Foreign investment policy of viet nam in the process of international economic integration

part I

Overview of foreign investments in Vietnam

It was only one year after the implementation of the Doi Moi policy, the State of Vietnam issued the Law on Foreign Investment. This is the first Law to be built on the basis of a market economy, and also the first Law to express the policy of Vietnamese Government on integration into the world and regional economy. The flexible and attractive regulations of the Law, along with the legal system and policies concerned have created a favorable environment for Vietnam to attract and use efficiently foreign investment capital.

1. Scope, speed and structure of foreign investment

1.1. Scope and speed:

From 1988 to the present, 4,560 FDI projects were given licenses by the Vietnamese Government, with a total registered capital of $US 42.88 billion. Also in the same period, 1,160 FDI projects were expanded with a total capital increase of $US 7.77 billion. Thus, the total registered and increased capital of the FDI projects in Vietnam amounted to $US50.65 billion. Excluding projects that were completed or dissolved before the expiry date, there are at present about 4,000 on-going projects in Vietnam with a total registered capital of $US39 billion and a disbursed capital of $US 21 billion. Below are some major characteristics of the scope and speed of foreign investment attraction in Vietnam, seen from three main stages:

- During the period prior to 1996, the attractiveness of a new market of over 70 million population as well as other favorable factors (establishment of official diplomatic relations with the US, cooperation relations with international financial institutions, and a start to integration) had created a favourable environment for Vietnam to attract foreign investments at the largest scope. In this period, foreign investment flows in Vietnam rapidly increased, both in the number of projects and registered capital. The most outstanding figure of which was $US 8.6 billion capital to be attracted in 1996.

- During the 1997-1999 period, due to the impact of the regional economic crisis and some defects of the environment, foreign investment flows into Vietnam fell by 24% per year, on average.

- From 2000 to the present, foreign investment flows into Vietnam recorded a gradual recovery. This was reflected in the growth rates (in project number) by 28.6%, 25% and 44% in 2000, 2001 and 2002, respectively. However, the total newly registered capital in 2002 amounted to only $US 1.56 billion, down by 39% as compared with 2001. This was mainly due to the fact that not many big-sized projects were licensed in 2002.

Source: Ministry of Planning and Investment

1.2. Structure of Foreign Investment

- By locations: The current FDI projects have been operating in all 61 provinces and cities of the whole country, but mainly concentrated in key economic regions of the South (accounting for 58% of the total project number and 50% of the total FDI capital), and key economic regions of the North (accounting for 26% of the total project number and 22.7% of the total FDI capital).

Diagram I.2: FDI in Vietnam by locations

Source: Ministry of Planning and Investment

- By investment partners: Presently, 74 countries and territories of the world have had FDI projects in Vietnam, of which Singapore is the largest investor with 311 projects and a registered capital of over $US 6 billion, then followed by Taiwan, Japan, Hong Kong, and Korea. The total capital of these investors alone accounted for 54.7% of the total committed FDI flows into Vietnam ($US 23 billion).

Diagram I.3: Foreign investments by partners

Source: Ministry of Planning and Investment
- FDI in Viet Nam by sectors: FDI projects have operated in most sectors of the economy, the majority of which have been invested into industry and construction - both in project number and registered capital.

Table I.1. FDI in Vietnam by sectors

<table>
<thead>
<tr>
<th>No</th>
<th>Industry</th>
<th>No. of projects</th>
<th>Registered capital (million $US)</th>
<th>Implemented capital (million $US)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Industry and Construction</td>
<td>2,576</td>
<td>25,180</td>
<td>14,617</td>
</tr>
<tr>
<td>1</td>
<td>Processing industry</td>
<td>2,439</td>
<td>17,826</td>
<td>10,037</td>
</tr>
<tr>
<td>2</td>
<td>Construction</td>
<td>69</td>
<td>3,487</td>
<td>576</td>
</tr>
<tr>
<td>3</td>
<td>Mine exploitation</td>
<td>48</td>
<td>2,003</td>
<td>3,196</td>
</tr>
<tr>
<td>4</td>
<td>Electricity, gas, water production and distribution</td>
<td>20</td>
<td>1,863</td>
<td>808</td>
</tr>
<tr>
<td>II</td>
<td>Services</td>
<td>790</td>
<td>11,072</td>
<td>5,594</td>
</tr>
<tr>
<td>1</td>
<td>Assets business, consulting services</td>
<td>394</td>
<td>3,869</td>
<td>1,770</td>
</tr>
<tr>
<td>2</td>
<td>Hotels and restaurants</td>
<td>108</td>
<td>2,865</td>
<td>1,820</td>
</tr>
<tr>
<td>3</td>
<td>Transportation, inventories, information</td>
<td>112</td>
<td>2,560</td>
<td>987</td>
</tr>
<tr>
<td>4</td>
<td>Culture and Sports</td>
<td>51</td>
<td>706</td>
<td>321</td>
</tr>
<tr>
<td>5</td>
<td>Finances, credits</td>
<td>39</td>
<td>573</td>
<td>517</td>
</tr>
<tr>
<td>6</td>
<td>Commerce, Repairing</td>
<td>40</td>
<td>251</td>
<td>125</td>
</tr>
<tr>
<td>7</td>
<td>Public Health</td>
<td>16</td>
<td>185</td>
<td>37</td>
</tr>
<tr>
<td>8</td>
<td>Education and Training</td>
<td>30</td>
<td>64</td>
<td>16</td>
</tr>
<tr>
<td>III</td>
<td>Agriculture, Forestry and Aquaculture</td>
<td>373</td>
<td>2,340</td>
<td>1,404</td>
</tr>
<tr>
<td>1</td>
<td>Agriculture-Forestry</td>
<td>312</td>
<td>2,155</td>
<td>1,298</td>
</tr>
<tr>
<td>2</td>
<td>Aquaculture</td>
<td>61</td>
<td>185</td>
<td>106</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>3,739</td>
<td>38,592</td>
<td>21,616</td>
</tr>
</tbody>
</table>

Source: Ministry of Planning and Investment (on-going projects only, as of December 31, 2002).

2.2. FDI contributions to Vietnam’s socio-economic development

On the whole, Vietnam’s policy on foreign investment attraction for the past 15 years has actively contributed to the fulfillment of the socio-economic objectives, and created initial foundations for national industrialization and modernization. Specifically:

2.2.1. Foreign investment has supplied an important source of capital for development investment, contributing to mobilizing and enhancing the efficiency of the available domestic sources.

With a rising ratio of implemented capital year after year, FDI has provided an important source of capital for development investment in Vietnam. Specifically, FDI accounted for 25% of the total capital in Vietnam in the 1991-1995 period, 24% in the 1996-2000 period and 1.8 times higher than that for the 1991-1995 period. For two years only, 2001 and 2002, FDI accounted for 18.5% of the total social capital for the development investment. Through FDI capital, many of the domestic resources have been mobilized and used efficiently, and at the same time, the State has...
been able to actively allocate capital for socio-economic infrastructure development and invest in regions that have been faced with socio-economic difficulties.

**Diagram I.4: Share of FDI in total investment**

![Chart showing the share of FDI in total investment from 1996 to 2002. The chart displays the percentage of FDI and FDI as a proportion of total investment over the years.](chart)

*Source: Ministry of Planning and Investment, General Department of Statistics*

The ratio of the FDI contribution to GDP was on a gradual rise year after year, from 3.5% in 1993 to 13.3% in 2000, and over 13%/year in 2001 and 2001.

**Diagram I.5: FDI contribution to GDP**

![Chart showing the percentage of FDI contribution to GDP from 1991 to 2002. The chart displays the percentage of FDI contribution to GDP over the years.](chart)

In the 1996-2000 period, the FDI sector remitted to the State budget $US 1.49 billion, up by 4.5 times as compared with the previous five years, and accounted for, on average, 6-7% of the total State budget revenue (this figure would be 20%, if the oil and gas revenue was included). For 2001 and 2002 only, the contribution of the FDI sector to the State budget went up by 115% and 116%, respectively, as compared with the same period. However, this contribution ratio of the FDI sector is still as high—following the first years of their operation, where most of FDI enterprises enjoyed preferences (tax reduction or exemption).
The performance of the FDI sector has had an active impact on the major balances of the national economy. Along with the development process, contributions of the FDI sector to the State budget has been increasing, which in turn has created favorable conditions for the State to balance the budget, reduce the budget deficit, and improve the current account balance, and balance of payment.

2.2.2. Policies to encourage export-oriented foreign investments have created favourable conditions for Vietnam to access and expand its markets in the world and enhance its competitive edge.

In recent years, the export value of the FDI sector (excluding oil and gas) has been rapidly increasing, from $US 1.12 billion in the 1991-1995 period to $US 10.6 billion in the 1996-2000 period, that is eight times higher, and accounting for 23% of the total export value of Vietnam. The export value of the FDI sector was $US 3.36 billion in 2001, and $US 4.5 billion in 2001, accounting for over 25% of the total export value of the country. Noteworthy is that the export value of the FDI sector occupied a considerable ratio to Vietnam’s, regarding the export of some key items (42% of footwear export, 25% of garments and textile, and 84% of electronics, computers and supplies).
In addition to this, the export performance of the FDI sector has contributed to expanding the domestic market, strengthening the development of the services sector, especially hostelry, tourism, foreign exchange services etc.

2.2.3. Vietnam’s policies to encourage foreign investments into areas of preferences, regions of socio-economic difficulties and industrial zones has had remarkable contributions made to economic restructuring in the direction of industrialization and modernization

Facts showed that, in the early years, FDI projects mainly focused on the real estate business (building of hotels and offices for lease), they were, in the 1996-2000 period, shifted to production industries with a more rational structure, focusing mainly on production, export-oriented processing and infrastructure development industries.

Specifically, there was a strong shift of FDI capital in the services sector, with an increasing ratio in the structure of foreign investments in Vietnam. Statistics showed that the number of FDI projects in real estate in the 1996-2000 period went down by 52%, while that of FDI projects in infrastructure building (telecommunications, technical services) rose by 1.4 times, as compared with the previous five years. In production, FDI projects have, until present, occupied 35% of the total industrial output with an average growth rate of over 20% each year, contributing to bring the national industrial growth rate to 11-13% each year. Also, the FDI sector has created numerous new industries and products, and occupied a high proportion in the total output of some major industrial items. Up to the present, the FDI sector has made 100% output of crude oil, automobiles, refrigerators, air-conditioners, computers and office equipment; 60% of laminated steel output, 28% of cement, 33% of electronics, and 76% of accurate medical tools. In the light industry, the FDI sector accounted for 55% of the total fibre output, 30% of cloth of various types, 49% of footwear, 18% of garments, and 25% of foodstuffs and drinks.

Diagram I.8: Industrial growth of the FDI sector

Source: General Department of Statistics

In particular, the policy to encourage foreign investments into industrial zones and export processing zones (IZs) has had an important contribution to the distribution of economic regions, enhancing export capacity, improving investment efficiency and, at the same time, creating conditions for narrowing the gap of development among regions, while speeding up the process of urbanization and labor utilization. Up to the present, 76 IZs have been established in Vietnam, 18
of which were built from FDI capital. These IZs have attracted 2,247 investment projects, of which 1,202 are FDI ones with a total registered capital of $US 9,444 million, and 1,035 are domestic investment projects with a total registered capital of VND 44 thousand billion. At present, foreign investments into IZs accounted for about 23% of the total FDI sector and 40% of FDI capital production industries and services (excluding oil and gas). The majority of them were light industry projects (textile, fibre, garments…), assembling of electronics, household electrical appliances and foodstuff processing, which are labour-intensive industries with a high percentage of export. Up to the present, IZs have generated over 380,000 direct jobs and about 300,000 indirect jobs.

2.2.4. Policy to encourage foreign investments in technological transfer has created favorable conditions for Vietnam to absorb advanced technologies for enhancing the technological capacity of the economy

In the recent period, many new and modern technologies have been imported into Vietnam through FDI projects, especially in telecommunications, oil and gas, chemical, electronics, computer, automobiles and motorbikes… These technologies have created an important turning point in the development of some cutting-edge economic areas for the country. In general, technologies used in FDI projects were of a similar or a higher technological level than advanced technologies used in Vietnam, and were used widely in all regional countries. The problem of environmental protection has also been paid much attention by FDI enterprises.

The operation of foreign invested enterprises in Vietnam has also created modern business and management skills/ models and at the same time promoted Vietnamese enterprises to renovate their management skills, and upgrade their technologies for the sake of competitiveness enhancement.

2.2.5. Policies to encourage foreign investments into labor-intensive industries have had remarkable contributions to jobs creation, hunger eradication and poverty reduction, improvement of the living conditions of the population and creating favorable conditions for human resource development in Vietnam

By the end of 2002, the FDI sector created 620 thousand direct jobs, and thousands of indirect jobs that provide relevant services. The speed of labour attraction into this sector has increased year after year, for example, from 69 thousand employees in 2001 (up by 19%) to 175 thousand employees in 2002 (up by 39%). Employees of the FDI sector in the past two years were mainly involved in processing industries.

Table I.2: Direct jobs created by the FDI sector

<table>
<thead>
<tr>
<th>Categories</th>
<th>2000</th>
<th>2001</th>
<th>2001</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Agriculture - Forestry - Aquaculture</td>
<td>33,313</td>
<td>40,957</td>
<td>63,224</td>
</tr>
<tr>
<td>2 Industry and Construction</td>
<td>304,418</td>
<td>362,068</td>
<td>512,189</td>
</tr>
<tr>
<td>3 Services</td>
<td>38,469</td>
<td>42,959</td>
<td>46,085</td>
</tr>
</tbody>
</table>

Source: Ministry of Planning and Investment

A considerable ratio of employees working in the FDI sector have been trained to improve their management, scientific and technological skills so that they can gradually substitute foreign experts, or enhance their professional skills and working attitudes in responding to the new working
mechanism. Foreign investments have also helped improve the income of a considerable number of employees and enhanced the purchasing power of the population. At present, the average wage of the Vietnamese workers in the FDI sector is about $US 75-80 /person/month, higher than that of those working in the State sector; the average wage of an engineer in the FDI sector may reach $US 220-250, and a manager $US 490-510. The total income of employees in the FDI sector is estimated to be over $US 500 million per year.

2.2.6. Foreign investments have contributed to expanding external relations, creating conditions for Vietnam to actively integrate into the regional and world economy

Today, business corporations and groups from 74 countries and territories, of these there are 80 multi-national corporations (TNCs) among 500 of the largest TNCs in the world, who have invested in major important industries of Vietnam, such as oil and gas, telecommunications, automobiles, electronics, information technology, chemicals, beverages, banking and insurance... The operation of FDI in general and the participation of these corporations in Vietnam in particular have contributed to dismantling the trade barriers and expanding the external economic relations to enhance the position and strength of Vietnam in the process of economic integration.

PART II

VIETNAM'S INTERNATIONAL OBLIGATIONS ON INVESTMENT

Over the past few years, along with setting up and gradually improving the legal and regulatory system on foreign investment, the Vietnamese Government has signed and/or acceded to several bilateral and multilateral investment agreements. These agreements form an integral part of the country’s legal framework for the promotion and protection of foreign investment in Vietnam. Below is a brief summary of such commitments:

1. Bilateral Agreements on the Promotion and Protection of Investments:

To date, Vietnam has signed the bilateral agreements on the Promotion and Protection of Investment with 45 countries and territorial regions in the world. These agreements expanded the scope of the definition from that provided under the Law on Foreign Investment and now covers, for instance, direct investment, portfolio investment in the form of shares, bonds, all kinds of tangible and intangible assets, intellectual property rights, contractual rights, and other forms of participation in a company. However, except for some agreements signed after the entry into force of the US-Vietnam Bilateral Trade Agreement (BTA), Vietnam’s investment commitments are limited to the granting MFN treatment, with the exception of incentives and privileges given to investors from a third country under the framework of a Custom Union or Regional Economic Agreements.

In addition to granting MFN treatment, Vietnam committed to implement measures to promote and protect investment in accordance with international rules, including:

- To promote investments and investors by ensuring fair and equitable treatment, full protection and security, and non-impairment by unreasonable and nondiscriminatory measures.
- To prevent expropriation of investors’ assets by administrative measures, except for public purpose, in a non-discriminatory manner, upon payment of prompt, adequate and effective compensation, and in accordance with due process of law.

- To ensure foreign investors’ rights to repatriate capital, profits, and other legitimate sources incomes without delay and by convertible currencies.

- To accept the right of investors to bring disputes (if any) with State agencies to competent courts, arbitration under the rules of UNCITRAL or ICSID, or any other previously agreed dispute settlement mechanism.


2.1 General assessment:

Although it is only one chapter of the BTA, the Investment Chapter (Chapter 4) contains many of the same provisions found in comprehensive bilateral agreements on investment. In comparison with the Framework Agreement for the ASEAN Investment Area, this Chapter has a broader scope of application, covering investment in both the manufacturing and services sectors. Investments protected by the BTA include all investments in the territory of a Party owned or controlled by nationals or companies of the other Party, and include, among other things, companies and enterprises, equity or other interests in a company, contract rights, tangible and intangible property, intellectual property rights, and rights conferred by the law, including licenses and permits.

What is noteworthy about the BTA is that, in keeping with the application of standards for investment promotion and protection, which is similar to the above-said bilateral Agreements, Vietnam has, for the first time, made binding commitments to grant MFN and national treatment to U.S. investors over a certain period of time. Specifically:

- **Investors will receive the better of MFN or National Treatment:** With respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of a covered investment, each Party shall accord treatment no less favorable than that it accords, in like situations, to investments in its territory of its own nationals or companies or to investments in its territory of nationals or companies of a third country, whichever is most favorable. However, a Party may adopt or maintain exceptions to this rule for matters specified in an annex to the BTA . As discussed below, Vietnam has reserved the right to adopt exceptions in certain sectors, including broadcasting, insurance, and banking.

- **General Standard of Treatment:** The BTA further requires each Party to, at all times, accord to the investments of the other Party fair and equitable treatment and full protection and security, and further obliges parties never to accord treatment less favorable than that required by applicable rules of customary international law. Each Party must also in no way impair by unreasonable and discriminatory measures the management, conduct, operation and sale or other disposition of the investments of the other Party.

2.2 Specific commitments on MFN and National Treatment:
As discussed above, Vietnam agreed to provide MFN and national treatment to U.S. investors. For MFN, Vietnam does not maintain any exceptions. For national treatment, Vietnam undertook national treatment exceptions for certain sectors and matters, containing a timetable for implementation providing for a transition period suitable for Vietnam’s economy.

2.1.1. Sectors and matters permanently exempted from National Treatment obligations: Vietnam reserves the right to adopt or maintain exceptions to National Treatment in the following sectors and matters: broadcasting, television; production, publication and distribution of cultural products; investment in insurance; banking; brokerage, dealership in securities and currency values, and other related services; mineral exploration and exploitation; construction, installation, operation and maintenance of telecommunication facility; construction and operation of inland water, sea and air ports; cargo and passenger transportation by railway, airway, road, sea and inland water-way transportation; fishing and fish catching; real estate business; ownership, use of land and residences; Government subsidies and supports (e.g. land allocation for investment projects, preferential credits, research and development and education assistance programs and other forms of Government supports); equitization of share in state owned enterprises; evaluation regime for investment license in respect of the project which are subject to approval of the Prime Minister.

2.1.2. Sectors and matters exempted from National Treatment for a limited period of time: Aside from the permanent national treatment exemptions (discussed above), Vietnam committed to phase in national treatment in certain sectors and matters, including:

a. Narrowing and eventually eliminating the restrictions on U.S. investment in some certain sectors:

Vietnam committed to eliminate within 5-7 years from the entry into force of the BTA certain measures inconsistent with the WTO Agreement on Trade Related Investment Measures (“TRIMs Agreement”), including export requirements for certain products, development of local raw material sources in respect of projects for processing of paper, vegetable oil, milk, cane sugar, wood processing, and localization requirements for automobile, motorcycle, electric and electronic products. Vietnam committed to eliminate all other TRIMs no later than five years after the date of entry into force of the Agreement, or the date required under the terms and conditions of Vietnam's WTO accession, whichever occurs first.

In addition, under Chapter I (trade in goods) and Chapter III (trade in services), Vietnam committed to the following:

- for trade in goods, within 3 to 7 years from the entry into force of the BTA, U.S. investors are allowed to set up joint ventures or 100% U.S. invested enterprise to do business in import and export activities in respect of all goods except those provided specifically in Annexes B, C, D.

- for trade in services, Vietnam will progressively eliminate most market access and national treatment limitations applicable to 8 service sectors: (i) professional services (legal, architecture, technical consultation, computer, advertisement, market survey); (ii) communications service (value added, basic telecom, audiovisual); (iii) construction services; (iv) distribution services (wholesale and retail); (v) education services; (vi) financial services (insurance, banking); (vii) health care services; (viii) tourist services.
b. Gradually implement registration regime for investment licensing:

The BTA allows Vietnam to maintain permanently the evaluation regime for investment licenses in respect of almost all the investment project falling within Group A which are subject to the approval of the Prime Minister. The criteria for the granting or denial of a license, and for the imposition of any conditions for such license, shall be published, readily understandable, and no more burdensome than necessary to serve a legitimate regulatory interest. Nationals and companies of the United States shall be accorded most-favored nation treatment in respect of any requirements for, and in the administration of, licenses.

Apart from the above investment projects, Vietnam shall, within 2 to 9 years, implement a registration regime for investment licensing in respect of projects investing in industrial zones and export-processing zones; projects with export rate of at least 50% of products, projects with investment capital of between $US 5 - 20 million, and all other projects not subject to evaluation regime for investment license. The registration procedure shall require only the provision of basic information concerning the investor and proposed investment, and shall be promptly approved and issued without the attachment of any conditions except as otherwise provided in Annex H. National treatment for the above registration regime shall be granted within 6 years from entry into force of the BTA.

c. Expanding the form of capitalization and abolishing some restrictions in the establishment, management, and organization of a U.S. invested enterprise:

From the date of entry into force of the BTA, U.S. investors may contribute, increase, and reinvest capital in any currency, including Vietnamese dong so long as the currency originates from lawful activity in Vietnam. Vietnam may maintain the following capital restrictions for up to 3 years from the entry into force of the BTA: (i) U.S. nationals or companies must contribute at least 30% of the legal capital of a joint venture; (ii) the legal capital of a U.S.-owned enterprise shall not be less than 30% of investment capital; and (iii) some conditions for capital assignment.

U.S. investors may also establish a joint stock company. Requirements that the general director or the first deputy general director of a joint venture enterprise must held by the Vietnamese citizen shall be abolished at the end of three years.

d. Implementing road map for abolishing the dual pricing system for certain goods and services under State control:

Under this commitment, Vietnam shall refrain from imposing new or more onerous discriminatory prices and fees, and eliminate discriminatory prices and fees within 4 years from the entry into force of the BTA (e.g. electricity, water, telecommunication services, airfare, international port fees, registration fees for transport means, tourist fees, etc.).

3. Investment obligations under the framework of regional organizations and forums:

Since 1995, in keeping with efforts to participate in regional forums and organizations (ASEAN, APEC, ASEM), and negotiate WTO accession, Vietnam has approached international investment integration on a bilateral and multilateral basis. A salient feature in this period is that,
along with the continuous signing of bilateral agreements on investment, Vietnam has signed or participated into the following international conventions and forums:

3.1. Framework Agreement on ASEAN Investment Area:

In October 1998, ASEAN member countries signed a Framework Agreement on an ASEAN Investment Area, with a view to enhancing the region’s attractiveness and competitiveness for foreign investment. The most important aspect of this Agreement is to implement National Treatment and open industries to foreign investment with some exceptions in certain sectors and matters. Accordingly, other than those sectors specified on the Temporary Exclusion List and Sensitive List, member countries committed to open industries and grant National Treatment to ASEAN investors upon entry into force of the Agreement.

The Temporary Exclusion List (TEL) includes sectors that economies could not commit to open or grant National Treatment within a definite time period. The time period is based on the principle of AFTA+3; that is, by 2013 for Vietnam, 2010 for original member countries, and 2015 for Laos and Myanmar.

The Sensitive List (SL) includes measures and/or sectors not yet covered by market access and national treatment obligations. ASEAN members will reconsider this list in 2003 in order to shorten it and move sectors to Temporary Exclusion List instead. Each ASEAN country determines its lists on the basis its own interests, conditions for socio-economic development without any negotiations with other member countries.

Table II.3: Duration for the exclusion of certain sectors on the SL for ASEAN investors

<table>
<thead>
<tr>
<th>Sectors</th>
<th>Opening industries</th>
<th>Granting National Treatment</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>TEL</td>
<td>SL</td>
</tr>
<tr>
<td></td>
<td>ASEAN 6 CLM VN</td>
<td>ASEAN 6 CLM VN</td>
</tr>
<tr>
<td>Agriculture</td>
<td>2010 2015 Cam. 2010</td>
<td>2010 2015 Cam. 2010</td>
</tr>
<tr>
<td>Forestry</td>
<td>2010 2015 Cam. 2010</td>
<td>2010 2015 Cam. 2010</td>
</tr>
<tr>
<td>Services relevant to the</td>
<td>2010 2015 Cam. 2010</td>
<td>2010 2015 Cam. 2010</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Source: Ministry of Planning and Investment</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Paper, MPI
3.2. Asia - Pacific Economic Cooperation (APEC)

The OSAKA Action Plan defined 15 areas for the Collective Action Plan of all member economies. One such area was the investment liberalization program whose objectives are investment liberalization and door-opening in the Asia-Pacific region, by: i) reducing or eliminating restrictions on investment; ii) implementing WTO norms, APEC's non-binding investment principles and any other APEC guidelines; and iii) expanding the system of bilateral investment agreements in APEC.

In order to achieve the above-said targets, APEC will cooperate to take collective actions, such as: to enhance the transparency of the investment environment of APEC economies; establish a dialogue mechanism between governments of member economies with the community of APEC enterprises in order to improve the investment environment; create forums to support the new WTO negotiations.

Soon after becoming an APEC member in November 1998, Vietnam formulated a National Action Plan (IAP) on investment liberalization in response to APEC's objectives. Accordingly, Vietnam will grant full National Treatment to foreign investors by the end of 2020; gradually create a legal foundation and apply a uniform regime of taxation and service charges (land rent, electricity, water, posts and telecommunications, air transport, etc.) for both foreign and domestic investors; enhance the transparency and predictability of Vietnam's policies and laws on foreign investment; simplify investment-related procedures; reduce restrictions on the operation of foreign investment projects in response to TRIMs Agreement; apply progressively a system of investment registration; and diversify forms of investments and measures for foreign investment mobilization.

3.3. Asia- Europe Meeting (ASEM):

ASEM’s priorities include enhancing cooperation among enterprises and improving the trade and investment environment, through the implementation of two cooperation programs, TFAP (Trade Facilitation Action Plan) and IPAP (Investment Promotion Action Plan). The comprehensive objective of IPAP is to build a favorable investment environment in order to increase two-way investment flows between Asia and Europe, carry out cooperation programs to promote investments within member economies and, at the same time, take initiatives to improve investment-related mechanisms, policies and regulations.

Within the IPAP framework, member economies have established high-ranking dialogues on policies to improve the investment environment following the non-binding investment principles, some major contents of which are to provide National Treatments; eliminate restrictions on the transfer of capital and profits abroad; apply fair and equitable treatment consistent with international principles in cases of expropriation and nationalization for public purposes; eliminate restrictions on trade-related activities of investment projects in accordance with TRIMs Agreement, apply a dispute settlement mechanism in accordance with international rules and conventions, and strengthen the signing of double-tax avoidance agreements by member economies.
PART III
INVESTMENT OBLIGATIONS UNDER WTO FRAMEWORK AND VIETNAM'S NEGOTIATION PROCESS

1. The basic obligations of the Agreement on Trade-Related Investment Measures (TRIMs)

WTO rules do not yet regulate foreign investment in the same manner as the 1,700 bilateral investment-related agreements signed in the recent years. However, the WTO’s TRIMs Agreement -- part of the Uruguay Round -- regulates the trade aspects of foreign investment activities.

The main objective of this Agreement is to prohibit investment measures that distort trade in goods, thereby promoting trade and investment liberalization. Building on this objective, Article 2.1 of the TRIMs Agreement forbids any trade-related investment measure (“TRIM”) that is inconsistent with the provisions of GATT Article III (national treatment of imported products) or GATT Article XI (prohibition of quantitative restrictions on imports or exports).

These measures include provisions and policies applied by a country in order to achieve its certain economic development objectives, which require investment projects to meet certain conditions for their establishment, expansion or enjoyment of investment incentives. Specifically, according to an Illustrative List annexed to the TRIMs Agreement, the following measures would be prohibited: certain local content requirements, trade balancing requirements, foreign exchange restrictions, and export restrictions.

In addition to the measures defined in the Illustrative List, Measures which are unlisted, but inconsistent with obligations of granting National Treatment or with obligations of eliminating quantitative restriction are also considered measures that violate TRIMs Agreement.

Finally, the TRIMs Agreement requires WTO Members to eliminate inconsistent TRIMs within 2 years (1997) for developed countries, 5 years (2000) for developing countries, and 7 years (2007) for least-developed countries. These time durations apply to WTO member countries; applicants for WTO membership can negotiate this duration in the context of their accession negotiations.

2. Development trend for a Multilateral Framework of Investment (MFI) in the WTO:

The first WTO Ministerial, held in Singapore in December 1996, decided to establish a "Working Group on the Relationship between Trade and Investment" with a view to studying possibilities to develop WTO investment principles. Ministers agreed to establish a non-negotiating Working Group to study the possibilities. However, WTO Members were unable to agree on beginning negotiations due in part to disputes among developed and developing countries regarding certain issues, such as implementation of a non-discrimination principle, elimination of restrictions on investment establishment, transparency and dispute settlement.

After lengthy negotiations, the WTO’s 4th Ministerial Conference, held in Doha in November 2001, produced a Declaration confirming the need to establish a multilateral investment mechanism
with a view to ensuring transparency, stability and predictability of foreign investment activities. However, in the negotiation process for this new mechanism, Ministers also stressed the importance of balancing interests among WTO Members, with considerations to financial, trade targets and specific development policies of the majority of developing and least-developed countries. Accordingly, WTO will intensify its technical and capacity building supports so as to help these countries effectively participate into this multilateral investment mechanism.

Moreover, Ministers of WTO member countries also agreed to start investment negotiations some time after the 5th Ministerial, to be held in Cancun in September 2003 on the basis of modalities agreed by WTO Members in Cancun. In an effort to reach consensus, the WTO Working Group on the Relationship between Trade and Investment will focus on the following issues:

- **Expand of the concept of “investment”:** For the purpose of diversifying investment activities, the group of developed countries suggested to expanding the concept of investment which does not confine only in direct investment but also in long-term cross-border investments.

- **Apply the non-discrimination principle:** Accordingly, member countries have to provide investments and investors of other countries with conditions no less favorable than those given to investments and investors of their own countries.

- **Apply conditions for investment establishment, on the basis of GATS approach:** The placement of this principle into the Declaration of the Ministerial Conference was one of the biggest victories of developing countries in the negotiations on issues relevant to the multi-lateral investment mechanism. Such modality of negotiation will therefore create conditions for developing countries to actively and flexibly take measures for the establishment of new investments.

- **Transparency requirements include publication of all relevant laws and regulations, investment procedures and decisions of member countries...**

- **Eliminate performance requirements:** According to this principle, member countries must not apply measures that require local contents, import-export balance, technological transfer, use of local labor, minimum ratio of capital and other restrictions on the transfer of capital and profits abroad.

- **Reduce or prohibit the use of investment incentives:** This issue has not been specifically defined in the Declaration of the Ministerial Conference, yet will be one of the contents to be discussed in the new Negotiation Round. According to developing member countries, the application of investment incentive is necessary for them to enhance their attractiveness for foreign investments into sectors and regions under their development program. In the mean time, most developed member countries see to it that the application of investment incentives will cause an unfair competition among investment recipient countries and need to be eliminated in order to avoid “distortions” in trade and investment activities.

- **Strengthen measures for investment protection and effectiveness of the dispute settlement mechanism:** According to this principle, member countries will apply measures to protect cross-border payments and capital transfer, and rules for compensation in case investors’ assets are
nationalized and/or expropriated for public purposes, and protection of investors in case strikes occur.

3. Current status of the implementation of TRIMs Agreement by Vietnam:

To implement TRIMs Agreement is a requirement of all regional and international organizations and forums Vietnam was and is now in the negotiation process to join. In practice, many of Vietnam’s current laws and regulations on import, export and other commercial activities of foreign invested projects basically comply with some requirements of TRIMs Agreement. For instance, foreign invested projects can engage in direct imports and exports in accordance with their objectives and scope of business specified in their investment licenses; they can sell, directly or through agents, their products in Vietnam without any restrictions on quantity and location, and access to foreign exchange sources for the purpose of serving import-export performance. Moreover, Government Decree 27/2003/ND-CP dated March 19, 2003 amended the List of Sectors where investment is conditional, towards eliminating mandatory requirements in respect of some industrial products that domestic production has already satisfied in terms of quantity and quality.

However, comparing with specific requirements of TRIMs Agreement, the following provisions are still not consistent, or causing debates on the nature and degree of consistency with the Agreement:

- **Localization requirement:** In practice, localization requirements still remain part of investment license appraisals and are conditions for the application of preferential import duty rates on imported accessories and spare parts by enterprises engaged in automobile, motorbike, electronics production and assembling. The application of localization requirement as a condition for granting investment license as well as a condition for enterprises to be given preferential import duty rate may be considered to be inconsistent with the TRIMs Agreement. As such, under the BTA, Vietnam has committed to abolish this requirement within 5 years from the effective date of the BTA.

- **Requirement for the development of local materials and resources:** In the List of Sectors where investment is conditional, this requirement has been applied to projects for sugar, vegetable oil, milk, and wood processing. Under the BTA, Vietnam also committed to eliminate this requirement within the above timetable.

In the negotiation process for WTO accession, Vietnam notified the above inconsistent TRIMs measures, and formulated its Action Plan with an objective to fully comply with the TRIMs Agreement by no later than 2006.
PART IV
OPPORTUNITIES AND CHALLENGES FOR VIETNAM

1. Opportunities:

Vietnam’s implementation of investment-related commitments and positive improvements in its legal system and policies on foreign investment in the recent years is an important factor contributing to consolidating the confidence of foreign investors in the attractiveness and competitiveness of Vietnam’s investment environment. This is of special significance in the context where there is fierce competition for foreign investment attraction among countries in the world and that Vietnam’s investment environment is still exposed to a number of weaknesses.

In addition, commitments made by Vietnam on market opening for goods and services in the framework of bilateral, regional and international Agreements are also positive factors that contributed to expanding Vietnam’s market for foreign investments. In practice, the most important objectives of AFTA are to attract direct investments from ASEAN countries and other regions. The implementation of AFTA and AICO will create a uniform/single market where Vietnam can mobilize to the maximum its economic advantages in scope and market, and other favorable conditions for foreign investment attraction. In addition, the implementation of commitment to import duty reduction regarding some goods items will create favourable conditions for domestic enterprises as well as foreign invested ones to lower their production costs and, thus, their product prices.

2. Difficulties and challenges:

Together with the above-said opportunities, the implementation of international investment commitments has set a number of challenges for Vietnam, as follows:

- Challenge to the competitive edge of the Vietnamese economy and enterprises:

Presently, Vietnam has been seen as an economy with low competitiveness, low purchasing power and re-investment capacity, limited production expansion, poor technologies, and insufficient capital for development investment, as compared with other countries in the world. This is indeed a big challenge for Vietnam in all fields of international economic integration. In the field of foreign investment, this challenge can be seen in two aspects. Firstly, the opening of the Vietnamese market for foreign goods, investments and services to flow in, and the commitments made by Vietnam in creating a level business environment for both domestic enterprises and foreign ones will create opportunities for foreign investors to have a broader access in to the Vietnamese market. This will in turn place Vietnamese enterprises in fierce competition, right in the domestic market, especially enterprises without comparative advantages and/or their products are highly protected. Secondly, due to limited efficiency and poor competitiveness, the Vietnamese enterprises may find it hard to invest in foreign countries with a view to taking advantage of the preferential treatment Vietnam will be offered through bilateral, regional and international agreements.
- Challenge to the achievement of socio-economic development targets in general and foreign investment attraction in particular:

To attract foreign capital and technologies, create jobs and use in an effective way, the available material and natural resources are essential objectives of the Law on Foreign Investment. Also from this Law, the legal system and relevant policies, the State of Vietnam has applied a number of restrictions on market access for foreign investors, such as forms of ownership, market, import-export balance, foreign exchange balance and local content requirement.

The application of the above-said restrictive measures are aimed at meeting selective and conditioned protection towards some industries for the purpose of investment restructuring, in the direction of promoting exports, enhancing production and processing capacity, and increasing the local content of some industrial products. However, in the framework of the regional and bilateral Agreements, especially the commitments under the TRIMs Agreement, Vietnam is obliged to reduce or remove all these restrictions within certain period of time. This is a very sensitive problem that may have a direct impact on the process of industrialization and modernization, policies on foreign investment attraction as well as macro balances of the Vietnamese economy.

In addition, in the process of international economic integration, the effective measures for Vietnam to manage foreign investment in accordance with its socio-economic development orientations, the issuance of investment licenses and the management of foreign invested enterprise operation must be adjusted in the direction of gradually reducing the State interventions into foreign investment activities. Investment incentives tax, land rent and other subsidies given by the State to foreign-invested projects must also be reduced and/or applied on the basis of non-discrimination between domestic projects and foreign ones. The reduction or elimination of all the above-said measures are indeed a big challenge for the achievement of Vietnam’s socio-economic development targets, and at the same time, can lower the competitiveness of Vietnam for foreign investment attraction.

- Challenge to the legal system and policies on foreign investment:

In facing the requirement to further improve the investment environment and strengthen the process of the international economic integration, the Vietnamese policies on foreign investment have remained a number of the weaknesses, which can not fully satisfy the implementation of the investment commitments. Specifically:

- As a separate system, which is rather independent compared with the Law on domestic investment, the law and policies on foreign investment have not yet created a “level playing field” between domestic and foreign investments, not only in the establishment, organization and operation of investment projects but also in problems regarding investment conditions, preferences and supports. This, as a result, has not met requirements of international and regional economic organizations, especially required to grant National Treatment to foreign investors.

- Building a full, clear and predictable legal system is one of the important requirements of the world and regional economic architectures. However, in the process of improvement, the Vietnamese law and policies on foreign investment have exposed a number of defects,
contradictions, overlaps, inconsistencies, and constant change. In addition, the enforcement of laws has not been well in various levels.

- In recent years, procedures for investment license application have been constantly improved and the most important of which was the amended Law, with simplified procedures for investment license application. However, criteria relating to investment license issuance and refusal are still unclear, not transparent and, in some cases, incoherent with one another. Procedures concerning project implementation, such as land, construction, import, export, customs are still bulky and improved slowly. This situation and the negative, troublesome activities of certain officials have therefore distorted the State policies on foreign investment and condensed the confidence of foreign investors.

3. Specific assessments on the impact of the negotiation process for a multilateral framework on investment in the WTO:

The new negotiation round on a multilateral trade system in general and a multilateral investment mechanism in particular was held at the time Vietnam started negotiations for WTO accession. In this process, the target set by the Government of Vietnam was to become a WTO member country at the closing time of the new negotiation round. Therefore, in order to achieve the target of becoming a WTO member country, Vietnam must immediately implement new commitments to this negotiation round. We can assess some major impact on the implementation of investment-related commitments, such as:

- The contents and modality of negotiation for a multi-lateral investment mechanism, as above, contain a number of relatively high standards, as compared with those on the Framework Agreement on the ASEAN Investment Area, and other bilateral Agreements on the Promotion and Protection signed by Vietnam with 45 countries in the world and region. However, we still can say that these standards are not higher, many of them are even more flexible than principles on investment treatment and protection Vietnam had committed with the US. Therefore, if it is agreed, the multilateral investment mechanism can create opportunities for Vietnam, for example:

  - The application of conditions for the entry of investment on the basis of GATS principles will create opportunities for Vietnam to actively select sectors or matters under which it can grant MFN and National Treatment within its capacity and situation.

  - With some exceptions, the multilateral investment mechanism will offer member countries the right to apply measures for the protection of their balance of payment in some cases and with some conditions. This provision will create conditions for Vietnam to apply necessary measures so that it can avoid negative impact on the process of investment liberalization (while the Vietnam - US Trade Agreement does not have any provisions relevant to this problem).

  - The implementation of transparency, dispute settlement mechanism, technological transfer and labour recruitment activities is in general, consistent with Vietnam’s direction to improve its investment environment, which was firmly stated in Decision 09/2001/NQ-CP on the improvement of efficiency and use of FDI capital in the 2001-2005 period.
PART V
SOLUTIONS TO ENHANCE EFFICIENCY OF INTERNATIONAL INVESTMENT INTEGRATION

International economic integration is key to improving the investment environment and increasing Vietnam’s the attractiveness and competitiveness. Therefore, measures to enhance Vietnam’s investment regime must be placed within a comprehensive system of measures to improve the investment environment and further Vietnam’s international economic integration. Accordingly, it is necessary to develop plans to implement international investment commitments in a comprehensive manner that account for national economic development, Vietnam’s current legal system, and its roadmap to implement obligations in bilateral and multilateral agreements. At the same time, it is necessary to maintain legal stability and avoid confusion in State’s management of foreign investment.

In this spirit, the Government of Vietnam has been carrying out the following solutions:

1. To continue economic and investment restructuring and further encourage foreign investment:

Economic and investment restructuring in response to Vietnam’s commitments on trade and investment liberalization is a solution set for all areas of international economic integration in Vietnam. Accordingly, the structure foreign investment should be refocused in the direction of closely associating with the comprehensive plan of investment sources, development plans of each sector, product and region, with considerations to a reasonable protection of domestic industries so as to enhance the competitiveness and efficiency of the economy, yet at the same time to fully complete international commitments and actively integrate into the regional and world economy. To this end, it is necessary to carry out the following actions:

1.1. To encourage foreign investment in expanded sectors:

With a view to increasing the efficiency of foreign investment and enhancing Vietnam’s competitiveness in attracting foreign investment, Vietnam must expand the sectors for which it encourages foreign investment. At the same time, the country must continue to attract foreign investment in export-oriented production projects, projects for agricultural and rural development, projects to apply technologies in information, biology, oil and gas, new materials, telecommunications, projects for the development of socio-economic infrastructure and industries of comparative advantages that can absorb modern technologies, generate jobs and contribute to economic restructuring.

1.2. To gradually eliminate restrictions on market access for foreign investors in response to the process of international economic integration:

Gradual elimination of market access restrictions is not only an international legal obligation but also important to encouraging foreign investment in new sectors, and enhancing the
attractiveness and competitiveness of the investment environment. For this target, Vietnam must gradually eliminate restrictions on market access of foreign investors in certain manufacturing sectors and gradually open the services market in accordance with international commitments.

Moreover, in order to achieve transparency and predictability of Vietnam’s laws and policies, it is necessary to ensure that foreign investors can freely choose investment sectors, with a view toward eventually permitting foreign investment in all sectors of the national economy, which are not restricted or prohibited by law. Accordingly, in addition to providing explicitly the investment project that may harm national defense, national security, historical and cultural vestiges, traditional customs and ecological environment, it is necessary to publish in a transparent and public manner all requirements for the issuance of a license. This is not only a requirement of international organizations to enhance the clarity, transparency and predictability of Vietnam’s laws and policies but also very important for enhancing the efficiency of State administration on foreign investment.

2. Build a legal foundation for both domestic and foreign enterprises, creating a level competitive environment for enterprises from all economic sectors:

In recent years, the law on foreign investment has been amended and supplemented, with the goal of eliminating unnecessary exceptions and building a level playing field for both domestic and foreign enterprises. To speed up this process, the following measures must be taken:

2.1. To improve regulations on the establishment and management of foreign invested enterprises:

In March 2003, the Government of Vietnam issued Decree 38/2003/ND-CP on the conversion of some foreign invested enterprises to operating under the form of joint-stock companies. This is a positive improvement in Vietnam’s legal system on foreign investment, contributing to diversifying forms of foreign investments in Vietnam. However, according to this Decree, the establishment of joint-stock companies with foreign capital has been applied on a trial basis only, by converting some currently operating enterprises.

Regulations relating to the establishment of holding companies, which are now commonly applied in many countries in the world and become an urgent demand of investors having various projects in Vietnam, have not been specifically defined. The form of partnership has applied to domestic investors doing business in some sensitive services, which need high prestige and personal responsibilities, but has not been applied to foreign investors engaging in similar businesses. In addition, the establishment and management organization of foreign invested enterprises has had to comply with certain regulations that have a number of limitations and differences, as compared with domestic enterprises. In fact, this was and is now hindering the implementation of Vietnam’s policy to diversify the forms and ways of foreign investment attraction.

Therefore, it is necessary to expand the business forms of foreign invested enterprises, gradually removing limitations in management organization of enterprises in the direction of:
- Allowing foreign investors with multi investment projects in Vietnam to establish their holding companies, and expanding the form of partnership applied for foreign investors in some certain sectors.

- Considering, in a flexible way, the conversion of investment forms, first and foremost projects of high export ratio and use of modern technologies, and other industries, which do not necessarily need Vietnam to involve in the work of management and supervision.

- Eliminating the unanimous principle in the operation of joint ventures, and provisions that require the Director General or the first Vice-Director General of a joint venture to be Vietnamese citizens.

2.2. To gradually eliminate restrictions on capital contribution and mobilization of foreign invested enterprises:

To gradually eliminate restrictions on capital contribution and mobilization by foreign invested enterprises, it is necessary to adjust current regulations with a view to: i) allowing foreign investors to contribute capital in Vietnamese dong that originate from their official investments in Vietnam; and ii) removing a number of restrictions on minimum capital ratio (30%) contributed by foreign investors in joint ventures and minimum prescribed capital ratio (30%) to the total investment capital of foreign invested enterprises. However, requirements on the maximum ratio of capital contribution by foreign investors in some important projects, especially services projects, should be maintained as provided under commitments made by Vietnam in international agreements on investment and services.

3.3. Moving forward to building a unified legal foundation on tax, financial and investment costs for both domestic and foreign invested enterprises:

In the framework of the second stage tax reform, the State of Vietnam has issued and/or amended the Value-added tax Law, Special Consumption Law and Enterprise Income Law. As the result of the implementation of these laws since 1999, some duties and fees inconsistent with economic policies in the new stage have been removed or amended with a view to narrowing the discrimination between domestic and foreign enterprises, creating a level playing field on tax-related responsibilities for enterprises from all economic sectors. Since 1999, the Government has also released the roadmap to adjust prices and fees of some goods and services. In this regard, fees concerning the establishment of representative offices and application for investment licenses, international phone calls and electricity have been reduced or removed; some other fees and charges have been applied on the principle of non-discrimination (such as water supply, visiting and tourism, etc.). To date, excluding electricity and domestic flight prices, other duties and fees have been basically applied on the principle of non-discrimination between domestic enterprises and foreign invested ones.

To continue implementing the above policies, it is necessary to carry out the following solutions:
- On tax and financial regime: The Law on Corporate Income Tax and the Law on Foreign Investment should be amended with a view to removing the withholding tax for repatriated profits and applying a unified corporate income tax rates for both domestic and foreign enterprises. The exemption and reduction of import duties for production materials, spare parts, and equipment should be continued in order to encourage foreign investment. In the long-term, these measures should be removed and replaced by a mechanism for tax reduction/exemption generally applied in the process of implementation of Vietnam international commitments on this issue. In addition, it is necessary to work out policies to develop supporting industries, by encouraging all economic sectors, especially small and medium-sized enterprises to invest in the production of materials, spare-parts and other supplies in order to create more jobs, enhance the added value and, at the same time, contribute to increase the local content of such products as automobiles, motorbikes, electronics as well as to meet requirements of product origin concerning textiles, garments and footwear.

- On investment costs: Adjustments in prices and fees of some goods and services should continue to be made in order to: i) reduce investment costs and enhance the competitiveness of Vietnam as compared with countries in the region; and ii) move forward to eliminate the dual-price system that discriminates between domestic and foreign invested enterprises.

3. To continue to develop a uniform system of markets, improve macro-management tools in the direction of trade and investment liberalization:

Such initiatives are designed to: i) improve policies that enhance the business environment of enterprises, especially on issues concerning land usage, foreign exchange management, labor recruitment, technology transfer and environment; ii) strengthen the development of various markets, including capital, real estate, scientific and technological services, and labor markets; and iii) reform economic management tools in the direction of intensifying the financial and banking system and speeding up the process of SOE reform.

5. To improve investment procedures and enhance the efficiency of State management of foreign investments:

To simplify investment procedures and create favorable conditions for foreign investment activities are not only a requirement of all international and regional economic organizations but also an urgent demand in order to improve the foreign investment environment in Vietnam. Thus, it is necessary to simplify investment procedures and enhance the efficiency of State administration on foreign investment activities in the following areas:

- Expanding the registration regime for investment licensing, and narrowing the extent of Group A Projects that must be subject to the Prime Minister's decision.

- Expanding the rights of the Provincial People’s Committees and IZ Management Boards in the issuance of licenses and management of foreign investment activities on a uniform basis; strengthening responsibilities, cooperation, and information exchange among Ministries, sectors and offices in charge of issuing investment licenses.
Moreover, in keeping with the application of registration regime for investment license for certain kinds of projects, it is necessary to officially publish all processes, time duration and responsibilities for dealing with investment procedures in order to create a basic and radical changes in administration reform in this field.

6. To improve the dispute settlement mechanism and strengthen guarantee measures for foreign investment activities

In almost all the bilateral investment agreements, including the BTA, Vietnam has recognized the right of foreign investors to bring a dispute before the competent court or any Vietnamese administrative tribunal. Vietnam has also agreed to adjudicate disputes through “binding arbitration” selected by investors, including UNCITRAL, ICSID rules or ICSID Additional Facility. At present, the Law on Foreign Investment of Vietnam permits foreign investors to sue State officials and agencies that violate laws; however, a dispute settlement mechanism agreed by the State agencies and foreign investors has not been set up under this Law.

For the implementation of the above commitments, it is necessary to improve Vietnam’s laws and regulations on dispute settlement and recognition of foreign arbitral awards in the following manner:

- Acceeding to the 1965 Washington Convention on Settlement of Investment Disputes between States and Nationals of other States.

- Adjusting the Commercial Law and Ordinance on Recognition and Enforcement of Foreign Arbitral Awards in order to ensure the enforcement of all foreign arbitral awards relating to trade and investment transactions.

PART VI
SUGGESTIONS TO THE GOVERNMENT AND DONORS

For the success of international economic integration, government agencies from the central to local levels must be fully aware of the State’s priority of attracting foreign investment. Such agencies must also appreciate the urgent need to improve the investment climate in order to enhance Vietnam’s competitiveness to attract foreign investment and speed up Vietnam’s process of international economic integration.

On this basis, it is necessary to devise solutions for economic and investment restructuring and improve the legal system and policies consistent with the process of international investment integration, with consideration to Vietnam’s specific conditions of socio-economic development. In particular, the Government should be more coherent in its decisions on foreign invested projects, not to issue guidelines which are unsuitable or more restrictive than provisions of the Law on Foreign Investment.
Investment and guidelines for the implementation of this Law, and at the same time carry out measures to strictly supervise the issuance of legal documents by Ministries and branches to ensure that the latter are consistent with commitments made by Vietnam to its world trading partners.

In this light, we look to world donors to continue to support Vietnam in institution building, enhancing Vietnam’s negotiating skills and implementation of international commitments, and other supporting measures so that Vietnam can enjoy the right to negotiate and implement WTO-based agreements as a country of low development level, which needs transitional steps for commitment implementation, and enjoy special preferential treatments and technical supports provided to a developing country.