0.4	0.6	2.3	3.8	2.6
8215 Furniture, n.e.s., of wood	2.8	2.6	2.5	2.5	1.9
8512 Sports footwear	3.6	4.6	1.8	1.8	1.8
8513 Footwear, n.e.s., rubber or plastic soles and uppers	1.1	0.6	1.3	1.3	1.3
Other	0.7	1.3	2.1	0.6	0.6
Gold	0.0	0.6	1.4	0.1	0.1

Source: UNSD Comtrade database, SITC Rev.3.

Table A1. 2 Merchandise imports by product group, 2007-11

(US\$ million and %)

	2007	2008	2009	2010	2011
Total imports (US\$ million)	62,764.7	80,713.8	69,948.8	84,838.6	106,749.9
	% of total				
Total primary products	27.5	29.0	25.5	26.5	28.3
Agriculture	9.4	9.8	10.8	12.1	12.4
Food	6.3	6.7	7.9	8.6	8.5
0813 Oil-cake, oilseed residues	1.3	1.5	1.6	1.6	1.4
0412 Other wheat (including spelt) and meslin, unmilled	0.5	0.4	0.5	0.7	0.8
Agricultural raw material	3.1	3.1	3.0	3.5	3.9
2631 Cotton (other than linters), not carded or combed	0.4	0.6	0.5	0.8	1.0
Mining	18.2	19.2	14.7	14.4	16.0
Ores and other minerals	1.1	1.6	1.5	1.6	1.6
2823 Other ferrous waste and scrap	0.6	1.0	1.0	1.1	1.1
Non-ferrous metals	3.1	2.3	2.4	3.2	2.7
6821 Copper anodes; alloys; unwrought	1.0	0.7	0.7	1.1	0.7
Fuels	13.9	15.3	10.7	9.6	11.7
Manufactures	70.0	67.2	73.6	72.0	69.4
Iron and steel	9.3	9.4	8.6	8.1	6.8
Chemicals	13.3	12.7	14.6	14.7	14.5
5429 Medicaments, n.e.s.	0.9	0.8	1.1	1.1	1.0
5751 Propylene polymers or of other olefins	1.0	0.9	1.0	1.0	1.0
5711 Polyethylene	1.2	0.9	0.9	1.0	0.9
5621 Mineral or chemical fertilizers, nitrogenous	0.6	0.6	0.9	0.5	0.7
Other semi-manufactures	6.5	6.0	6.6	6.8	6.3
6114 Other bovine/equine leather, without hair (excl. of 611.8)	1.1	1.0	0.8	0.8	0.7
Machinery and transport equipment	28.4	27.8	31.3	29.2	29.1
Power generating machines	2.4	1.7	1.9	1.4	1.4
Other non-electrical machinery	9.9	10.3	10.3	9.9	8.8
7284 Machinery and appliances for particular industries, n.e.s.	1.0	1.0	0.9	0.9	1.2
Agricultural machinery and tractors	0.2	0.1	0.2	0.2	0.2
Office machines & telecommunication equipment	7.2	6.9	9.0	8.6	10.0
7764 Electronic integrated circuits and microassemblies	1.1	1.0	1.2	1.7	3.0
7649 Parts and accessories for apparatus of division 76	0.6	0.6	0.9	1.2	2.0
7643 Radio or television transmission apparatus	2.1	1.2	1.5	1.2	0.9
Other electrical machines	3.5	3.5	4.0	4.5	4.6
7731 Insulated wire, cable etc.; optical fibre cables	0.7	0.6	0.6	0.7	0.6
7725 Switches, relays, fuses etc. for a voltage not exceeding 1,000 V	0.5	0.5	0.6	0.7	0.6
Automotive products	2.5	3.0	3.6	2.7	2.3
7843 Other motor vehicle parts and accessories of 722, 781 to 783	1.2	1.3	1.3	1.1	0.9
Other transport equipment	2.9	2.4	2.5	2.1	2.0

	2007	2008	2009	2010	2011
Textiles	8.2	7.1	7.8	8.3	8.2
6552 Other knitted/crocheted fabrics, not impregnated/coated, etc.	0.7	0.8	1.3	1.6	1.7
Clothing	0.4	0.4	0.5	0.5	0.5
Other consumer goods	3.9	3.6	4.2	4.4	4.0
Other	2.5	3.9	0.9	1.5	2.3
9710 Gold, non-monetary (excl. gold ores and concentrates)	2.1	3.4	0.5	1.1	1.9

Source: UNSD Comtrade database, SITC Rev.3.

Table A1. 3 Merchandise exports by destination, 2007-11

(US\$ million and %)

	2007	2008	2009	2010	2011
Total exports (US\$ million)	48,561.3	62,685.1	57,096.3	72,236.7	96,905.7
	% of total				
America	24.2	22.6	23.4	23.5	21.0
United States	20.8	19.0	20.0	19.7	17.5
Other America	3.4	3.7	3.4	3.8	3.5
Europe	19.8	18.9	21.5	20.3	19.2
EU(27)	18.7	17.4	16.5	15.8	17.1
Germany	3.8	3.3	3.3	3.3	3.5
United Kingdom	2.9	2.5	2.3	2.3	2.5
Netherlands	2.4	2.5	2.4	2.3	2.2
France	1.8	1.5	1.4	1.5	1.7
Spain	1.6	1.5	1.6	1.5	1.6
Italy	1.7	1.6	1.4	1.4	1.6
EFTA	0.6	1.0	4.5	3.8	1.3
Other Europe	0.4	0.6	0.6	0.8	0.8
Commonwealth of Independent States	1.3	1.6	1.1	1.4	1.6
Russian Federation	0.9	1.1	0.7	1.1	1.3
Africa	1.4	2.0	2.7	2.5	3.7
South Africa	0.2	0.2	0.7	0.7	1.9
Middle East	1.0	1.6	1.6	1.6	1.9
Asia	51.6	52.5	49.0	50.1	50.9
China	7.5	7.7	9.5	10.7	11.5
Japan	12.5	13.5	11.1	10.7	11.1
Six East Asian Traders	16.0	16.1	16.5	15.8	16.2
Korea, Rep. of	2.6	2.9	3.6	4.3	4.9
Malaysia	3.2	3.2	3.1	2.9	2.9
Singapore	4.6	4.3	3.6	2.9	2.4
Hong Kong, China	1.2	1.4	1.8	2.0	2.3
Chinese Taipei	2.3	2.2	2.0	2.0	1.9
Thailand	2.1	2.1	2.3	1.6	1.8
Other Asia	15.5	15.1	12.0	12.9	12.1
Australia	7.8	6.9	4.2	3.7	2.6
Cambodia	2.1	2.4	2.0	2.2	2.5
Indonesia	2.4	1.2	1.3	2.0	2.4
India	0.4	0.6	0.7	1.4	1.6
Philippines	2.0	2.9	2.6	2.4	1.6
Other	0.8	0.7	0.7	0.5	1.7
<i>Memorandum:</i>					
APEC	72.2	70.6	68.0	68.3	66.2
ASEAN	16.7	16.5	15.3	14.3	14.0

Source: UNSD, Comtrade database; and data provided by the authorities (2011 figures).

Table A1. 4 Merchandise imports by origin, 2007-11

(US\$ million and %)

	2007	2008	2009	2010	2011
Total imports (US\$ million)	62,764.7	80,713.8	69,948.8	84,838.6	106,749.9
	% of total				
America	5.0	5.2	6.9	7.3	7.1
United States	2.7	3.3	4.3	4.5	4.3
Other America	2.3	1.9	2.6	2.8	2.8
Brazil	0.4	0.5	0.5	0.6	0.9
Argentina	0.7	0.5	0.8	1.0	0.8
Europe	9.9	9.5	9.3	9.0	9.2
EU(27)	8.2	6.9	8.3	7.5	7.3
Germany	2.1	1.8	2.3	2.1	2.1
France	1.8	1.0	1.2	1.1	1.1
Italy	1.1	0.8	1.0	1.0	0.9
EFTA	1.7	2.5	0.7	1.4	1.8
Switzerland	1.6	2.4	0.6	1.2	1.7
Other Europe	0.1	0.1	0.2	0.1	0.1
Commonwealth of Independent States	1.1	1.7	2.7	1.6	1.0
Russian Federation	0.9	1.2	2.0	1.2	0.7
Africa	0.4	1.0	0.7	0.9	1.2
Middle East	0.8	0.8	1.3	1.8	2.4
Kuwait	0.0	0.1	0.0	0.4	0.8
Kingdom of Saudi Arabia	0.2	0.2	0.5	0.7	0.7
Asia	82.6	81.7	78.8	79.0	78.5
China	20.3	19.8	23.8	23.8	23.0
Japan	9.9	10.2	10.7	10.6	9.7
Six East Asian Traders	44.4	43.5	36.2	36.2	36.9
Korea, Rep. of	8.5	9.0	10.0	11.5	12.3
Chinese Taipei	11.1	10.4	8.9	8.2	8.0
Singapore	12.1	11.6	6.1	4.8	6.0
Thailand	6.0	6.1	6.5	6.6	6.0
Malaysia	3.6	3.2	3.6	4.0	3.7
Hong Kong, China	3.1	3.3	1.2	1.0	0.9
Other Asia	8.0	8.2	8.1	8.3	8.8
India	2.2	2.6	2.3	2.1	2.2
Indonesia	2.2	2.1	2.2	2.3	2.1
Australia	1.7	1.7	1.5	1.7	2.0
Philippines	0.7	0.5	0.7	0.8	0.8
Other	0.1	0.1	0.3	0.4	0.6
<i>Memorandum:</i>					
APEC	83.9	83.3	82.8	82.4	80.8
ASEAN	25.3	24.2	19.7	19.3	19.6

Source: UNSD, Comtrade database; and data provided by the authorities (2011 figures).

Table A2. 1 Overview of Viet Nam's free-trade agreements

ASEAN FTAs	
The Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA)	
Date of signature/entry into force	27 February 2009/1 January 2010
Transition for full implementation by Viet Nam (goods)	Normal track: tariffs on 85% of all tariff lines to be eliminated by 2018; an additional 5% of all tariff lines by 2020 with flexibility. Sensitive track: tariffs on goods on "Sensitive List" (6% of all tariff lines) to be reduced to 5% by 2022. "Highly Sensitive List" (3% of all tariff lines) – tariffs to be reduced to 7-50% by 2022. Exclusion list: 1% of all tariff lines.
Services covered by Viet Nam	Essentially the same as Viet Nam's WTO commitments with the addition of mode 1 for higher education services, and reducing the minimum required teaching experience of foreign teachers from 5 to 3 years.
Selected features	Advance origin/classification/valuation ruling on request; investment; movement of natural persons; TBT/SPS; safeguard measures; dispute settlement; intellectual property; competition
WTO consideration status	Factual presentation not distributed (as at May 2013)
WTO document series	WT/REG284/N/1 and S/C/N/545, 9 April 2010
ASEAN-India Trade in Goods Agreement (AITIG)	
Date of signature/entry into force	October 2009/1 June 2010
Transition for full implementation by Viet Nam	For the 9,186 HS eight-digit tariff lines: tariffs on 5,580 tariff lines (60.74%) to be reduced to 0% by end 2018 (track1); on an additional 788 tariff lines (8.58%) by end 2021 (track 2). Sensitive track (7.2% of all tariff lines): common commitment to reduce tariff rates above 5% to 5% by end 2021. 4% of the tariff lines to removed from the sensitive track by end 2024. 50 tariff lines with applied MFN rate of 5% to be maintained. Tariffs on other items of 5% on sensitive track reduced to 4.5% after 5 years from the date of entry into force of the Agreement, and to 4% by end 2021. Highly sensitive list: 6.61% of all tariff lines on which either (i) applied rate to be reduced to 50%; (ii) applied MFN rate to be reduced by 50%; or (iii) applied MFN rate to be reduced by 25%. To be implemented by Viet Nam by end 2024. Exclusion list: 16.86% of all tariff lines.
Selected features	Rules of origin, non-tariff measures, safeguard measures
WTO consideration status	Factual presentation not distributed (as at May 2013)
WTO document series	WT/COMTD/N/35, 23 August 2010
ASEAN-Japan Comprehensive Economic Partnership Agreement (AJCEP)	
Date of signature/entry into force	1 April 2008/1 December 2008
Transition for full implementation by Viet Nam (goods)	Normal track: Viet Nam committed to reduce tariffs to zero on 89% of all tariff lines within 16 years, i.e. by 2025. Tariffs on "sensitive list" items to be reduced to 5% by 2025 (bilateral commitment under the framework of EPA) Items on highly sensitive list to be reduced to 50% tariff (bilateral commitment under the framework of EPA) Exclusion list comprising 6% of all tariff lines (bilateral commitment under the framework of EPA)
Selected features	Agreement applies to goods only; provisions on SPS, TBT, and economic cooperation; services and investment subject to future negotiations
WTO consideration status	Factual presentation not distributed (as at May 2013)
WTO document series	WT/REG277/N1, 14 December 2009

ASEAN-Korea Trade in Goods Agreement (AKTIG)	
Date of signature/entry into force	2006, revised in November 2011/1 July 2007
Transition for full implementation by Viet Nam	Normal track: tariff rates on 95% of the tariff lines to be reduced to zero by 2016, tariffs on remaining lines to be eliminated by 2018
	Highly sensitive list: maximum 3% of all tariff lines or 200 HS six-digit tariff lines. Group A products: tariffs capped at 50% by 2021; Group B: tariff reduction of 20% by 2021; Group C: tariff reduction of 50% by 2021; Group D: products subject to TRQs; Group E: exempt from tariff concessions (maximum 40 HS six-digit tariff lines on the list).
Selected features	Rules of origin, non-tariff measures, transitional safeguard
WTO consideration status	Factual presentation not distributed
WTO document series	WT/REG287/N/1; WT/COMTD/N/33, 8 July 2010.
ASEAN-Korea Trade in Services Agreement	
Date of signature/entry into force	2007/1 May 2009
Services covered	Viet Nam's commitments similar to its WTO commitments
WTO consideration status	Factual presentation not distributed (as at May 2013)
WTO document series	S/C/N/559; S/C/N/560, 8 July 2010. S/C/N/559/Add.1; S/C/N/560, Add.1, 3 May 2011
ASEAN-China Trade in Goods Agreement (ACTIG)	
Date of signature/entry into force	November 2004, revised 2006/1 January 2005 Early harvest programme: tariff elimination completed by 1 January 2008.
Transition for full implementation by Viet Nam	Normal track: tariffs on most goods reduced to zero by 2015 or 2018 with some flexibility. Sensitive track: maximum 500 tariff lines (HS 6-digit) representing maximum 15% of the bilateral import value in 2001. Highly sensitive list: 140 tariff lines (HS 6-digit) or maximum 40% of all lines on sensitive track. Tariff on highly sensitive items to reach 50% by 2018. Tariffs on other sensitive items to be reduced to 0-5% by 2020.
Selected features	Rules of origin, non-tariff measures, transitional safeguard
WTO consideration status	Factual abstract distributed
WTO document series	WT/COMTD/N/20, 21 December 2004; WT/COMTD/N/20/Add.1, 26 September 2005; WT/COMTD/51, 21 December 2004; WT/COMTD/51/Add.1, 27 September 2005; WT/COMTD/51/Addenda 2-7 (questions and replies)
ASEAN-China Trade in Services Agreement	
Date of signature/entry into force	14 January 2007/1 July 2007
Services covered	Viet Nam's commitments similar to its WTO commitments
WTO consideration status	Factual presentation not distributed
WTO document series	S/C/N/463, 2 July 2008
BILATERAL FTAs	
Viet Nam-Chile Free Trade Agreement (VCFTA)	
Date of signature/entry into force	11 November 2011/
Transition for full implementation by Viet Nam	Tariffs on 28.5% of all tariff lines to be eliminated upon entry into force of the agreement. Tariffs eliminated on 88.55% of all tariff lines within 15 years. For the remaining lines (11.45%), (i) partial tariff reduction list; (ii) tariff lines with base rate remaining; and (iii) exclusion list.
Selected features	Rules of origin, TBT, SPS, customs co-operation, transitional safeguard, transparency, joint FTA Committee, and dispute settlement provisions. Services and investment to be negotiated.
WTO consideration status	
WTO document series	

Viet Nam-Japan Economic Partnership Agreement (VJEPA)	
Date of signature/entry into force	25 December 2008/1 October 2009
Transition for full implementation by Viet Nam	Normal track: tariffs on approximately 92% of all tariff lines to be reduced to zero by 2026 (85% of the lines to zero by 2020). Sensitive list: 0.6% of all tariff lines; tariffs to be reduced to 5% by 2025. Highly sensitive list: 0.8% of all tariff lines; tariffs to be cut by 50% by 2023 Applied base rate: 2.02% of all tariff lines; no tariff reductions Unbound: 4.6% of all tariff lines
Selected features	Movement of natural persons, implementation of bilateral investment liberalization, promotion, and protection agreement signed in 2003.
WTO consideration status	Considered 28 June 2011 (WT/REG/275/M/1)
WTO document series	WT/REG/275/N/1, S/C/N/513

Source: Vietnamese authorities and WTO Secretariat RTA database.

Table A3. 1 Tariff summary, 2013

	Number of lines	Average (%)	Range (%)	Standard deviation	Duty free (%)
Total^a	9,558	10.4	0-135	12.5	32.9
By WTO category					
WTO agricultural products	1,298	17.4	0-135	15.5	13.3
Animals and products thereof	150	14.0	0-40	11.4	10.7
Dairy products	38	9.5	0-20	5.2	5.3
Fruit, vegetables, and plants	348	18.9	0-40	12.3	11.5
Coffee and tea	42	27.9	10-40	10.8	0.0
Cereals and preparations	185	19.2	0-40	12.4	7.0
Oils seeds, fats, oil and their products	198	12.2	0-30	9.8	8.6
Sugars and confectionary	32	14.1	0-40	12.2	6.3
Beverages, spirits and tobacco	106	44.0	15-135	23.5	0.0
Cotton	5	6.0	0-10	4.9	40.0
Other agricultural products, n.e.s.	194	6.7	0-20	7.3	41.8
WTO non-agricultural products ^a	8,260	9.3	0-100	11.6	35.9
Fish and fishery products	377	14.5	0-35	9.0	16.2
Minerals and metals	1,386	8.6	0-45	10.6	38.5
Chemicals and photographic supplies	1,327	3.7	0-27	5.9	56.4
Wood, pulp, paper and furniture	455	10.3	0-25	9.2	26.6
Textiles	802	10.0	0-100	6.5	10.6
Clothing	300	19.6	5-30	2.5	0.0
Leather, rubber, footwear and travel goods	319	12.5	0-35	11.2	13.5
Non-electric machinery	1,291	4.6	0-50	7.4	57.8
Electric machinery	694	9.0	0-35	9.4	35.7
Transport equipment ^a	551	25.3	0-75	25.8	14.3
Non-agricultural products, n.e.s.	722	9.7	0-35	10.5	41.8
Petroleum	36	8.7	0-20	4.9	8.3
By ISIC sector (excluding electrical energy)					
ISIC 1 - Agriculture, hunting and fishing	625	10.9	0-40	9.8	25.0
ISIC 2 - Mining	117	1.7	0-30	4.4	69.2
ISIC 3 - Manufacturing ^a	8,815	10.5	0-135	12.8	33.0
Manufacturing excluding food processing ^a	7,781	9.2	0-100	11.7	36.3
Electrical energy	1	1.0	1	0.0	0.0
By stage of processing					
First stage of processing	1,061	9.5	0-100	10.6	33.4
Semi-processed products	2,503	5.4	0-40	6.9	43.6
Fully processed products ^a	5,994	12.7	0-135	14.0	28.3
By HS section					
01 Live animals and products	521	11.7	0-40	8.4	17.1
02 Vegetable products	474	15.1	0-40	11.0	14.8
03 Fats and oils	156	14.1	3-30	9.9	0.0
04 Prepared food, beverages and tobacco	443	27.8	0-135	18.5	8.4
05 Mineral products	204	4.5	0-35	7.2	49.5
06 Chemicals and products thereof	1,157	3.1	0-27	5.2	61.1
07 Plastics, rubber, and articles thereof	480	8.5	0-35	8.6	20.6
08 Raw hides and skins, leather, and products thereof	100	12.5	0-25	11.0	31.0
09 Wood and articles of wood	157	6.6	0-25	8.9	47.1
10 Pulp of wood, paper and paperboard	269	11.6	0-25	8.1	14.9
11 Textiles and clothing	1,079	12.3	0-100	7.1	9.2
12 Footwear, headgear, etc.	74	22.3	0-30	10.2	8.1
13 Articles of stone, plaster, cement	215	17.6	0-45	13.3	6.0
14 Precious stones and metals, pearls, articles thereof	81	12.9	0-30	13.4	22.2
15 Base metals and articles thereof	909	7.4	0-35	8.8	41.8
16 Machinery, electrical equipment, etc.	2,067	6.2	0-50	8.5	49.5

	Number of lines	Average (%)	Range (%)	Standard deviation	Duty free (%)
17 Transport equipment ^a	565	24.7	0-75	25.7	15.6
18 Precision equipment	329	4.5	0-25	7.9	67.5
19 Arms and ammunition	27	3.5	0-30	9.4	85.2
20 Miscellaneous manufactured articles	239	18.2	0-30	8.3	5.0
21 Works of art, etc.	12	2.5	0-20	5.6	75.0

a For 87 tariff lines, under motor vehicles (HS Chapter 87), no rates are provided as duties are based on special instructions provided under Chapter 98

Note: Calculations for averages are based on national tariff line level (8-digit).

Source: WTO Secretariat calculations, based on data provided by the authorities of Viet Nam, and Ministry of Finance, Circular No. 193/2012/TT-BTC.

Table A3. 2 Extract of changes in customs duties, 2007–12

Date of issue	Instrument	Measure	Old vs. new rates
2007			
09.01.	Decision No. 04/2007/QĐ-BTC	Tariff change on fuel products	Fuels generally: 15% Kerosene: 5%
11.01.	Decision No. 78/2006/QĐ-BTC	Tariff reduction on automobiles (to comply with WTO commitments)	Down from 100% to 80%
15.01.	Decision No. 05/2007/QĐ-BTC	Tariff changes on second-hand automobiles	Vehicles with 5 seats or less: New rates ranging from US\$6,300 to US\$26,250/unit 6 to 9 seats: US\$7,650 to US\$11,200/unit From 10 to 15 seats: US\$6,800 to US\$9,600/unit
06.03.	Decision No. 09/2007/QĐ-BTC	Tariff reduction on fuels	Generally down from 15% to 10%, except for diesel (new rate 0%)
27.04.	Decision No. 29/2007/QĐ-BTC	Tariff reduction on fuels	Cut from 10% to 5%
31.05.	Decision No. 40/2007/QĐ-BTC	Tariff increase on leaded fuels	New rates ranging from 0% to 20% (depending on the content of lead)
03.08.	Decision No. 65/2007/QĐ-BTC	Tariff changes for certain products including automobiles	Automobiles: old rate 80% new rate 70%
07.08.	Decision No. 72/2007/QĐ-BTC	Tariff change on second-hand automobiles	Vehicles with 5 seats or less: new rates ranging from US\$3,000 to US\$26,250/unit 6 to 9 seats: US\$7,267 to US\$20,000/unit 10 to 15 seats: US\$6,460 to US\$14,250/unit
19.10.	Decision No. 106/2007/QĐ-BTC	Tariff reduction on automobiles	Down from 70% to 60%
01.11.	Decision No. 92/2007/QĐ-BTC	Tariff change on second-hand automobiles	Vehicles with 5 seats or less: new rates ranging from US\$2,700 to US\$30,000/unit 6 to 9 seats: US\$7,200 to US\$24,000/unit 10 to 15 seats: US\$6,400 to US\$13,500/unit
2008			
11.03.	Decision No. 13/2008/QĐ-BTC	Tariff increase on automobiles	Up from 60% to 70%
21.04.	Decision No. 17/2008/QĐ-BTC	Tariff increase on automobiles	Up from 70% to 83%
03.10.	Decision No. 83/2008/QĐ-BTC	Tariff increase on fresh and frozen meat	Poultry: up from 15% to 40% Pork: up from 25% to 27% Beef: up from 15% to 17%
2009			
10.02.	Circular No. 28/2009/TT-BTC	Tariff increase on newsprint paper and uncoated paper	Up from 20% and 25% to 29%
25.03.	Circular No. 58/2009/TT-BTC	Tariff increases on steel	Semi-finished steel products: up from 5% to 8% Cold-rolled steel sheets and coils: up from 7% to 8% Coated steel sheets and coils: up from 12% to 13% Steel products for construction: up from 12% to 15%

Date of issue	Instrument	Measure	Old vs. new rates
14.04.	Circular No. 77/2009/TT-BTC	Tariff increase on fertilizer and tariff reductions on certain products	Fertilizer: up from 5% to 6.5% Oil and fat from fish and other marine mammals: down from 15% to 5% Wheat: down from 5% to 3% Animal feed for poultry and pigs: down from 5% to 4% Other animal feed: down from 10% to 0%
20.04.	Circular No. 75/2009/TT-BTC	Tariff increase on alloy steel (long products)	Up from 0% to 10%
29.05.	Circular No. 108/2009/TT-BTC	Tariff increase on fuels	Fuels generally: old rates: 0% to 20% new rate: 20% Kerosene: up from 5% to 35% Diesel: up from 0% to 20%
14.09.	Circular No. 180/2009/TT-BTC	Tariff reduction on kerosene	Old rate: 35% New rate: 30%
25.09.	Circular No. 162/2009/TT-BTC	Tariff increase on certain dairy products	Old rate: 3% to 7% New rate: 3% to 20%
20.11.	Circular No. 52/2009/TT-BTC	Tariff increase on fresh and frozen meat	Pork: up from 27% to 28% Beef: up from 17% to 33%
2010			
19.04.	Circular No. 59/2010/TT-BTC	Tariff reductions on fuels	Generally cut from 20% to 17%, except for Kerosene: old rate: 30% new rates: 3% to 17%, and Diesel: cut from 20% to 10%
01.12.	Circular No. 190/2010/TT-BTC	Tariff reductions on fuels	Generally cut from 17% to 12%, except for Kerosene: old rates: 3% to 17% new rates: 3% to 5%, and Diesel: cut from 10% to 5%
22.12.	Circular No. 213/2010/TT-BTC	Tariff reductions on fuels (except kerosene)	Generally cut from 12% to 6%, except for Kerosene: old rates: 3% to 5% new rate: 6%, and Diesel: cut from 5% to 2%
2011			
14.01.	Circular No. 07/2011/TT-BTC	Tariff reductions on fuels	Generally cut from 6% to 0%, except for Kerosene: (new rate 2%), and Diesel (down from 2% to 0%)
23.02.	Circular No. 24/2011/TT-BTC	Tariff increase on kerosene	Old rate: 2% New rates: 3% to 5%
2012			
24.05.	Circular No. 84/2012/TT-BTC	Tariff increase on fuels	Generally increased from 0% to 4%, except for Kerosene: old rates 3% to 5%, new rates: 4% to 5% Diesel: up from 0% to 3%
08.06.	Circular No. 94/2012/TT-BTC	Tariff increase on fuels	Generally increased from 4% to 7%, except for Kerosene: old rates 4% to 5%, new rate: 6% Diesel: up from 3% to 6%
22.06.	Circular No. 103/2012/TT-BTC	Tariff increase on fuels	Generally increased from 7% to 10%, including for Kerosene: up from 6% to 10% Diesel: old rate: 6% new rate: 8%

Date of issue	Instrument	Measure	Old vs. new rates
03.07.	Circular No. 109/2012/TT-BTC	Tariff increase on fuels	Generally increased from 10% to 12%, including for kerosene Diesel: Old rate: 8% New rate: 10%
11.09.	Circular No. 148/2012/TT-BTC	Tariff reductions on fuels	Generally reduced from 12% to 10%, including for kerosene Diesel: Old rate: 10% New rate: 8%
30.11.	Circular No. 208/2012/TT-BTC	Tariff reduction on jet fuel	Down from 10% to 7%

Source: WTO Secretariat.

Table A3. 3 Preferential tariff averages for selected product groups, 2013

Description	No. of lines	MFN applied (%)	ATIGA ^a (%)	AK FTA ^b (%)	AC FTA ^c (%)	AANZ FTA ^d (%)	AI FTA ^e (%)	AJ CEPA ^f (%)	VJ EPA ^g (%)
Total	9,558	10.4	2.0	7.5	4.2	8.2	9.1	7.8	7.6
HS 01-24	1,594	17.4	2.8	10.5	4.7	13.5	15.5	14.3	14.5
HS 25-97	7,964	9.0	1.8	6.9	4.1	7.2	7.8	6.5	6.2
By WTO category									
WTO Agriculture	1,298	17.4	3.4	10.4	5.4	12.6	15.1	13.8	14.0
Animals and products thereof	150	14.0	2.7	6.6	3.3	10.3	11.6	9.6	9.7
Dairy products	38	9.5	4.5	5.4	0.0	6.9	8.5	7.8	8.4
Fruit, vegetables and plants	348	18.9	2.0	9.4	2.5	12.9	15.8	14.2	14.6
Coffee and tea	42	27.9	4.4	12.4	10.0	16.3	25.2	20.5	22.3
Cereals and preparations	185	19.2	2.9	10.4	6.2	12.5	16.1	14.4	14.6
Oil seeds, fats and oils and their products	198	12.2	1.7	6.8	4.7	9.7	10.6	9.9	9.6
Sugar and confectionary	32	14.1	3.0	12.6	7.7	9.3	13.3	12.5	12.2
Beverages, spirits and tobacco	106	44.0	18.8	39.0	23.5	36.8	42.5	41.4	41.4
Cotton	5	6.0	0.0	3.0	3.0	3.0	6.0	3.0	3.3
Other agricultural products n.e.s.	194	6.7	0.3	3.6	2.3	4.7	5.1	5.2	4.9
WTO non-agriculture	8,260	9.3	1.7	7.1	4.0	7.5	8.1	6.9	6.5
Fish and fishery products	377	14.5	0.0	9.0	1.7	14.2	14.2	13.5	13.6
Minerals and metals	1,386	8.6	1.3	5.4	3.1	5.9	7.3	6.1	5.8
Chemicals and photographic supplies	1,327	3.7	1.1	3.1	1.9	3.1	3.4	3.1	2.8
Wood, pulp, paper and furniture	455	10.3	1.3	6.6	3.6	7.9	8.1	7.7	6.8
Textiles	802	10.0	1.4	9.3	5.8	9.6	7.6	5.6	5.8
Clothing	300	19.6	0.0	14.6	9.6	18.8	13.2	12.3	10.3
Leather, rubber, footwear and travel goods	319	12.5	2.9	8.4	6.0	9.7	11.7	10.8	10.2
Non-electric machinery	1,291	4.6	1.0	3.6	2.4	3.7	4.1	3.3	3.0
Electric machinery	694	9.0	0.5	7.5	3.7	6.8	8.1	6.1	5.7
Transport equipment	551	25.3	10.7	23.7	13.3	18.7	24.9	19.8	19.6
Non-agriculture articles n.e.s.	722	9.7	1.6	5.8	2.9	7.4	8.4	7.4	7.3
Petroleum	36	8.7	7.5	7.9	7.9	8.7	8.7	8.7	8.2
By ISIC sector^h									
ISIC 1 - Agriculture and fisheries	625	10.9	1.6	6.7	1.6	8.5	9.7	9.2	9.0
ISIC 2 - Mining	117	1.7	0.3	1.7	0.9	1.5	1.6	1.3	1.0
ISIC 3 - Manufacturing	8,815	10.5	2.0	7.7	4.5	8.3	9.1	7.8	7.5
Manufacturing excluding food processing	7,781	9.2	1.8	7.1	4.2	7.3	7.9	6.7	6.3
By stage of processing									
First stage of processing	1,061	9.5	1.2	6.0	1.5	7.5	8.4	8.0	7.9
Semi-processed	2,503	5.4	1.0	4.5	2.7	4.5	4.5	3.7	3.4
Fully processed products	5,994	12.7	2.5	9.1	5.4	9.9	11.2	9.5	9.3
By HS section									
01 Live animals and products	521	11.7	1.0	7.1	0.5	10.3	10.8	10.1	10.1
02 Vegetable products	474	15.1	1.3	7.5	2.2	10.4	12.3	11.3	11.4
03 Fats and oils	156	14.1	2.0	7.7	5.4	11.3	12.5	11.6	11.2
04 Prepared food, beverages and tobacco	443	27.8	6.7	18.5	12.0	21.3	25.7	23.5	24.1
05 Mineral products	204	4.5	2.1	3.9	3.1	3.7	4.0	3.8	3.4
06 Chemicals and products thereof	1,157	3.1	0.9	2.5	1.6	2.6	2.7	2.5	2.2
07 Plastics, rubber, and articles thereof	480	8.5	2.5	6.7	4.7	6.9	7.8	7.2	6.3
08 Raw hides and skins, leather products	100	12.5	2.7	7.4	3.6	9.5	11.6	11.4	11.1

	No. of lines	MFN applied	ATIGA ^a	AK FTA ^b	AC FTA ^c	AANZ FTA ^d	AI FTA ^e	AJ CEPA ^f	VJ EPA ^g
09 Wood and articles of wood	157	6.6	0.5	4.4	2.1	5.9	6.2	6.2	6.1
10 Pulp of wood, paper and paperboard	269	11.6	1.7	7.4	4.1	8.6	8.4	8.2	6.6
11 Textiles and clothing	1,079	12.3	0.9	10.6	6.8	11.9	8.8	7.0	6.7
12 Footwear, headgear, etc.	74	22.3	2.1	11.9	6.8	15.7	21.3	18.9	20.1
13 Articles of stone, plaster, cement	215	17.6	1.7	11.0	6.5	10.6	14.9	13.1	13.3
14 Precious stones and metals	81	12.9	2.3	7.2	2.3	9.5	11.9	9.1	9.7
15 Base metals and articles thereof	909	7.4	1.2	4.5	2.7	5.5	6.3	5.2	4.7
16 Machinery, electrical equipment, etc.	2,067	6.2	0.9	5.0	2.9	4.7	5.5	4.2	0.9
17 Transport equipment	565	24.7	10.4	23.1	13.0	18.2	24.3	19.3	19.1
18 Precision equipment	329	4.5	0.5	2.7	1.3	3.7	3.8	3.5	3.2
19 Arms and ammunition	27	3.5	3.5	3.5	3.5	3.5	3.5	3.5	3.5
20 Miscellaneous manufactured articles	239	18.2	2.8	10.3	5.5	14.0	15.8	14.1	14.0
21 Works of art, etc.	12	2.5	1.3	1.4	1.3	1.7	1.7	1.9	1.7

a ASEAN Trade in Goods Agreement (Circular No. 161/2011/TT-BTC).

b ASEAN-Korea Free Trade Agreement (Circular No. 163/2011/TT-BTC).

c ASEAN-China Free Trade Agreement (Circular No. 162/2011/TT-BTC).

d ASEAN-Australia New Zealand Free Trade Agreement (Circular No. 44/2012/TT-BTC).

e ASEAN-India Free Trade Agreement (Circular No. 45/2012/TT-BTC).

f ASEAN-Japan Comprehensive Economic Partnership Agreement (Circular No. 20/2012/TT-BTC).

g Viet Nam-Japan Economic Partnership Agreement (Circular No. 21/2012/TT-BTC).

h ISIC (Rev.2) classification, excluding electricity (1 line).

Source: WTO Secretariat calculations, based on data from the Ministry of Finance, Circular No. 193/2012/TT-BTC and Circular Nos. as in footnotes a to g.

Table A3. 4 Imported goods subject to line management licensing

HS	Goods	Form of management
Ministry of Agriculture and Rural Development		
ex 3004; 30062000	Veterinary medicines and materials for making veterinary medicines	TBT/SPS licence
N.A	Biological products for veterinary use registered for first-time use in Viet Nam	TBT/SPS licence
ex 3808	Pesticides and materials for making pesticides excluded in the List of pesticides allowed to be used in Viet Nam	Automatic licence
ex 3808	Pesticides and materials for making pesticides included in the List of pesticides subject to restricted use in Viet Nam	Automatic licence
ex 0106; 06; 07; 08; 09; 12	Plants and animal strains, and various types of insects not available in Viet Nam	TBT/SPS licence
ex 23	Animal feeds and materials for producing animal feeds newly used in Viet Nam	TBT/SPS licence
3101; 3102; 3103; 3104; 3105	Fertilizers newly used in Viet Nam	TBT/SPS licence
3001; 3002	Genetic sources of plants, animals and micro-organisms used for scientific purposes	TBT/SPS licence
ex 01	Wild animals and plants subject to import control according to CITES Convention	Automatic licence
State Bank of Viet Nam		
84793000	Money destroying machines	Import permit
ex 7308	Treasury doors	Appointment of importers
ex 4802	Papers for printing money	
ex 3215	Inks for printing money	
8462; 8477; 4907	Machines for printing hard-to-forge money, payment vouchers, certificates and other valuable papers to be issued and managed by the banking industry	
ex 8443	Money printers (technical specifications announced by the State Bank)	
ex 8462	Machines for moulding and pressing metal money (technical specifications announced by the State Bank)	
Ministry of Information and Communications		
49070020; 49070090; 97040010; 97040090	Postage stamps, stamp publications and items of postage stamps	Licence
8517; 8525; 8526	Radio transmitters and radio transceivers of 9 KHz-400 GHz frequency band with power output of 60 mV or more	TBT licence
8517; 8525; 8526	Microwave equipment	TBT licence
4901; 4902; 4903; 4904; 4905; 4906; 4909; 4910; 4911; 8442;	Publications (books, magazines, newspapers, pictures, photographs, calendars, etc.)	Licence
8440; 8443; 9009	Specialized print proof making systems and type setting systems used in printing industry Printers of any kinds (Offset printers, flexo printers, bronze drum printers) and colour photocopiers	Licence
8528; 8529; 8543	Television Receive Only (TVRO) equipment	
Ministry of Culture, Sports and Tourism		
9504	Gambling machines	Automatic licence
9501; 9502; 9503	Children's toys	TBT licence
Ministry of Health		
3004	Addictive substances, sedative substances, pre-substances (including final medicines)	Automatic licence
3004	Finally tested medicines for human beings, which have been registered	TBT/SPS licence
3004	Finally tested medicines for human beings, which have not been registered	

HS	Goods	Form of management
ex 28; 29; 30; 19059060; 96020010; ex 3923; ex 4014; ex 4819	Materials for producing medicines, pharmaceutical materials, excipient, empty hard gelatine and containers directly contacting with medicines, which are newly used in Viet Nam	TBT/SPS licence
3302; 3303; 3304; 3305; 3306; 3307	Cosmetics directly affecting human health	TBT licence
3002	Vaccines and immunized biological products excluded in the List of items allowed to be imported upon demand	Automatic licence
ex 9019; ex 9020	Medical equipment which may directly affect the health of human beings	Automatic licence
3808	Chemicals, pesticides, antiseptic products for medical use	TBT licence
Ministry of Industry and Trade		
Imported chemicals on list of goods restricted in production and trade		Licence for production and trade (Circular No. 28/2010/TT-BCT of 28 June 2010)
Toxic chemicals (Table 2 list and Table 3 chemicals in the Convention on the prohibition of the development, production, stockpiling, and use of chemical weapons and on their destruction) Products containing toxic chemicals		Licence (Decree No. 100/2005/ND-CP of 3 August 2005; Circular No. 01/2006/TT-BCN of 11 April 2006)
Industrial products and consumer goods with toxic chemicals		TBT licence (Circular No. 01/2006/TT- BCN of 11 April 2006)
Pre-substances used in industrial sector		Licence not required, but products must comply with TBT requirements
Imported chemicals on list of chemicals to be declared		Law No. 23/2000/QH10 of 9 December 2000, amended on 3 June 2008; Decision No. 134/2003/QĐ-BCN of 25 August 2003; Decision No. 04/2004/AD-BCN of 7 January 2004, Circular No. 01/2006/TT-BCN of 11 April 2006
Industrial explosive materials NH ₄ NO ₃		Decree No. 26/2011/ND-CP of 8 April 2011; Decree No. 108/2008/ND- CP of 7 October 2008; Circular No. 40/2011/TT.-BCT of 14 November 2011
Natri hydrocid (liquid) Natri hydroxyt liquid (NaOH) > 31%		Import and export licence (Decree No. 39/2009/ND-CP of 23 April 2009; Decree No. 54/2012/ND-CP of 22 June 2012; Decree No. 12/2006/ND- CP of 23 January 2006; Circular No. 23/2009/TT-BCT of 11 August 2009)
Natri hydrocid (liquid) Natri hydroxyt liquid (NaOH) > 31%		TBT regulations (Circular No. 01/2006/TT-BCN, Annex 4)
Ministry of Natural Resources and Environment		
3915; 4017; 4707; 6310; 7112; 7204; 7404; 7503; 7602; 7802; 7902; 8002; 810197; 810297; 810420; 810830; 810930; 811020; 8111; 811222	Scrap	TBT licence
Ministry of Transport		
360490	Lighting flares used in maritime transport	Licence (subject to the provisions of Chapter III of the International Life- Saving Appliance Code) of the International Maritime Organization)

Note: According to Ministry of Agriculture and Rural Development Circular No. 60/2009/TT-BNNPTNT, lists have been drawn up for conditional imports of marine animal feed; chemicals used in fish farming; and breeds, microorganisms, and enzymes. Circular No. 88/2011/TT-BNNPTNT lists live aquatic species allowed to be imported as food and treatment products to improve the aquaculture environment.

Source: WTO document WT/ACC/VNM/48; and information provided by the Vietnamese authorities.

Table A3. 5 Export duties, 1 January 2013

HS Code	Description	Applied rate (%)	Committed rate in WTO (from 2012) (%)
0801.31.00	Cashew nuts in shell	0 ^a	
1211.90.14, 1211.90.19, 1211.90.98, 1211.90.99	Agarwood	15	
2502-2516, 2518-2522, 2524, 2526, 2528-2530	Minerals	5-30	
2601-2617	Metal ores and concentrates	10-40	
2621	Other slag and ash, including seaweed ash (kelp); ash and residues from the incineration of municipal waste	0-7	
2701-2704	Coal	10-20	
2709	Petroleum oils and oils obtained from bituminous minerals, crude	0-10	
2709.00.10	Crude petroleum oil	10	
28.04	Hydrogen, rare gases and other non-metals	0-5	
28.17	Zinc oxide; zinc peroxide	0-5	
28.18	Artificial corundum, whether or not chemically defined; aluminium oxide; aluminium hydroxide	0	
40.01, 40.02, 40.05	Rubber	0-5	
4101	Raw hides and skins of bovine (including buffalo) or equine animals (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), whether or not de-haired or split	10	
4102	Raw skins of sheep or lambs (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment dressed or further prepared), whether or not with wool on or split, other than those excluded by Note 1(c) to this Chapter	5	
4103	Other raw hides and skins (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), whether or not de-haired or split, other than those excluded by Note 1(b) or Note 1(c) to this Chapter	0-10	
4401	Fuel wood, in logs, in billets, in twigs, in faggots or in similar forms; wood in chips or particles; sawdust and wood waste and scrap, whether or not agglomerated in logs, briquettes, pellets or similar forms	0-5	
4402	Wood charcoal (including shell and nut charcoal), whether or not agglomerated	0-10	
4403	Trees' roots and bush of natural wood	10	
4404	Hoopwood; split poles; piles, pickets and stakes of wood, pointed but not sawn lengthwise; wooden sticks, roughly trimmed but not turned, bent or otherwise worked, suitable for the manufacture of walking-sticks, umbrellas, tool handles or the like; chip wood and the like of natural wood	5	
4406	Railway or tramway sleepers (cross-ties) of natural wood	20	
4407	Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or end-jointed, of a thickness exceeding 6 mm of natural wood	5-20	
4408	Sheets for veneering and laminated wood (whether or not assembled), other wood, sawn lengthwise, sliced or peeled, whether or not planed, sanded, spliced or end-jointed, of a thickness not exceeding 6mm of natural wood	5 ^a	
4409	Wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rebated, chamfered, V-jointed, beaded, moulded, rounded or the like) along any of its edges, ends or faces, whether or not planed, sanded or end of natural wood	5 ^a	

HS Code	Description	Applied rate (%)	Committed rate in WTO (from 2012) (%)
7102	Diamonds, whether or not worked, but not mounted or set	5-15	
7103	Precious stones (other than diamonds) and semi-precious stones, whether or not worked or graded but not strung, mounted or set; un-graded precious stones (other than diamonds) and semi-precious stones, temporarily strung for convenience of transport:		
7103.10.00	- Un-worked or simply sawn or roughly shaped	15	
7103.91.00	- Otherwise worked:	5	
7103.99.00	-- Rubies, sapphires and emeralds	5	
7104	-- Other	5-10	
7105.90.00	Synthetic or reconstructed precious or semi-precious stones, whether or not worked or graded but not strung, mounted or set; ungraded synthetic or reconstructed precious or semi-precious stones, temporarily strung for convenience of transport	3	
7106	Dust and powder of precious stones of 7103	5	
7108	Silver (including silver plated with gold or platinum), unwrought or in semi manufactured forms, or in powder form	0-10	
7113	Gold (including gold plated with platinum) unwrought or in semi manufactured forms, or in powder form	0-10	
7114	Articles of jewellery and parts thereof, of precious metal or of metal clad with precious metal	0-10	
7115	Articles of goldsmiths' or silversmiths' wares and parts thereof, of precious metal or of metal clad with precious metal	0-10	
7204	Other articles of precious metal or of metal clad with precious metal	15-17	17
7401	Iron and steel wastes (excluding turnings, shavings, milling waste, sawdust, filings, trimmings, and stampings of steel, whether or not in bundles)	15-20	
7403	Copper mattes; cement copper (precipitated copper)	10-20	
7404	Refined copper and copper alloys, unwrought	22	22
7405	Copper waste and scrap	15	
7406.10.00	Master alloys of copper	15	
7406.20.00	Powders of non-lamellar structure	15	
7407	Powders of lamellar structure; flakes	10	
7501	Copper bars, rods and profiles	0-5	
7502	Nickel mattes, nickel oxide sinters and other intermediate products of nickel metallurgy	5	
7503.00.00	Unwrought nickel	22	22
7504.00.00	Nickel waste and scrap (excluding turnings, shavings, milling waste, sawdust, filings, trimmings and stampings of nickel, whether or not in bundles)	5	
7505.11.00	Nickel powders and flakes	5	
7505.12.00	Nickel, not alloyed, in bars, rods and profiles	5	
7601	Alloyed nickel bars, rods and profiles	15	
7602.00.00	Unwrought aluminium	22	22
7603	Aluminium waste and scrap (excluding turnings, shavings, milling waste, sawdust, filings, trimmings and stampings of aluminium, whether or not in bundles)	10	
7801	Aluminium powders and flakes	15	
7802.00.00	Unwrought lead	22	22
7804.20.00	Lead waste and scrap (excluding turnings, shavings, milling waste, sawdust, filings, trimmings and stampings of lead, whether or not in bundles)	5	
7901	Lead powders and flakes	5	
7902.00.00	Other articles of lead	10	
7903.10.00	Unwrought zinc	22	22
7903.90.00	Zinc waste and scrap (excluding turnings, shavings, milling waste, sawdust, filings, trimmings and stampings of zinc, whether or not in bundles)	5	
7904	Zinc powder	5	
8001	Zinc powder and flakes	5	
8002.00.00	Zinc bars, rods, profiles	10	
	Unwrought tin	22	22
	Tin waste and scrap (excluding turnings, shavings, milling waste, sawdust, filings, trimmings and stampings of tin, whether or not in bundles)		

HS Code	Description	Applied rate (%)	Committed rate in WTO (from 2012) (%)
8003.00.10	Tin bars, rods	5	
8003.00.90	Tin profiles	5	
8007	Aluminium powder and flakes	5	
8101 to 8113	Waste and scraps of metal and metallic ceramics and their products (excluding turnings, shavings, milling waste, sawdust, filings, trimmings and stampings, whether or not in bundles)	22	22
8101 to 8113	Semi-products of metal and metallic ceramics and Products of metal and metallic ceramics	5	
8104	Magnesium and articles thereof, including waste and scrap	15	

a These items were not subject to export duty in 2012

Source: Ministry of Finance, Circular No.157/2011/TT-BTC of 14 November 2011, effective 01.01.2012; Ministry of Finance, Circular No. 193/2012/TT-BTC of 15 November 2012, effective 01.01.2013; and WTO document WT/ACC/VNM/48.

Table A3. 6 Goods subject to export restriction

Measure/affected products	
Export prohibition	
-	Weapons, ammunition, explosives, technical military equipment
-	Antiques
-	Narcotics
-	Toxic chemicals
-	Log, sawn timber, husked wood, fire wood, mining coal from wood or fire wood, other wooden products from group IA and high quality-manufactured pallet from group IIA (refer to the notice), rattan materials
-	Various kinds of wild animal and precious natural animals and plants
Export subject to specific control	
-	Coffee beans
-	Wild animals for export
-	Wild animals for breeding
-	Precious gems, metals and natural pearls
-	Wooden products (except handicraft; those produced from cultivated forest wood, from imported wood and from artificial pallet, implemented under Prime Minister Decision No. 136/1998/QD-TTg, 31 July 1998)
-	Minerals

Note: Certain plant species are subject to a 'Notice' requirement (see WTO document WT/ACC/VNM/48, Table 18).

Source: WTO document WT/ACC/VNM/48 (Table 18).

Table A3. 7 Assistance to chemical and mechanical engineering industries

Policy objective	Specific targets	Measures to be implemented	Additional comments
Chemical industry - Build a chemical industry with a relatively complete structure, including the production of materials to service other industries, meeting domestic demands and promoting exports; - Contribute to a rational distribution of production by branch and region, creating a balanced and reasonable development within the sector.	1. Chemical products used in agriculture: - Fertilizer: Invest in the modernization of factories producing phosphorous fertilizer, NPK fertilizer and biological organic fertilizer; the development of assorted mixed fertilizers with enhanced nutritive content. Capital to be concentrated towards factories making nitrogenous fertilizer from natural gas and coal, factories making NPK with advanced technologies, and DAP-manufacturing factories. Use assorted wastes to produce biological organic fertilizer, minimizing the environmental pollution; assorted useful micro-organisms to be imported for the production of biological organic fertilizer. - Plant protection chemicals: Replace outdated processing technologies to make easy-to-use and environmentally friendly products. Step up research and output of products of biological origin, using new-generation and less polluting active elements and solvents. 2. Petrochemical products: Attract capital from all economic sectors, especially foreign investment, to exploit oil and gas resources efficiently. Combine oil refineries and petrochemical and gas processing projects efficiently to make upstream petrochemical products for other industries. 3. Industrial chemicals: - Base chemical products: Concentrate investment to ensure adequate acids for the production of fertilizer and soda for the textile, paper, detergent industries, etc. Select the timing of investment in the production of soda and metal oxides such as titanium oxide, manganese oxide, etc. - Electric goods and industrial gas products: Step up the production and quality of products to meet domestic demand. New technologies to be phased in for the production of high tech goods such as special batteries and rare gases. 4. Chemicals as consumer goods: Diversified and higher production, meeting increasing domestic demand with higher quality products. 5. Pharmaceutical chemicals: Invest in modern technology, improve equipment and management to establish an industry capable of providing efficient materials for the production of medicines. Establish businesses producing antibiotics, new anti-malarial, anti-tubercular drug resistance, and other essential pharmaceutical chemicals, and medical materials based on pharmaceuticals.	- Reduce input prices for important products relating to food security, national security, and human health. - Establish plans for the use of domestic natural resources with lower imports of intermediary products. - Increase and diversify links in production, upgrade infrastructure. - Train human resources and improve the managerial skills of officials. - Develop key scientific and technological programs in parallel with the establishment and development of a scientific and technological market. New solutions must support sustainable development and improve the quality of human resources. - Balanced development across regions, in keeping with the socio-economic development strategy. Additional state instruments to be developed to encourage investment in specific regions to reduce regional imbalances. - Limit the importation of inferior-quality products. - Limit the importation of raw materials and semi-finished products - Apply reasonable tax policies, encourage investment from different economic sectors, ODA, and FDI.	The chemical industry is divided into three groups: - Group I (to receive direct State investment): Production of nitrogenous and phosphorus fertilizers (including DAP); plant protection preparations; petrochemical products; assorted base chemicals in large quantities, exploitation of raw materials for fertilizer production. - Group II (to be granted investment preferences): Production of assorted pharmaceuticals; rubber products; other base chemicals used in industrial production; and the exploitation and processing of other raw materials. - Group III: Production of NPK fertilizer and microbiological organic fertilizer, electric goods, industrial gases, detergents, paint, and other chemicals.

Policy objective	Specific targets	Measures to be implemented	Additional comments
Mechanical engineering - Develop sub-sectors with the optimum exploitation of human and natural resources; - Foster innovation and adaptation of modern technology to reach the middle level of technology in Asia.	Sector objective: To supply 45 to 50% of local demand and to export 30% of total production. Product-specific targets: 1. Complete equipment: To supply 40% of local demand by 2010, focusing on the production of pulp and paper, cement, electricity and oil, water, etc. 2. Prime movers: To meet 60 to 70% of domestic demand for medium-sized and small prime movers by 2010, to manufacture hydraulic engines of 400 HP or more with a localization rate of 35-40%. 3. Tractors and agricultural machinery: • Meet domestic demand and gradually begin to export. • Encourage medium-sized and small manufacturing establishments and local mechanical engineering units. 4. Machine tools. 5. Construction engineering. 6. Shipbuilding: - By 2010 Viet Nam's shipbuilding industry should be at the average advanced level in the region by 2010 and gradually begin to export. - By 2010, the shipbuilding industry should be able to construct most inland waterway transport means, project ships, fishing vessels and sea-going vessels less than 15,000 DWT; meet 70-75% of the demand for multi-purpose ships of 15,000 to 50,000 DWT and oil tankers of 100,000 DWT. Full repair of ships up to 400,000 DWT. - Increase the localization ratio to 60% for newly built ships by 2010, and 70% by 2020. 7. Electric equipment: - Build a modern electric equipment manufacturing industry to reach the advanced level in the region by 2020. 8. Automobile, communication, and transport engineering - Automobiles: • Common-type vehicles: Meet 40 to 50% of domestic demand with a localization ratio of up to 40% by 2005; and more than 80% of domestic demand with a localization rate of 60% by 2010 (50% for engines and 90% for gear boxes). • Special-purpose vehicles: Meet 30% of domestic demand and a localization ratio of 40% by 2005, meet 60% of domestic demand and a localization ratio of 60% by 2010. • High-class vehicles: Tourist automobiles manufactured by joint-ventures must reach a localization ratio of 20-25% by 2005 and 40-45% by 2010, meet 80% of the demand for high-class trucks and buses with a localization ratio of 20% by 2005, and 35-40% by 2010.	- Technical standards to serve as basis for inspecting the quality of key mechanical products of Vietnamese and foreign origin. - Conditional and definite-term protection to be provided by the State for several Vietnamese mechanical products, accompanied by policies to promote and enhance the stability of domestically-made mechanical products. - Support the borrowing of working capital for manufacturers of mechanical equipment and projects to manufacture complete equipment requiring considerable capital and long production cycles . - Projects to manufacture key mechanical products shall be entitled to borrow capital pursuant to Government Resolution No. 11/NQ-CP of 31 July 2000 at an interest rate of 3% per annum over 12 years and a grace period of 2 years. Repayments begin as from the fifth year, or the interest rate is subsidized if the capital is borrowed on commercial terms. - Equitize engineering enterprises, including the sale of equities to foreigners, to create new investment capital and diversify capital sources. - Encourage investment in the manufacture of spare parts and components, and specialization and cooperation throughout the mechanical engineering industry. - Import tax reductions or exemptions to be granted to raw materials, components and parts for key mechanical products and for mechanical products made for the first time in Viet Nam.	According to the development strategy, mechanic enterprises should receive preferential interest rates. However, only 8 projects got preferential rate (of 11.4%) over the last 10 years. Enterprises are confronted with relatively high interest rates, a long and complicated application process, and slow disbursement.

Policy objective	Specific targets	Measures to be implemented	Additional comments
	<ul style="list-style-type: none"> - Communications and transport engineering: <ul style="list-style-type: none"> • Invest heavily in assembly technologies and equipment for manufacturing project vehicles and machinery, such as thermal bituminous concrete mixers, bituminous concrete spreaders, road rollers of all types, stone-grinding and screening stations of an output of 100-300 tons/hour. • Invest heavily in new technology for manufacturing high-class train cars with a localization ratio of more than 70% by 2005, reaching 90% by 2010. 	<ul style="list-style-type: none"> - For key mechanical products, the State shall consider and provide capital support for technical services, such as the hiring of experts, procurement of designs and technologies and technology transfer, exceeding the capability of the enterprises. - Mechanical engineering enterprises shall be entitled to set aside up to 2% of their turnover for research and development activities. - Invest in training of human resources. 	

Note: Concerning mechanical engineering, the Vietnamese authorities note that the Strategy document was promulgated before Viet Nam became a WTO Member. Targets and instruments have been revised accordingly, to be in line with Viet Nam's WTO commitments.

Source: The strategy on development of Viet Nam's chemical industry to the year 2010 (with a vision to the year 2020), Prime Minister Decision No. 207/2005/QĐ-TTg of 18 August 2005. Viewed at: http://moj.gov.vn/vbpg/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=6778. Development strategy until 2010 with the orientation until 2020, Prime Minister Decision No. 186/2002/QĐ-TTg of 26 December 2002. Viewed at: http://moj.gov.vn/vbpg/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=9684.

Table A3. 8 Main dedicated intellectual property laws and regulations

Relevant legislation	Brief description
All subject matters	
Civil Code, Part Six	Basic law on intellectual property, which states that intellectual property rights, including copyright and related rights, industrial property rights and rights to plant varieties, are property rights; reaffirming civil principles of intellectual property rights (specifically: determining subject matters, owners, content of rights and providing for the transfer of rights)
Intellectual Property Law (IP Law) - Articles 4 and 6 + the relevant chapter of each IPR + chapter on enforcement	Article 4 (interpretation of terms); Article 6: establishing the IPRs Comprehensive law governing all aspects of intellectual property rights, containing provisions on protectable subject matters, conditions for protection, establishment of rights, owners, scope and limitations of rights, transfer of rights, representative, and enforcement of IPRs
Government Decree No. 105/2006/ND-CP of 22 September 2006, amended by Decree No. 119/23010/ND-CP of 30 December 2010	The Decree makes 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
Copyright and related rights	
IP Law, Articles 4 and 6 + Part Two, Articles 13-35 in particular	Part Two IP Law contains provisions on protectable subject matters, conditions for protection, establishment of rights, owners, scope and limitations of rights, transfer of rights, representative, and enforcement of copyright and related rights
Government Decree No. 100/2006/ND-CP of 21 September 2006, amended by Decree No. 85/2011/ND-CP of 20 September 2011	The Decree makes detailed provisions and guidelines for implementing certain articles of the 2005 Intellectual Property Law and the Civil Code concerning copyright and related rights
Government Decrees Nos. 47/2009/ND-CP of 13 May 2009 and 109/2011/ND-CP of 2 December 2011	The Decree makes detailed provisions and guidelines for handling administrative violations in the field of culture and information
Directive No.04/2007/CT-TTg of 22 February 2007 of the Prime Minister	The Directive mandates measures for intensifying the protection of copyright to computer programs
Directive No. 36/2008/CT-TTg	The Directive strengthens the management and implementation of copyright and related rights protection
Joint Circular No. 07/2012/BTTTT-BVHTTDL of 19 June 2012	The Circular stipulates the liabilities of intermediary services providing Internet and telecommunications networks regarding the protection of copyright and related rights
Trade marks (including Trade descriptions)	
IP Law, Part Three, section 4, Articles 72-75 in particular	Part 3 contains provisions on protectable subject matters, conditions for protection, establishment of rights, owners, scope and limitations of rights, transfer of rights, representative, and enforcement of rights to trade marks
Government Decree No. 103/2006/ND-CP of 22 September 2006, amended by Decree No. 122/2010/ND-CP	The Decree makes detailed provisions and guidelines for implementing certain articles of the 2005 Intellectual Property Law concerning industrial property rights, including rights to trade marks
Government Decree No. 105/2006/ND-CP of 22 September 2006	The Decree makes 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
Government Decree No. 106/2006/ND-CP of 22 September 2006	The Decree makes detailed provisions and guidelines for handling administrative violations in the field of industrial property
Circular No. 01/2007/TT-BKHCN of 14 February 2007 of the Ministry of Science and Technology	The Circular makes detailed provisions on the procedures for registration of industrial property rights, for guiding the implementation of Government Decree No. 103/2006/ND-CP of 22 September 2006
Geographical indications	
IP Law, Part Three, Section 6, Articles 79-83 in particular	The Law contains provisions on protectable subject matters, conditions for protection, establishment of rights, owners, scope and limitations of rights, transfer of rights, representative, and enforcement of rights to geographical indications
Government Decree No. 103/2006/ND-CP of 22 September 2006, amended by Decree No. 122/2010/ND-CP	The Decree makes detailed provisions and guidelines for implementing certain articles of the 2005 Intellectual Property Law concerning industrial property rights, including rights to geographical indications

Relevant legislation	Brief description
Government Decree No. 105/2006/ND-CP of 22 September 2006	The Decree makes 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
Government Decree No. 106/2006/ND-CP of 22 September 2006	The Decree makes detailed provisions and guidelines for handling administrative violations in the field of industrial property
Circular No. 01/2007/TT-BKHCN of 14 February 2007 of the Ministry of Science and Technology	The Circular makes detailed provisions on the procedures for registration of industrial property rights, for guiding the implementation of Government Decree No. 103/2006/ND-CP of 22 September 2006
Industrial designs	
IP Law, Part Three, Section 2, Articles 63-67 in particular)	The Law contains provisions on protectable subject matters, conditions for protection, establishment of rights, owners, scope and limitations of rights, transfer of rights, representative, and enforcement of rights to industrial designs
Government Decree No. 103/2006/ND-CP of 22 September 2006, amended by Decree No. 122/2010/ND-CP	The Decree makes detailed provisions and guidelines for implementing certain articles of the 2005 Intellectual Property Law concerning industrial property rights, including rights to industrial designs
Government Decree No. 105/2006/ND-CP of 22 September 2006	The Decree makes 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
Government Decree No. 106/2006/ND-CP of 22 September 2006	The Decree makes detailed provisions and guidelines for handling administrative violations in the field of industrial property
Circular No. 01/2007/TT-BKHCN of 14 February 2007 of the Ministry of Science and Technology	The Circular makes detailed provisions on the procedures for registration of industrial property rights, for guiding the implementation of Government Decree No. 103/2006/ND-CP of 22 September 2006
Patents	
IP Law, Part Three, Section 1, Articles 58-62 in particular	The Law contains provisions on protectable subject matters, conditions for protection, establishment of rights, owners, scope and limitations of rights, transfer of rights, representative, and enforcement of patent rights
Government Decree No. 103/2006/ND-CP of 22 September 2006, amended by Decree No. 122/2010/ND-CP	The Decree makes detailed provisions and guidelines for implementing certain articles of the 2005 Intellectual Property Law concerning industrial property rights, including patent rights
Government Decree No. 105/2006/ND-CP of 22 September 2006	The Decree makes 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
Government Decree No. 106/2006/ND-CP of 22 September 2006	The Decree makes detailed provisions and guidelines for handling administrative violations in the field of industrial property
Circular No. 01/2007/TT-BKHCN of 14 February 2007 of the Ministry of Science and Technology	The Circular makes detailed provisions on the procedures for registration of industrial property rights, for guiding the implementation of Government Decree No. 103/2006/ND-CP of 22 September 2006
Plant varieties	
IP Law, Part Four, Articles 157-197 in particular	The Law contains provisions on protectable subject matters, conditions for protection, establishment of rights, owners, scope and limitations of rights, transfer of rights, representative, and enforcement of rights to plant varieties
Government Decree No. 88/2010/ND-CP of 16 August 2010?	The Decree makes detailed provisions and guidelines for implementing certain articles of the 2005 Intellectual Property Law concerning rights to plant varieties
Government Decree No. 57/2005/ND-CP of 27 April 2005	The Decree makes detailed provisions and guidelines for handling administrative violations in the field of plant varieties
Layout-designs (Topographies) of Integrated Circuits	
Intellectual Property Law, Part Three, Section 3, Articles 68-70 in particular	The Law contains provisions on protectable subject matters, conditions for protection, establishment of rights, owners, scope and limitations of rights, transfer of right, representative, and enforcement of rights to layout designs of integrated circuits
Government Decree No. 103/2006/ND-CP of 22 September 2006, amended by Decree No. 122/2010/ND-CP	The Decree makes detailed provisions and guidelines for implementing certain articles of the 2005 Intellectual Property Law concerning industrial property rights, including rights to layout-designs of integrated circuits
Government Decree No. 105/2006/ND-CP of 22 September 2006	The Decree makes 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

Relevant legislation	Brief description
Government Decree No. 106/2006/ND-CP of 22 September 2006	The Decree makes detailed provisions and guidelines for handling administrative violations in the field of industrial property
Circular No. 01/2007/TT-BKHCN of 14 February 2007 of the Ministry of Science and Technology	The Circular makes detailed provisions on the procedures for registration of industrial property rights, for guiding the implementation of Decree No. 103/2006/ND-CP of 22 September 2006 of the Government
Protection of undisclosed information	
Intellectual Property Law, Part Three, Chapter IX, Articles 127-128 in particular	The Law contains provisions enforcement of rights to undisclosed information in the form of trade secrets, and test data
Government Decree No. 103/2006/ND-CP of 22 September 2006, amended by Decree No. 122/2010/ND-CP	The Decree makes detailed provisions and guidelines for implementing certain articles of the 2005 Intellectual Property Law concerning industrial property rights, including rights to trade secrets
Government Decree No. 105/2006/ND-CP of 22 September 2006	The Decree makes 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
Government Decree No. 106/2006/ND-CP of 22 September 2006	The Decree makes detailed provisions and guidelines for handling administrative violations in the field of industrial property
Decision No. 69/2006/QĐ-BNN of 13 September 2006 of the Minister of Agriculture and Rural Development	The Decision promulgates regulations on confidentiality protection of testing data submitted in the procedures for marketing approval of agro-chemical products
Decision No. 30/2006/QĐ-BYT of 30 September 2006 of the Minister of Health	The Decision promulgates regulations on data protection applied to Drug Registration Dossiers (confidentiality protection of testing data submitted in the procedures for marketing approval of drugs)

Source: Information notified by Viet Nam in 2008 (WTO document IP/N/1/VNM/1), revised and updated by the WTO Secretariat and the Vietnamese authorities.

Table A3. 9 IPR enforcement legislation

Relevant legislation	Brief description
Civil judicial procedures and remedies	
Civil Procedures Code of 15 June 2004, in force since 1 January 2005	The Code provides for basic principles in civil proceedings, the orders and procedures for courts to settle civil cases, including cases related to disputes over intellectual property rights.
Special requirements related to border measures	
Government Decree 154/2005/ND-CP of 15 December 2005, in force since 1 January 2006	The Decree makes detailed provisions on customs procedures and the inspection and supervision by customs offices, including the procedures for applying border control measures with regard to imports and exports related to intellectual property rights.
Criminal procedures	
Criminal Code, Articles 41, 131, 156, 157, 158, 162, 168, 171 in force since 1 January 2005, amended and supplemented by Law No. 37/2009/QH12 of 19 June 2009	The Code includes provisions on copyright infringement (Articles 131 and 170a), production and trade in counterfeits (Articles 156-158), deceptive practices (Article 162), false advertising (Article 168), and infringement of industrial property rights (Article 171). 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. Article 41 provides for the confiscations of articles directly related to crime, i.e. including materials and implements used for production of the IPR infringing goods.
Criminal Procedures Code of 26 November 2003, in force since 1 July 2004	The Code provides for basic principles in criminal proceedings, the orders and procedures for initiating criminal proceedings, investigation, prosecution, judgement and enforcement of criminal cases, including cases related to intellectual property.

Source: WTO document IP/N/1/VNM/1, 6 February 2008, revised and updated by the Secretariat.