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Extortion at the gate

Will Viet Nam join the WTO on pro-development terms?

As Viet Nam negotiates entry to the World Trade Organisation, the world's most powerful countries are working hard to exact the onerous 'WTO-plus' commitments which have become characteristic of accession proceedings. Membership could help Viet Nam to benefit from international trade, supporting its efforts to reduce poverty, but the demands from rich countries for excessive liberalisation of imports and foreign investment threaten to undermine this goal and to destroy livelihoods, particularly in rural areas.

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MAKE TRADE FAIR

Summary

Since the early 1990s, Viet Nam has been implementing legal, institutional, and economic reforms together with gradual, selective liberalisation of international trade. This process has led to macroeconomic stability, an average annual per capita growth rate of 6 per cent over the period 1990-2001, and a halving of the incidence of poverty from 58 per cent in 1993 to 29 per cent in 2002. As Viet Nam negotiates entry to the World Trade Organisation (WTO) it is facing pressure to agree to a raft of new trade policies, including accelerated and more indiscriminate liberalisation, that threaten the continuation of this success. The threat to Viet Nam is illustrated by trade regulations, contained in the 2001 US-Viet Nam bilateral trade agreement, which drive up the price of medicines and enable the USA to block Vietnamese imports. WTO members may well demand that Vietnam 'multilateralises' these commitments, which go beyond compliance with WTO rules.

The WTO accession process: flaws in the system

The WTO accession process is inherently unfair. Not only must an aspirant country comply with all WTO rules, but individual member countries are allowed to ask for further concessions, known as 'WTO-plus', from applicants in return for support for their application. Without the support of key WTO members, a country cannot join. Consequently, the applicant is at a significant disadvantage in its accession negotiations. There is a history of WTO members making onerous demands of developing-country applicants, paying little regard to their development priorities. Conditions set by the rich countries include a rapid opening-up to international investors in services and manufacturing, and the dropping of barriers to imports, even to dumped agricultural products. This paper argues that the process of Viet Nam's accession is proving to be no exception to this trend, and that it is time that the WTO reduced the high cost of entrance. If Viet Nam was able to achieve a reasonable deal, other countries planning to join would benefit, notably Ethiopia and Sudan, two of the poorest countries in the world.

Poverty in Viet Nam

Vietnam remains a low-income country with a GDP per capita of US$435, despite having had great success in bringing down the incidence of poverty. Significant numbers of Vietnamese still live in great hardship, and a quarter of children under five are under-nourished. A large part of the population has an income only just above the poverty line and could easily be pushed back below it by external economic shocks.

A bad accession agreement could reinforce the danger that future economic growth will be less beneficial for poorer sectors, and involve economic restructuring that could cause a major loss of livelihoods. Agriculture is a particularly sensitive sector. 69 per cent of Viet Nam's labour force are employed in farming, and 45 per cent of the rural population live below the poverty line.

The potential rewards of accession

The primary motive for developing countries in seeking to join the WTO is the boost that they hope membership will give to their exports, thanks to their improved access to international markets. Viet Nam hopes that as well as expanding sales of agricultural and fishery products, and textiles and garments, WTO membership will increase its attractiveness for foreign direct investment. It also wishes to take advantage of the WTO dispute-settlement mechanism, which enforces international trading rules. As a WTO member, Viet Nam would also have a say in shaping those rules.

However, significant benefits are by no means guaranteed. For example, the USA could still severely restrict market access for Vietnamese products, particularly for textiles and clothing, on which the country is pinning much of its hope. Recent US measures to block Vietnamese sales of shrimp and catfish despite the enormous damage to livelihoods in rural Viet Nam are worrying precedents. And it is not clear that WTO membership per se makes much difference to investor decisions. Moreover, smaller developing countries have been prevented from defending their rights through the WTO by the high costs of the process, a lack of technical capacity, and political pressures.

If industrialised countries deliver on the promises they made at the start of the Doha Development Round, above all by improving access to their markets, the benefits of membership to Viet Nam and other developing countries will be more substantial. Unfortunately, progress in the Round has so far been disappointing, and it remains possible that the rich countries will renege on their commitments. Whatever the eventual value of the Round, it is important that Viet Nam watches the progress of the talks in Geneva, and does not let the terms of its WTO entry restrict access to whatever benefits other developing countries are able to negotiate in the Round.

While there may be longer-term gains from WTO membership (whether modest or more substantial), there are also serious potential losses, due to the excessive demands of the industrialised countries.

The potential threats from accession

Part of the explanation for Viet Nam's recent high rate of growth and impressive falls in levels of poverty was its success in exporting, combined with a cautious approach to import liberalisation and foreign investment, which was quite out of step with the fashionable Washington prescriptions. The danger is that the WTO accession process may force Viet Nam to open up its economy further and faster than is desirable, causing considerable disruption to domestic producers and undermining the broader national development strategy.

Despite its vulnerablility, and the importance of the agricultural sector to the majority of Vietnamese people – 90 per cent of poor people live in rural areas – WTO members are asking Viet Nam to liberalise its agricultural sector above and beyond their own commitments. Under considerable pressure from developed countries, Viet Nam's latest average agricultural bound tariff offer stands at 25.3 per cent, a level that already threatens rural livelihoods. This offer is more than 10 per cent lower than the average bound levels in neighbouring Thailand and the Philippines, which are already WTO members, yet Vietnam is under considerable pressure from the industrialised countries to reduce tariffs still further. Viet Nam must be allowed to maintain an adequate level of protection for sensitive products, including sugar, maize, and animal products, on which many poor farmers depend. Sugar and maize producers are particularly at risk, given that they will face competition from heavily subsidised imports from the EU and the USA. US maize farmers receive subsidies of as much as US$10bn a year, and EU sugar farmers gain €833m of hidden support annually on nominally unsubsidised exports.

Viet Nam is particularly concerned to be able to use tariff rate quotas (TRQs) and Special Safeguards (SSGs) against import surges. With average holdings of 0.7 hectare, farmers are extremely vulnerable to price falls. Most Working Party members have asked Viet Nam not to apply TRQs and SSG, though Viet Nam's proposal to apply SSGs for only pork, beef, and poultry, and to apply TRQs for eight other products was much more modest than that of China. Those who did not ask Vietnam to remove TRQs and SSGs asked Vietnam to reduce tariffs.

In a further display of double standards, Viet Nam is being asked by the USA, a subsidy superpower, and by Australia and New Zealand to reduce its farm subsidies, which are principally directed at small producers and have been of great assistance to farmers in more remote areas, where the incidence of poverty is highest and agriculture the main source of household income.

There are also threats in the manufacturing sector, where to lower tariffs further than the latest offer of 17 per cent could threaten the development of Viet Nam's domestic industry, notably the embryonic automobile industry, which is a growing source of employment for Vietnamese workers.

While Viet Nam has had to agree to phase out 'local content' provisions and other performance requirements for foreign investors, its negotiators could still try to secure technology transfer as a condition of foreign investment in certain sectors, to ensure the flow of much-needed modern technology into their country. ASEAN neighbours who use these provisions should be a source of support for Viet Nam within the WTO working party set up to deal with its accession.

Immediate compliance with WTO agreements such as the Agreement on Sanitary and Phytosanitary Measures (SPS), as was demanded from China, will place an enormous financial and technical strain on Viet Nam. Viet Nam needs time to adjust to higher standards and be able to spread the costs of implementation – a flexibility that was granted to Cambodia, a least-developed country.

Viet Nam's Non-Market Economy (NME) status poses one of the major threats to its achievement of a pro-development accession package. The WTO members that currently give Viet Nam NME status could use it to restrict Viet Nam's access to their markets. During its accession negotiations, China had to submit to a range of discriminatory, WTO-plus commitments. These include a special 'non-market economy' methodology for measuring dumping in anti-dumping cases against Chinese companies, which considerably reduces the burden of proof. China is already the target for one fifth of the anti-dumping measures worldwide. Viet Nam should not be forced into similar commitments, and must be able to obtain a yearly, post-accession review of any similar restrictions.

Finally, there are further threats posed by Vietnam's trade treaty with the USA, the unfavourable terms of which could well become part of the WTO entry package.

The US-Viet Nam Bilateral Trade Agreement

Under the recent bilateral trade agreement with the USA (USBTA), Viet Nam has made concessions which go further than the WTO requirements of a member country. This has major implications for Viet Nam's ability to negotiate the terms of its WTO accession. Due to the principle of Most-Favoured Nation (MFN), any concessions that are granted to one country must be made available to all WTO Members. This means that, in the context of negotiations where members try to extract as many commitments as possible from the acceding country, the provisions of the USBTA can become the effective starting point.

Among the WTO-plus commitments agreed to in the USBTA, those on 'safeguards' and intellectual property are of the greatest concern from a development perspective. The USBTA allows parties to block each others' imports in cases of 'market disruption', the burden of proof for which is much lower than that established by the WTO Agreement on Safeguards. Abuse of this safeguard by the USA would severely damage Viet Nam's growing textile and clothing exports. Although employment practices in this industry are often poor, it provides a vital source of income and employment for tens of thousands of men and women.

The 'TRIPs-plus' provision on restricting for five years third-party use of clinical trials data for pharmaceutical products threatens to drive up the price of medicines for poor people. Manufacturers of inexpensive generic medicines will have to repeat the long, costly tests to obtain the same data required for regulatory approval, or will have to delay marketing their products.

Oxfam believes that WTO members should not require Viet Nam to 'multilateralise' any of the USBTA concessions during the course of its WTO accession negotiations if they present a threat to the achievement of development objectives.

Recommendations

WTO members should stop setting onerous WTO-plus conditions in negotiations with Viet Nam which may have a negative impact on the lives of poor people. Oxfam believes the accession package should include the following elements:

- Agricultural tariffs should not be bound at an average rate of less than 25 per cent, which is Viet Nam's latest offer and which is a rate that already threatens the livelihoods of farmers and rural workers.
- Viet Nam should be able to use all the instruments available to other developing-country WTO members to further protect vulnerable farm sectors; these measures include tariff rate quotas, the current WTO Special Safeguard (SSG) provision and the new provisions now under negotiation at the WTO ('special safeguard mechanism' and 'special products').
- Viet Nam should not be asked to make greater commitments on the scale and timing of reductions in domestic support and export subsidies than those made by other developing countries in the WTO or those agreed in current WTO negotiations.
- Industrial tariffs should not be bound at an average rate of less than 17 per cent, which is Viet Nam's latest offer and which may already mean the loss of manufacturing jobs.
- Viet Nam should not be asked to renounce policy instruments which enable it to increase the development impact of foreign investment, such as requiring the transfer of technology.
- Viet Nam should have sufficiently long transition periods for compliance with the Agreements on Technical Barriers to Trade, Sanitary and Phyto-Sanitary Measures, and Customs Valuation, in order to spread the costs of implementation and build the required technical capacity.
- Members of the Working Party should not include 'non-market economy' provisions that restrict Most-Favoured Nation (MFN) rights.
- WTO-plus provisions on intellectual property and trade safeguards in the US bilateral trade agreement should not become part of the accession package.

Given the concerns raised by Viet Nam's WTO accession negotiations and the harsh experience of other recently acceded countries, Oxfam believes the accession process should be reformed in the following ways:

- The WTO should establish clear guidelines regarding the rights and obligations of new members, based on development indicators.
- Developing-country entrants should enjoy the 'special and differential treatment' in WTO agreements that is granted to developing-country members.

- A panel of experts should decide whether an applicant's trade regime complies with existing WTO rules, and when the 'non-market economy' provisions for acceding countries should be revoked.
- WTO-plus commitments already agreed in bilateral trade agreements which pose a threat to development should not be automatically 'multilateralised' in accession packages.

1 Introduction

As Viet Nam negotiates entry to the WTO, the world's most powerful nations are working hard to exact the onerous 'WTO-plus' commitments which have become the trademark of accession proceedings. Conditions set by the rich countries include a rapid opening up to international investors in services and manufacturing, and a dropping of barriers to imports, even to dumped agricultural products. This paper argues that Viet Nam's accession process is so far proving to be no exception, and that it is time the WTO brought down the cost of entrance. As a low-income country with an excellent track record in poverty reduction, Viet Nam has good grounds for resisting demands which run counter to its national development objectives.

WTO membership may give Viet Nam increased access to international markets for its burgeoning textile industry and for its agricultural exports, but these gains are far from guaranteed, particularly due to protectionist pressures in the USA. At the same time, membership that is tied to excessive liberalisation presents a serious threat to Viet Nam's vulnerable economic sectors, including agriculture, which employs 69 per cent of the population. The achievement of a pro-development entry package is threatened by the blinkered self-interest of WTO members who exact tough conditions from Viet Nam, and by the absence of clear WTO rules to guide the accession process, with potentially damaging consequences for poor people in Vietnam.

The WTO accession process

The WTO accession process is seriously flawed, favouring the short-term self-interest of existing WTO members at the expense of the development priorities of the acceding country. Decisions on accession are formally taken by the Ministerial Conference, which is comprised of all WTO members. The 'terms' to be agreed are negotiated with the applicant by the WTO members who opt to join the 'Working Party' on the accession. The major trading nations are invariably members. All members of the Working Party must agree to these terms for the accession to be approved. For a self-declared 'rules-based organisation', the absence of any rules governing accession is a remarkable omission, although one that can be explained by the advantage it confers on the powerful member countries.

Negotiations are conducted multilaterally within the Working Party, and bilaterally with each of the Working Party members. Not only must a country abide by all the WTO rules to enter the organisation, but also individual members are able to ask for further concessions from applicants, known as 'WTO-plus', in return for support for their application. One consequence is that recently-acceded countries have little to bargain with during trade rounds, as they made as many concessions as they could prior to entry. Transition countries consistently face more severe demands than other developing countries.

Whether or not a country accedes to the WTO and at what pace the process moves forward is largely determined by the priorities and ambitions of the existing WTO members. Accession for some countries has been blocked by political problems, while others have been helped by their ex-colonial status or political alliances. The WTO has repeatedly refused observer status to Iran and Syria because of US objections, whereas Iraq was granted observer status even before having a sovereign government in place.

In December 2002, the WTO membership agreed to exercise 'restraint' in seeking commitments on liberalising trade in goods and services from acceding least–developed countries (LDCs).[1] LDCs would be allowed to make reasonable concessions commensurate with their individual development and trade needs and 'taking into account the commitments undertaken by LDC WTO Members at similar levels of development'. However, when the accession packages of Cambodia and Nepal were made public in September 2003 (the first two LDCs to join the WTO after its creation), it was clear that this pledge had been ignored and the spirit of the Doha Development Round disregarded. WTO members had pressured Cambodia into making concessions that went far beyond the commitments made by other member LDCs. Although 80 per cent of its population is employed in the agricultural sector, Cambodia had to agree to provide less tariff protection to its vulnerable agricultural sectors (60 per cent maximum tariff) than the USA, the EU, and Canada.[2] The EU's highest tariff on agriculture is 252 per cent; in the case of the USA and Canada it is 121 per cent and 120 per cent respectively.[3] It is important that Sudan and Ethiopia, both extremely poor LDCs now seeking membership, do not suffer the same fate as Cambodia.

For non-LDC developing countries seeking to join the WTO, the Doha Development Agenda brought no such promises (neglected or otherwise) of leniency in the accession process. Viet Nam is one of those countries.

Background to Viet Nam's accession

As Viet Nam has a population of 80.4 million[4] and represents a potentially large market, there are many countries interested in its accession package. The Working Party on the accession of Viet Nam to the WTO was established in January 1995.[5] It has met eight times since, with the most recent meeting held in June 2004. The Chair of the Working Party, Seung Ho, of the Republic of Korea, aims to hold the ninth meeting in December 2004. According to the WTO Secretariat, a first draft Working Party report could be ready for December. This schedule means that Viet Nam's earlier ambition to join the WTO by 1 January 2005 will not be realised. Accession later in 2005 may be possible, perhaps at the time of the WTO Ministerial meeting in Hong Kong in December. After the last Working Party meeting, several members stated that much work remains to be done. In addition, although bilateral market access negotiations are underway, only Cuba has completed a deal.

It is to be welcomed that the Vietnamese negotiators are not pushing ahead towards a 2005 deadline regardless of the consequences. A Vietnamese official in Washington recently stated that Viet Nam would like to become a WTO member as soon as possible, but that it does not want to do so at any price; furthermore, the country is not 'letting the timeframe push the negotiations'.[6] It is imperative that Viet Nam and all other acceding countries give themselves the time to negotiate carefully on the substance of each issue, in order to have a clear view of the implications for their country's development. While WTO accession may be a political and economic goal for many countries, when it comes down to the negotiations – as always – the detail of the agreements is crucial.

Developing countries, including Viet Nam, inevitably have fewer resources to invest in accession negotiations than developed countries and lack the capacity to negotiate as effectively as they would like, so financial and technical assistance is essential for them. A World Bank donor assistance matrix shows that Viet Nam receives substantial technical assistance linked to its quest for WTO membership.[7] However, the majority of donors are also members of the Working Party with their own specific interests in the accession process. As a result, this assistance is by no means free from bias. As a developing country with ambitious poverty reduction targets, Viet Nam would benefit enormously from help with assessing the social impact of WTO accession terms, in order to inform its negotiating position. This is completely absent from the bilateral assistance on offer.

The World Bank was planning to complete a Poverty and Social Impact Assessment (PSIA) of WTO accession by June 2004. This vital piece of work has been delayed, so it will not assist Viet Nam with the all-important negotiations, and will only serve to inform Viet Nam about the sequencing and implementation of reforms that have already been decided.

Informed negotiations are all the more important for developing countries in which a considerable proportion of the population is living on or close to the poverty line and is therefore very vulnerable to any changes to the internal or external economic environment. Viet Nam is a case in point.

Poverty in Viet Nam

Box 1

Viet Nam basic development indicators

GDP:	US$35.1bn (2002)
GDP per capita:	US$435 (2002)
GDP per capita growth:	6.0% p.a. (1990–2001)
Poverty incidence:	29% (2002)
Adult literacy rate:	92% (1998) Female rate 90% (1998)
Primary completion:	97% (2002) Female rate 95% (2002)
Life expectancy at birth:	69.7 years (2002)
Infant mortality:	20 per 1,000 live births (2002)
Under-fives malnutrition:	25.7% (2002)
HIV (female, ages 15–24):	0.2% (2001)

Sources: World Development Indicators database 2004, 'Viet Nam Development Report 2004' and Economist Intelligence Unit.

Since the early 1990s, Viet Nam has been implementing legal, institutional, and economic reforms together with the gradual liberalisation of international trade, which have led to macroeconomic stability, an average annual per capita growth rate of 6 per cent, and a halving of the incidence of poverty from 58 per cent in 1993 to 29 per cent in 2002. [8] According to the 'Viet Nam Development Report 2004', the driving forces behind poverty reduction in recent years have been job creation by the private sector and the increased integration of agriculture into the market economy, together with targeted development policies to ensure that growth is pro-poor. In real terms, Viet Nam's exports grew at a rate of nearly

17 per cent a year in the 1990s, significantly higher than the rate of growth in world exports.[9]

Despite these impressive achievements, economic growth has benefited the rich more than it has the poor, widening the gap between them. The 'Viet Nam Development Report 2004' warns that growth is becoming less beneficial to those living in poverty. Reversing this trend is one of the most difficult challenges facing Viet Nam over the coming years. It is important to note that the income of a large proportion of the population lies just above the poverty line, [10] and as a consequence many families who are not technically 'poor' are extremely vulnerable to external shocks, which could send them back into poverty.

Poverty is particularly widespread in rural areas, where more than 90 per cent of the country's poor people live and work. Agriculture employs 69 per cent of Viet Nam's labour force, and 45 per cent of the rural population live below the poverty line.[11] Average farm size is a mere 0.7 hectare per household. Factors such as crop failure or a fall in commodity prices due to increased import competition are potential threats to the income of millions of vulnerable people.

According to the Vietnamese government's 2003 monitoring report on its Comprehensive Poverty Reduction Growth Strategy (CPRGS), more than 80 per cent of poor people in Viet Nam are farmers with low professional and business skills and with little access to productive resources such as capital, knowledge, and technology. Women farmers in remote areas, especially single female householders and elderly women, are among the most vulnerable of the poor. Poverty among ethnic minority groups, who account for roughly 14 per cent of the national population, is disproportionately high. According to the 'Viet Nam Development Report 2004', the percentage of people living in poverty who are from ethnic minorities increased from 20 per cent in 1993 to more than 30 per cent by 2002. The majority of these groups live in isolated areas and lack infrastructure and basic social services. Predictions suggest that by 2010, more than two-thirds of the number of Vietnamese lacking sufficient food could be from ethnic minorities.[12]

Although the poverty rate in the cities is much lower and living standards higher than the national average, the rate of improvement in urban living standards is uneven. The majority of the urban poor work in the informal economic sector in insecure jobs with low and unstable incomes. The transformation of the economic and ownership structure in the state sector has led to a large number of redundancies from state-owned enterprises. According to the CPRGS monitoring report of 2003, those workers laid off have either moved to lower paid employment in the non-state sector or have become unemployed. The increase in migration from the rural areas in recent years has exacerbated the problem of urban poverty.

While the Vietnamese government is committed to reducing further the incidence of poverty, its ability to finance development has in part been restricted by debt repayments. Viet Nam is classified by the World Bank as a Heavily Indebted Poor Country (HIPC): debt in 2002 totalled $13bn; debt service was equivalent to 6 per cent of GDP over the period 1997-2001, falling to 4.3 per cent of GDP in 2002.[13]

Economic growth linked to gradual trade liberalisation has been instrumental in Viet Nam's poverty reduction efforts. In this regard, the terms of Viet Nam's WTO accession will have huge implications for whether or not the country is able to continue to reduce poverty.

2 What will WTO accession mean for Viet Nam?

Possible gains

The primary motive for Viet Nam and most other developing countries in seeking to join the WTO is the boost that they hope membership will give to their exports, due to improved access to international markets. Following its accession to the WTO in 2001, China registered spectacular increases in its exports and imports.[14] If industrialised countries deliver on the promises they made at the start of the Doha Development Round, above all by improving access to their markets and reducing their farm subsidies, the benefits of WTO membership for Viet Nam and other developing countries could be substantial. Unfortunately, progress in the Round has been disappointing so far, and it remains possible that the rich countries will renege on their commitments.

As well as expanding sales of agricultural products and textiles, Viet Nam hopes to attract increased foreign direct investment. It also wishes to take advantage of access to the WTO dispute-settlement mechanism, which enforces international trading rules. As a WTO member, it could also have a say in shaping those rules. However, significant benefits deriving from WTO membersip are by no means guaranteed.

Most-Favoured Nation (MFN) treatment

One way in which Viet Nam could obtain improved access to international markets is through the WTO principle that trade terms offered by one country to another, essentially the tariff rates, must be offered to all trading partners – a principle of non-discrimination known as Most-Favoured Nation (MFN) treatment.[15] Countries joining the WTO, such as Viet Nam, may not have had access to the lower tariffs enjoyed by existing members.[16]

However, there is a danger that Vietnam will not be granted full MFN benefits as part of its accession process. The so-called Jackson-Vanik[17] provisions of US trade law establish different rules for granting MFN treatment for communist countries such as Viet Nam: MFN status is subject to annual review by the US Congress, which can set conditions on renewal. The uncertainty about the terms of Viet Nam's trade with the USA is a disincentive to investment in the export sector. Since the USA is an important market for many of

Viet Nam's products, including textiles and clothing (see Box 4), the USA's conditional MFN is an obstacle to Viet Nam's realisation of its export potential. The US Congress should lift these restrictions prior to WTO entry, as it did in the case of China, and no limitation of MFN should be included in Viet Nam's accession protocol. All parties involved in Viet Nam's accession, especially the WTO Secretariat and Working Party members, should ensure full application of the MFN principle..

Benefits of the Doha Development Round

At the July 2004 WTO General Council meeting, member countries agreed a framework for the next stage of the negotiations in the Doha Development Round, which runs up to the Hong Kong Ministerial Conference in December 2005.[18] Overall, however, progress in the Round has been extremely slow, and the content of the final agreement, presuming there is one, cannot be predicted. It is possible that it will deliver much less benefit to developing countries than was originally promised, particularly in the area of market access. It is crucial that Viet Nam is not deprived of these gains, whether substantial or not, by the terms of its accession package.

One example of a potential gain that Viet Nam should not renounce is a provision in the proposed agreement on agriculture. This gives developing countries access to a special safeguard mechanism (SSM) to respond to import surges from other countries and exemption from tariff reductions for a number of 'special products' vital to food security. As Viet Nam will be placed in direct competition with the largest agro-exporters, use of an SSM could be of vital importance. For Viet Nam, sensitive products include sugar, maize, animal products, and cassava – key crops for poor farmers whose livelihoods are extremely vulnerable to changes in the market. In some of the poorest parts of the country these are the only crops it is possible to grow. Maize and cassava are also used as fodder in the dairy sector, for cattle and pig fattening, and in the chicken industry. Cheap imports of subsidised fodder are likely to negatively affect local producers in both the mountains and lowlands, who are very often smallholders.

As the EU and the USA continue to heavily subsidise their sugar and maize sectors – to the tune of as much as US$10bn a year for the US maize farmers[19] and €833m of hidden support annually on nominally unsubsidised sugar exports for the European farmers[20] – it is highly likely that further liberalisation will lead to dumping in Viet Nam, forcing poor farmers out of business and into poverty.

Dispute Settlement Understanding (DSU)

The DSU is the binding WTO procedure for resolving trade quarrels between member countries. Without this facility, developing countries would have to face the might of the trade heavyweights in bilateral confrontations. In such a situation, given the disparity in power and resources, the likelihood of success for the smaller developing countries would be very low. The DSU provides developing countries with a means of appealing against 'illegal' trade practices which have a negative impact on their trade flows and economy. However, this facility is less useful for the smaller developing countries.

Of the 305 cases brought to the Dispute Settlement body to date, 91 were brought by developing countries (sometimes with the support of developed countries).[21] While this suggests that developing countries are taking advantage of the system, the majority of these cases were brought by Brazil, Mexico, and India. None of the Least-Developed Countries have resorted to the Dispute Settlement body, although they have participated in several cases as third parties. In reality, costs, a lack of technical capacity, and political pressures have deterred the majority of developing country members from defending their rights in this forum. According to the Centre for Rural Progress, it is likely that Viet Nam, which is not a powerful player in world trade and which lacks resources, will not find it easy to stand up to any claims made against it at the WTO.

However, the DSU offers Viet Nam some chance in the future to remedy unfair action by trading partners. The USA, for example, has restricted imports of Vietnamese shrimp and catfish (see Box 2) – a protectionist measure that could be challenged at the WTO. Perhaps more importantly, cases brought by larger developing countries, such as Brazil's recent successful claim that US cotton subsidies and EU sugar subsidies constitute illegal dumping, could force policy changes that benefit all WTO members.

Box 2

When is a catfish not a catfish? The US–Viet Nam trade dispute

Catfish farming sustains the livelihoods of thousands of farming communities living along Mekong River in Viet Nam. According to a 2002 Oxfam/ActionAid study, there were 3,400 officially registered catfish river cages and 1,430ha of catfish ponds in An Giang province. In Vinh Long province, the number of people directly raising catfish (owners and hired workers) and indirectly employed through providing services (finance and credit organisations, fish-feed sellers, veterinary services, storing, and transportation) totalled 3,300 people. Another 7,200 people worked in the fish processing business in Vinh Long and An Giang. Many of these workers send money home to support their families in other provinces.

Nationwide, around 15 per cent of rural households have at least one catfish pond.

Viet Nam exports these catfish mainly to the USA, the EU, Japan, and Hong Kong. In 2002, Viet Nam supplied about 2 per cent of the US market, which generated about US$500m in export revenue. US consumers have demonstrated a preference for Vietnamese catfish over US varieties.

Domestic producer lobbies in the USA, led by the American Catfish Farmers Association (CFA), have gone to great lengths to curb Viet Nam's advantage. Measures include obtaining a legal ban on anyone using the name 'catfish' if the fish did not originate from USA; claiming that Vietnamese catfish are reared in contaminated waters; and finally filing an anti-dumping action with the US International Trade Commission (ITC) against members of the Vietnamese Association of Seafood Exporters and Processors. This allegation was unfair because Vietnamese catfish is a highly competitive product which is not sold at a price lower than the costs of production. However, the ITC upheld the claims of the CFA, and a punitive 64 per cent tariff was levied on Vietnamese catfish, threatening the livelihoods of more than 100,000 catfish farmers.

Source: 'What do the Catfish Farmers Say? Report of an Interaction with Catfish Farmers in the Mekong Delta of Vietnam', ActionAid and Oxfam Hong Kong, Hanoi, August 2002; 'Certain Frozen Fish Fillets from Vietnam', International Trade Commission Publication 3617, August 2003.

Foreign direct investment

Some countries believe that membership of the WTO offers proof of a business-friendly environment that in turn attracts foreign direct investment (FDI) into the export sector and production for the local market. Indeed, when properly regulated, FDI can make a vital contribution to a country's sustainable development. However, determining the extent to which FDI levels are influenced by WTO membership is a difficult task, as there are so many factors that determine investment decisions. A survey by the Multilateral Investment Guarantee Agency (MIGA) found that the decision to invest in a particular country is driven primarily by access to customers and by a stable social and political environment . The greatest perceived risks in FDI are physical insecurity of staff, war or civil disturbance, currency inconvertibility, and breach of contract.[22]

China's record FDI inflow of US$53bn in 2002, which made it the world's biggest FDI host, coincided with its accession to the WTO. Part of this flow may have been a result of liberalisation measures undertaken as part of accession negotiation, although China had been attracting extremely large investments well before entry.

Viet Nam is already successfully attracting FDI. In 2002, it ranked 50th in UNCTAD's performance index, which ranks countries by the FDI they receive relative to their economic size. Only China (third) and Singapore (sixth) ranked higher in the East Asia region. Total FDI inflows to Viet Nam in 2002 reached US$1.2bn. However, systemic barriers for further FDI growth remain. In its assessment of the impact on poverty in Viet Nam of the Doha Development Agenda, the Hanoi-based Centre for Rural Progress argues that the changes made to Viet Nam's legal systems through the process of accession will result in more transparency and accountability in regulations, which will create a more favourable environment for both domestic and foreign investors.

While there are these longer-term gains from WTO membership, perhaps modest or perhaps more substantial, there are also serious potential losses, due to the excessive demands of the industrialised countries, which are examined in the next section.

Threats

Viet Nam is a low-income,[23] heavily-indebted developing country which is facing a range of development challenges. The Vietnamese government is concerned that the economy has to deal with fierce international competition while the level of its development is low, productivity is still not high, and its ability to compete is weak.[24] It is also concerned about having to introduce new trade rules which are costly or may limit its development strategy.

The first part of this section outlines a number of WTO-plus provisions under discussion in the negotiations that potentially threaten development gains. The second part examines other provisions which are also under discussion but which are already present in the 2001 bilateral trade agreements with the USA, and which risk becoming the baseline for the accession negotiations.

The right to protect vulnerable sectors of the population

There are strong grounds for developing countries like Viet Nam to be allowed to use tariffs to shelter vulnerable domestic sectors from competition, in order, for example, to promote key national development objectives such as food security or support to the livelihoods of poor communities. Transitional protection of certain industries can also be a vital strategy for developing a manufacturing base, as the experience of some of Viet Nam's East Asian neighbours has shown. In both South Korea and Taiwan, manufactured exports boomed following a period when domestic investment in labour-intensive manufacturing was promoted through a regime of strategic import controls. Viet Nam itself has achieved great success in poverty reduction over the past decade, in part due to a programme of cautious, gradual trade liberalisation.

As Viet Nam seeks to join the WTO, Working Party members are asking Viet Nam to liberalise more than most existing developing-country members of the WTO, pushing for a series of WTO-plus concessions that risk negating Viet Nam's efforts to reduce poverty. The dangers are perhaps greatest in the sector in which the incidence of poverty is greatest: the agricultural sector.

Agriculture

One result of further agricultural import liberalisation will be a fall in farm incomes due to increased competition from overseas. This will exacerbate inequalities in rural and urban incomes. Furthermore, losses of agricultural income can have strong multiplier effects. Research carried out by the International Food Policy Research Institute suggests that for every dollar generated in farm income, another four dollars are added through exchange in the rural economy. Conversely, losses suffered by farmers will be felt elsewhere in the rural economy. Viet Nam should not be asked to increase its commitments to liberalise agriculture beyond what has already been offered.

<u>Market access in agriculture</u>

In the agriculture sector, under considerable pressure from Working Party members, Viet Nam's latest offer is to bind agricultural tariffs at an average level of 25.3 per cent, in other words, to set this as a ceiling. The current applied rate is 27.1 per cent. As a developing country, the majority of whose population is heavily dependent on agriculture for its livelihood, Viet Nam should not have to lower rates further, particularly bearing in mind that Thailand and the Philippines, ASEAN neighbours who are also members of the Viet Nam accession Working Party, have bound average tariffs in agriculture of 36 per cent and 34 per cent respectively. Nepal, an LDC that concluded its accession talks in 2003, was able to bind its agricultural tariffs at an average of 42 per cent.

Under the far less generous terms of its accession package, China agreed to bind its average agricultural tariffs at the relatively low level of 15.5 per cent. However, China has a huge internal market. Demand for food is growing extremely fast, so the country is able to absorb rising food imports without much damage to local producers. The same cannot be said for Viet Nam.

There are some products which are particularly sensitive in Viet Nam, including sugar and maize. Oxfam research in the sugar-producing province of Guangxi in China revealed that increased competition post-WTO accession from heavily subsidised EU sugar has forced poor farmers out of business (see Box 3). To prevent a similar situation in Viet Nam, these sensitive products must continue to enjoy a measure of protection from international competition through tariffs or tariff rate quotas (TRQs).

Box 3

Dumped out of business: the plight of the Guangxi sugar farmers

Situated in the southwest part of China, Guangxi is one of the country's poorest provinces. Some 18 million people live below the poverty line, and farmers' incomes are particularly low. In recent years, sugarcane production has provided a way out of poverty for 39 counties, and 11 million people in the province. Since 1990, the incomes of sugarcane farmers have grown by an average of 14 per cent.

However, the situation has changed since China's accession to the WTO in 2001. Under the terms of entry, 1.6m tonnes of refined sugar were allowed to enter China's domestic market each year. This was equivalent to 20 per cent of national production. Since 2001, sugar prices in China have dropped by 35 per cent, harming the growers and processors, as well as the local government of Guangxi. Farmers in the region have lost RMB2.95bn (US$369m) due to the slump in prices. If, as declared by the government, the area for cane production is reduced by 1.69m mu (113,000ha), farmers' incomes will fall further. Around 110,000 jobs may be lost.

Such an adverse impact on Guangxi's sugar industry is not the result solely of market forces. The EU depresses the world sugar price by 10–20 per cent by its use of trade-distorting export and production subsidies.

Source: 'Bitter Sugar: How Unfair Trade Hurts China's Sugar Industry', Oxfam Hong Kong, 2003.

Viet Nam is particularly concerned to be able to use TRQs and special safeguards (SSGs) against import surges that cause prices to fall, as so many farmers are in or living on the edge of poverty . At recent negotiation sessions, most of Working Party members asked Viet Nam not to apply TRQs and SSGs, though Viet Nam's proposal was much more modest than that of China: Viet Nam asked to apply SSG measures for only pork, beef, and poultry, and apply TRQs for eight other products. Those who did not ask Viet Nam to remove TRQs and SSGs asked for reduced tariffs.

Agricultural export subsidies

Some Working Party members (led by Australia and New Zealand, representing the Cairns group, together with the USA) are putting pressure on Viet Nam to eliminate all its agricultural export subsidies at the moment of accession – a WTO-plus demand which goes well beyond obligations of both developed and developing country members. In the negotiation framework for the next phase of the Doha Round, adopted in July 2004, there is still no firm date for the elimination of rich-country export subsidies. Elimination could take another ten or fifteen years. The framework also specifies that 'developing country Members will benefit from longer implementation periods for the phasing out of all forms of export subsidies.' According to the Centre for Rural Progress, Viet Nam provides around 1,103bn VND (US$73.5m) per year (1999–2001) in export subsidies. This figure pales into insignificance when we consider that rich countries spend US$6–7bn a year on export subsidies and cheap export credits.[25] Asking Viet Nam to eliminate subsidies immediately is a clear case of double standards by the most powerful members of the WTO. Viet Nam can reasonably argue for continued use of export subsidies in order to achieve its poverty reduction and development goals. Although Oxfam research has shown that export subsidies used in the past in Viet Nam on rice[26] and coffee[27] have not always benefited the poorest farmers, better-targeted export subsidies could help to achieve poverty reduction. For example, the government can help to market a new product which is important to poor farmers, or to cover agricultural transportation costs from remote areas where the incidence of poverty is highest and agriculture the main source of household income.

<u>Domestic agricultural support</u>

Viet Nam should not be pressed into making any WTO-plus commitment to reduce domestic support to farmers, as this would threaten livelihoods in poor and disadvantaged areas. Viet Nam should fully benefit from WTO rules that recognise the special needs of developing countries with regards to domestic support. Under the *de minimis* rule, developing country members are allowed to spend up to ten per cent of the value of production on subsidies (excluding 'green box' payments, which are not capped, and subsidies for low-income and resource-poor farmers, which are not subject to reduction commitments).

Even without the *de minimis* provision, most of the domestic support in place in Viet Nam should be exempt from reduction commitments as it is minimally trade distorting and for low-income and resource-poor farmers. For instance, Oxfam research in Viet Nam identified several positive examples of state-owned companies aiding poverty reduction efforts in Nghe An and Tra Vinh provinces through domestic agricultural support schemes. In Nghe An, a state company subsidises the transport of agricultural inputs (fertiliser, pesticides, etc.) to farmers in remote rural areas. However, even in such schemes, the inputs are normally only brought as far as the local commune centre. It may be a further 20–60km from the villages to the local centre on tracks or paths accessible at best by motorbike but often only on foot. This is a journey frequently undertaken by women, who will often spend a whole day walking to collect an important input. The total subsidy involved in these schemes is small and 'non trade-distorting'. Despite the remaining challenges of access, yields have improved and the effects on poverty reduction are very positive.[28]

In the terms of its WTO accession package, China agreed to limit total domestic support to farmers to less than 8.5 per cent of the value of production, even though existing WTO rules allow developing countries to spend up to ten per cent of the value of production on subsidies. Viet Nam should not be pressed into a similar WTO-plus commitment to reduce domestic support to farmers as this will threaten livelihoods in poor and disadvantaged areas.

Industrial market access

Aside from the highly competitive part of the textile and clothing industry, which has the potential to profit from WTO membership (see Box 4), there are other less well-developed manufacturing industries for which accession-related liberalisation could pose a threat. Pressure on Viet Nam to lower tariffs further than the latest offer of 17 per cent could threaten its further development and cut off a growing source of employment for Vietnamese workers. There is concern that the mechanised goods sector is not yet sufficiently established to remain competitive within a fully liberalised market. The automobile and motorcycle industry will be particularly vulnerable to imports from neighbouring China and Japan. Excessive or long-term protection would not necessarily benefit Viet Nam, as import liberalisation does bring down costs of inputs for local companies and for consumers, with corresponding welfare benefits. However, a balance must be found for Viet Nam so that sectors not yet prepared for liberalisation can receive a degree of protection and be gradually liberalised, in accordance with development priorities.

Investment

Many multinational companies use developing countries merely as assembly or distribution points, with limited backward linkages or technology transfer to the local host economy. Through performance requirements and local-content provisions, some developing countries try to retain more of the benefits of foreign investment within their own economies. Indeed, this was how many of today's developed countries climbed the development ladder, including the relatively recent success stories such as South Korea.[29] Several of Viet Nam's ASEAN neighbours still use local-content provisions for industries such as electronics.

Viet Nam has already relinquished its ability to use local-content and export performance requirements for foreign investment under the terms of the recent Bilateral Trade Agreement with the USA (USBTA) (see section 3), effectively becoming compliant with the WTO Agreement on Trade-Related Investment Measures (TRIMS). However, there is still room for the Vietnamese negotiators to try to secure technology transfer as a condition of foreign investment, to ensure the flow of much-needed modern technology into their country. ASEAN neighbours who use these provisions should be a source of support for Viet Nam within the Working Party.

The monitoring report of the CPRGS reports that science and technology have not yet been able to serve as a foundation and a source of dynamism for production and trade in Viet Nam. In the industrial sector, the low level of technology, obsolete machinery and equipment, and the slow rate of upgrading have led to high production costs with low efficiency, resulting in difficulties in production and product distribution. Linking technology transfer to investment policy within the terms of its accession package would help Viet Nam to make the necessary improvements in industry and other sectors that are so vital to becoming competitive in the world market.

Flexibility in implementing agreements

Viet Nam is requesting a 2008 deadline for compliance with the agreements on Technical Barriers to Trade (TBT) and Sanitary and Phytosanitary Measures (SPS), and an accession-plus–two-years deadline for Customs Valuation.[30] These modest requests are currently being blocked by Working Party members led by the EU, USA, Canada, and Australia.

According to World Bank estimates, the cost of implementation stands at around US$100m per agreement.[31] Furthermore, compliance with such agreements can be an extremely complex process. The SPS agreement involves harmonising national standards in agricultural and fishery products, which will be an enormous challenge for poor producers, especially in the remote rural areas of Viet Nam, and will undoubtedly take some time to achieve. It should not be forgotten that Viet Nam is a low-income HIPC country with budgetary priorities in sectors linked to poverty reduction, such as health and education. Some acceding countries, including neighbouring Cambodia and China (in the case of the TBT agreement), have managed to negotiate transition periods, however inadequate. There is no reason why Viet Nam should not also enjoy this flexibility.

Non-market economy status and anti-dumping

The classification of Viet Nam as a non-market economy (NME) could restrict Viet Nam's access to international markets, and poses a major challenge for Vietnam's accession.

The WTO allows member states to use more flexible calculation methods to determine the existence of dumping in the case of imports from an NME.[32] It is up to the country investigating a possible dumping case to determine whether a country is an NME. There is an acceptable reason for this special treatment. However, WTO members should not use NME status as an excuse for protectionism.

The concept of NME status in international trade first appeared in the 1970s in anti-dumping cases. According to McCarty and Kalapesi[33] there is no fixed definition of a country as a 'non-market economy', and the process by which a country is classified as such is arbitrary. The USA tends to take the lead in this classification process and other countries follow suit. The US Department of Commerce has been changing its definition of what constitutes a non-market economy over the years, moving from 'a centrally planned economy', through 'an economy in transition', to 'a highly distorted market'. Alongside this definition, the Department of Commerce has come up with six criteria against which a country is assessed in order to determine whether it is an NME. McCarty and Kalapesi criticise the 'unreasonable logic' of the US definition and reveal that in some cases Viet Nam fits the market-economy criteria better than some countries that hold this status, although in others it clearly fits the NME definition.

We have yet to see the impact of NME status on Viet Nam's accession package, but the experience of China is informative. In joining the WTO, China undertook far-reaching commitments both to lower trade barriers and to make trade policy more transparent. WTO members also insisted on WTO-plus anti-dumping and 'transitional product-specific safeguard' provisions, under the rationale that China was still a non-market economy.

- **'Transitional product-specific safeguard'**: WTO members can block increases in Chinese imports that could cause or threaten to cause market disruption to domestic producers (available for 12 years post-accession).
- **Special textiles safeguard**: if a member believes that imports of Chinese textiles or apparel are, due to market disruption, threatening to impede the orderly development of trade in these products, the member can request consultations with China. At this point, China must hold back shipments to the requesting member (available for seven years post-accession).

- **Anti-dumping**: the ability to use a special 'non-market economy' methodology for measuring dumping in anti-dumping cases against Chinese companies, which reduces the burden of proof (available for 15 years post- accession).

While it is not yet clear whether Viet Nam will have to comply with similar safeguards within the terms and conditions of its accession package, the threat is real. Viet Nam has already agreed to a market disruption safeguard in its bilateral trade agreement with the USA (see section 3). Such safeguards risk countering the benefits of WTO MFN treatment in key exporting industries. The potential of Viet Nam's growing manufacturing industries such as textiles and clothing (see Box 4) could be considerably restricted, and with it the employment opportunities for thousands of Vietnamese workers.

With regard to anti-dumping action, Viet Nam is already a popular target for the USA. In a case similar to the catfish dispute described in Box 2, the US Southern Shrimp Alliance (SSA) filed an anti-dumping lawsuit in December 2003 against shrimp imported from Vietnam and five other countries. The SSA alleged that shrimp are sold at 'less than fair value' and 'materially injure or threaten to injure' the US shrimp sector. In July 2004, the US government issued a preliminary ruling that China and Viet Nam were dumping shrimp at below market prices and proposed countervailing duties as high as 112 per cent. The two countries were treated separately from the other four because the US classed them as non-market economies.

Research by ActionAid in Viet Nam showed that the US claim was unfair .[34] It concluded that Vietnamese shrimping is a highly competitive and unsubsidised sector which does not meet the criteria for a non-market status (state trading monopoly or price fixing by the state). In August 2004, the US Department of Commerce recognised that some of Viet Nam's shrimp exports were not, in fact, controlled by the government and lowered the anti-dumping duties for at least two Vietnamese firms.[35]

The imposition of anti-dumping tariffs still threatens the livelihoods of thousands of Vietnamese shrimpers and the Vietnamese economy in general, given that the industry, together with other aquatic produce, has created jobs for about 900,000 people. Furthermore, the income of up to 3.5 million people in Viet Nam is sustained – directly or indirectly – by shrimp and shrimp-related business.

WTO disciplines on anti-dumping are widely regarded as being too weak already, allowing systematic protectionist abuse of what is essentially a reasonable defensive trade measure to be used in exceptional circumstances. For example, anti-dumping measures can be taken before a case is proved, or even minimally substantiated, so that even if a claim is false, the target country is punished; a claim can be repeated a number of times, even if unsuccessful; and the burden of proof is too low. Efforts to facilitate even greater abuse of anti-dumping measures on the grounds of NME status are unjustified and unfair.

NME status should not be a blanket excuse for countries to impose WTO-plus demands on acceding countries. Furthermore, acceding countries defined as NME as part of their accession protocols should be able to obtain a review of this status on a yearly basis post-accession, together with any corresponding restrictions.

Services

Viet Nam has agreed to allow international companies to enter 92 service sub-sectors, including financial, professional, telecommunications, and legal services.[36] The EU is currently pushing Viet Nam to go beyond these commitments, even though this already represents greater liberalisation than in its closest neighbours in the region. China provides access to 85 sub-sectors, Thailand 74, and the Philippines 50.[37]

According to the 2003 monitoring report of the CPRGS, the banking and financial system in Viet Nam is inefficient and could benefit from the increased competition which will accompany WTO membership, resulting in improved service delivery and access. However, there are sensitive sectors in Viet Nam, as in other countries, that provide basic services essential for welfare, such as water, sanitation, and electricity. A liberalised service may not reach the poorer citizens, as they do not represent a significant or profitable market. Continued and improved government provision, combined with strengthened regulation over private-sector activity in these areas, may be necessary to ensure full coverage.

Finally, there are further threats posed by Viet Nam's comprehensive trade treaty with the USA, the unfavourable terms of which could well become part of the WTO entry package. These dangers are analysed in section 3.

3 The US Bilateral Trade Agreement

The Bilateral Trade Agreement between the USA and Viet Nam (USBTA) was ratified by both parties in 2001. This agreement, which has a number of serious flaws from Viet Nam's point of view, has major implications for Viet Nam's ability to negotiate the terms and conditions of its WTO accession package. Under the principle of Most-Favoured Nation (MFN), one of the cornerstones of the WTO, concessions granted to one country must be made available to all WTO members. This means that, in the context of negotiations in which members try to extract as many commitments as possible from the acceding country, the terms of the USBTA effectively form the starting point for Viet Nam's negotiations with WTO members. On some issues, Viet Nam has made damaging WTO-plus concessions. While the terms of the USBTA cannot be undone without a complex process of renegotiation, Viet Nam should not be required to 'multilateralise' its WTO-plus concessions in its accession deal, where they present a threat to the achievement of development objectives.

In the USBTA, Viet Nam made extensive commitments encompassing trade policy and legislation, export–import regulations and practices, market access for US products and services, and changes to its intellectual property and investment regimes. According to UNCTAD staff, this bilateral trade agreement is the most comprehensive such treaty ever negotiated.

WTO-plus commitments in the USBTA

Table 1 below gives details of some WTO-plus commitments within the USBTA. The two areas of most concern from a development perspective, data protection and trade safeguards, are explained in more detail below.

Table 1

Issue	Commitment
Intellectual property	Chapter II provides additional obligations not contained in the WTO TRIPS (Trade Related Aspects of Intellectual Property Rights) agreement: • longer term of copyright protection • extension of trademark protection to certification marks • obligation to provide a trademark registration system • obligation to protect encrypted program-carrying signals • protection for clinical test data for pharmaceutical products for at least five years, which will drive up the price of medicines
Investment measures	In Chapter IV there are extensive provisions which go beyond the WTO TRIMS agreement. These provisions are designed to facilitate cross-border investment, and include MFN, 'national treatment' (NT) for foreign investors,[38] guarantee of fair and equitable treatment, and prohibitions on certain expropriations.
Safeguards	Article 6 allows parties to apply restrictive measures against each other's imports in cases of 'market disruption'. The standards for application are much lower than in the WTO Agreement on Safeguards so there is an even greater risk of protectionist abuse.

Source: 'The USBTA and Vietnam's WTO Accession', the US Viet Nam Trade Council Education Forum, 2003; 'Report on Legal and Trade Issues Related to Access to Affordable Anti-retroviral Drugs for People Living with HIV/AIDS in Viet Nam', Jakkrit Kuanpoth and Le Hoai Duong, 2004.

Intellectual Property

The 'TRIPs-plus' provision on restricting third-party use of clinical trials data for pharmaceutical products for five years threatens to drive up the price of medicines for poor people. Manufacturers of inexpensive generic medicines will have to repeat the long and costly tests to obtain the data required for regulatory approval, or will have to delay marketing their products.

When brand companies seek regulatory approval for a new drug, they have to submit test data to the relevant government concerning the quality, safety, and efficacy of the drug, as well as information on its chemical composition. In many developed countries, this data is kept confidential for a period. When this period expires, generic producers can gain regulatory approval without generating their own clinical data by submitting 'bio-equivalence' data that shows that their drugs are the same compound. This is a great deal quicker and cheaper.

The TRIPS Agreement requires that members must protect such data against 'unfair commercial use', but does not specify what this means, or the time period for protection. However, the USBTA obliges Vietnam to prohibit third parties or even the regulatory authorities from using the test data submitted during the previous five years by the originator company in support of an application for product approval. Generic manufacturers have to perform long and costly trials to produce their own data for marketing approval, or, much more likely, to postpone the marketing of their product. Either way, the price of medicines rises.[39]

Furthermore, according to Kuanpoth and Duong,[40] this provision may also limit the effectiveness of the compulsory licensing system, as essential data are not available for drug registration. Compulsory licensing gives governments the ability to override a patent on a new medicine on the grounds of public interest and to commission the production of a cheaper, generic version, paying reasonable remuneration to the patent holder in return. Having this ability gives governments much greater bargaining power when negotiating prices for medicines with the big pharmaceutical companies.

In August 2003, after two years of intense wrangling, WTO members agreed to lift TRIPS restrictions on the production of generic versions of patented drugs for export. The deal was intended to help countries without adequate drug-production capacity – including almost all developing countries – to gain access to affordable medicines. At a time when the WTO is slowly moving towards improving the provisions for compulsory licensing, Viet Nam may find itself with a weakened system.

This situation is set against a background of a rising incidence of HIV/AIDS in Viet Nam. Current estimates put the number of people living with HIV in Viet Nam at around 200,000 and recent epidemiological data suggest that HIV is becoming a more generalised epidemic in the most hard-hit areas of the country, including Quang Ninh, Ho Chi Minh City, and Hanoi, where prevalence among pregnant women is nearing or has surpassed one per cent.[41] Viet Nam should not be made to multilateralise this WTO-plus commitment which could have harmful consequences for public health.

Safeguards

Safeguard provisions are the WTO-plus commitment within the USBTA that could most undermine the benefits of increased market access that the agreement, and WTO accession, should bring to Viet Nam. As Table 1 shows, Article 6 of the USBTA allows parties to apply safeguards against each other's imports in cases of 'market disruption'. The burden of proof is much lower that that imposed by the WTO Agreement on Safeguards:

> *'Market disruption exists within a domestic industry whenever imports of an article, like or directly competitive with an article produced by such domestic industry, are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat thereof, to such domestic industry.'* USBTA, 2001

Under the terms of the agreement, unless a different solution is mutually agreed during the consultations, the importing party may impose quantitative import limitations, tariff measures, or any other restrictions or measures it deems appropriate to prevent or remedy threatened or actual market disruption.

If this protectionists' charter is multilateralised at the WTO level – as happened in the case of China – this type of safeguard has the potential to damage one of the principle motivations for Viet Nam in joining the WTO, that is, increasing exports of textiles and clothing to the USA and other markets, as Box 4 demonstrates.

Box 4

Textiles and clothing: Viet Nam's pot of gold?

The Vietnamese negotiators originally set the date for their country's accession to the WTO for January 2005. This was not an arbitrary decision: it coincides with the phase-out of textiles quotas for all WTO members under the terms of the Agreement on Textiles and Clothing (ATC). As a member of the WTO, Viet Nam would stand to benefit significantly from the ending of quotas, as it has become a highly competitive player in the global market in recent years. In fact, increased market access for textiles and clothing was considered to be the 'pot of gold' for Viet Nam at the end of the accession process – a negotiating arena in which it is notoriously difficult for developing countries to win any significant advantage.

However, the treatment of textiles within the USBTA is becoming an increasing cause for concern for Viet Nam as the phase-out of quotas draws closer and the goal of WTO membership seems to move further away. The terms of the USBTA are clear: all present laws and regulations concerning restrictions on textiles imports are to remain valid, disregarding the WTO Agreement on Textiles and Clothing, until such time as Viet Nam joins the WTO.

The USA is Viet Nam's largest market for textiles and clothing. Exports have increased considerably from US$3m in 1994 to US$2,484m in 2002[42] and have the potential to grow still further. Quota restrictions impede the further development of an industry that accounts for more than 14 per cent of total exports.[43] The textile and clothing industry is a vital source of income and employment in Viet Nam, particularly for women, many of whom are from the rural areas - although poor employment practices and the denial of labour rights mean that these benefits are not consistently realised. In a further blow, the USA announced in May 2004 that it will reduce Viet Nam's quota, following investigations carried out by US customs officials which concluded that counterfeit Vietnamese certificates of origin were accompanying imports of apparel into the USA. As a result of this investigation, quota limits have been reduced at the very moment when Viet Nam's competitors are gearing up to expand their production. Exports from China to the USA reached US$11,609m in 2002; India's exports stood at US$3,212m.[44]

Could all this be resolved upon WTO accession? Perhaps - although there is a further threat. The terms of the USBTA allow for the use of a special 'market disruption' safeguard (see above for details), which the USA could invoke should it conclude that imports from Viet Nam are rising rapidly enough to pose a threat to the domestic industry. The 'injured party' then has a raft of measures at its disposal by which it can restrict these imports. The threat could become more serious if this safeguard provision is multilateralised though the WTO, as has happened in China's case.

The textile and clothing industry is vital to Viet Nam's efforts to increase economic growth and pursue poverty reduction. The WTO-plus commitments made within the USBTA that have the potential to counter these efforts must not be included within the terms and conditions of Viet Nam's WTO accession package.

4 Recommendations

WTO members should stop setting onerous WTO-plus conditions in negotiations with Viet Nam which may have a negative impact on the lives of poor people. Oxfam believes the accession package should include the following elements:

- Agricultural tariffs should not be bound at an average rate of less than 25 per cent, which is Viet Nam's latest offer and which is a rate that already threatens the livelihoods of farmers and rural workers.
- Viet Nam should be able to use all the instruments available to other developing-country WTO members to further protect vulnerable farm sectors; these measures include tariff rate quotas, the current WTO Special Safeguard (SSG) provision and the new provisions now under negotiation at the WTO ('special safeguard mechanism' and 'special products').
- Viet Nam should not be asked to make greater commitments on the scale and timing of reductions in domestic support and export subsidies than those made by other developing countries in the WTO or those agreed in current WTO negotiations.
- Industrial tariffs should not be bound at an average rate of less than 17 per cent, which is Viet Nam's latest offer and which may already mean the loss of manufacturing jobs.
- Viet Nam should not be asked to renounce policy instruments which enable it to increase the development impact of foreign investment, such as requiring the transfer of technology.
- Viet Nam should have sufficiently long transition periods for compliance with the Agreements on Technical Barriers to Trade, Sanitary and Phyto-Sanitary Measures, and Customs Valuation, in order to spread the costs of implementation and build the required technical capacity.
- Members of the Working Party should not include 'non-market economy' provisions that restrict Most-Favoured Nation (MFN) rights.
- WTO-plus provisions on intellectual property and trade safeguards in the US bilateral trade agreement should not become part of the accession package.

Given the concerns raised by Viet Nam's WTO accession negotiations and the harsh experience of other recently acceded countries, Oxfam believes the accession process should be reformed in the following ways:

- The WTO should establish clear guidelines regarding the rights and obligations of new members, based on development indicators.
- Developing-country entrants should enjoy the 'special and differential treatment' in WTO agreements that is granted to developing-country members.
- A panel of experts should decide whether an applicant's trade regime complies with existing WTO rules, and when the 'non-market economy' provisions for acceding countries should be revoked.
- WTO-plus commitments already agreed in bilateral trade agreements which pose a threat to development should not be automatically 'multilateralised' in accession packages.

Notes

[1] 'Accession of Least-Developed Countries', decision of 10 December 2002 by the WTO General Council. WT/L/508.

[2] 'Cambodia's Accession to the WTO: How the Law of the Jungle is Applied to One of the World's Poorest Countries', Oxfam International, August 2003.

[3] *Rigged Rules and Double Standards*, Oxfam International, 2002.

[4] World Bank Development Indicators, figures from 2002.

[5] The members of the Viet Nam Working Party are: Argentina, Australia, Brazil, Brunei, Bulgaria, Canada, Chile, China, Colombia, Croatia, Cuba, Dominican Republic, Egypt, European Union and member states, Honduras, Hong Kong China, Iceland, India, Indonesia, Japan, Republic of Korea, Kyrgyz Republic, Malaysia, Morocco, Myanmar, New Zealand, Norway, Panama, Paraguay, Philippines, Romania, Singapore, Switzerland, Chinese Taipei, Thailand, Turkey, United States, Uruguay.

[6] 'Viet Nam WTO accession proceeds slowly; major issues unresolved', www.insidetrade.com, June 25 2004.

[7] 'Vietnam's WTO Accession: Summary of TA Programs', World Bank, 2003.

[8] 'Viet Nam Development Report 2004', Joint donor report to the Viet Nam Consultative Group Meeting, 2003.

[9] 'Assessing the Poverty Impact of the Doha Development Agenda: a Case Study of Viet Nam', Centre for Rural Progress, Hanoi, February 2003: p. 8.

[10] 'Calculated as an expenditure level that is insufficient to support a healthy life, the definition of "healthy" is based on a minimum calorific intake per day plus a set of basic non-food needs.' 'Viet Nam Development Report 2004' *op. cit*.

[11] 'Assessing the Poverty Impact of the Doha Development Agenda: a Case Study of Viet Nam', *op. cit*. p.21.

[12] 'Viet Nam Development Report 2004', *op. cit*.

[13] http://www.imf.org/external/pubs/ft/scr/2003/cr03382.pdf

[14]

Exports in US$bn:	2000	249.2
	2001	266.1
	2002	325.6
	2003	438.4
Imports in US$bn:	2000	225.1
	2001	243.6
	2002	295.2
	2003	412.8

Data on trade varies according to source. These are figures given to Oxfam by the Chinese Ministry of Agriculture.

[15] 'Most-favoured-nation treatment (Article I of the GATT 1994) requiring countries not to discriminate between goods on the basis of their origin or destination', www.wto.org

[16] Selective trade preferences which override the MFN principle do exist within the WTO for the benefit of certain groups of countries, including LDCs and developing countries, or if a waiver is granted, as in the case of the ACP. Countries may also establish free trade agreements with a limited membership, such as the EU, provided they liberalise 'substantially all trade'.

[17] 'Note on the Status of Countries Under the Jackson-Vanik Law', C. Van Grasstek, 2003

[18] See 'Arrested Development: WTO July framework agreement leaves much to be done', Oxfam International, September 2004.

[19] 'Dumping Without Borders: How US Agricultural Policies are Destroying the Lives of Mexican Corn Farmers', Oxfam International, August 2003.

[20] 'Dumping on the World: How EU Sugar Policies Hurt Poor Countries', Oxfam International, April 2004.

[21] Figures from the WTO website, www.wto.org

[22] Foreign Direct Investment Survey, Multilateral Investment Guarantee Agency (MIGA), with the assistance of Deloitte & Touche LLP, World Bank, Washington, January 2002.

[23] Viet Nam qualifies as a 'low-income country' according to the UN definition. Countries with 1995 GDP per capita below US$800 qualify.

[24] 'CPRGS Monitoring Report', Socialist Republic of Viet Nam, 2003.

[25] 'The Effects of Eliminating EU Export Subsidies', S. Leetmaa, Economic Research Service of the US Department of Agriculture, 2001.

[26] 'Rice for the Poor and Trade Liberalisation in Viet Nam', Oxfam GB and Oxfam Hong Kong, 2001.

[27] 'Impact of the global coffee trade on Dak Lak province, Viet Nam: Analysis and Policy Recommendations' ICRAD, Oxfam GB and Oxfam Hong Kong, 2001.

[28] 'Rice for the Poor and Trade Liberalisation in Viet Nam' *op. cit*.

[29] 'The Emperor's New Clothes: Why Rich Countries Want a WTO Investment Agreement', Oxfam International, 2003.

[30] 'Inside US Trade', www.insidetrade.com, 25 June 2004.

[31] 'Implementation of Uruguay Round Commitments: the Development Challenge', J. M. Finger and P. Schuler, World Bank Policy Research Working Paper, 1999.

[32] The Agreement on Anti-Dumping includesspecific rules for non-market economies regarding determination of the injury involved in dumping. In the particular situation of economies where the government has a complete or substantially complete monopoly of its trade and where domestic prices are

fixed by the State, a strict comparison with home market prices may not be appropriate. Importing countries have thus exercised significant discretion in the calculation of the 'normal' value of products exported from non-market economies.

[33] 'The Economics of the NME Issue: Viet Nam Catfish Case *Study',* A. McCarty and C. Kalapesi, Mekong Economics Ltd, 2003.

[34] 'Vietnam Shrimpers: Beyond the Petition', ActionAid, Hanoi, 2004.

[35] Fact Sheet amending findings in the shrimp case, US Department of Commerce, 24 August 2004.

[36] 'Inside US Trade', www.insidetrade.com, 25 June 2004.

[37] 'Paying the Price for Joining the WTO: a Comparative Assessment of Services Sector Commitments by WTO Members and Acceding Countries', Grynberg, Ognivtsev, and Razzaque, an EAD Discussion Paper, 2002.

[38] 'Obligation under Article III of the GATT 1994 which requires that imports be treated no less favourably than domestically-produced goods once they have passed customs.' See www.wto.org. The principle can be applied to services and investment.

[39] In many cases, the patent term on a drug and the protection of its clinical trial data run concurrently, so the date on which a generic version can be manufactured is unaltered. However, if the patent was never registered, or might be challenged, or if the patent holder has found a new use for a medicine after patent expiry, the protection of the trial data ensures an extended period of exclusivity on the market.

[40] 'Report on Legal and Trade Issues Related to Access to Affordable Anti-retroviral Drugs for People Living with HIV/AIDS in Viet Nam', Jakkrit Kuanpoth and Le Hoai Duong, 2004.

[41] 'Report on Legal and Trade Issues Related to Access to Affordable Anti-retroviral Drugs for People Living with HIV/AIDS in Viet Nam' op.cit.

[42] 'US Textiles and Clothing Imports', ITCB, 2004.

[43] 'Assessing the Poverty Impact of the Doha Development Agenda: a Case Study of Vietnam', Centre for Rural Progress, Hanoi, February 2003.

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