The World Bank in Vietnam has been providing technical assistance to some Vietnamese research institutes to conduct researches on WTO-related policy reforms. The key objective of this technical assistance is to support the Government of Vietnam in preparing necessary conditions for the country to join the WTO and implement its WTO commitments.

Among other on-going TA components, one research on legal issues arising out of the WTO accession and the needs of Vietnam to prepare relevant domestic legal conditions for the accession has been conducted by the Institute of Law Science (ILS) in collaboration with the International Law Department of the Ministry of Justice. The study has been completed and all its reports are available in the website of the World Bank in Vietnam.

Another research is on application of WTO-related technical supports for capacity enhancement of members of the National Assembly, conducted by the Center for Economic Analysis and Forecasting under the Vietnam Academy of Social Sciences, in collaboration with the Center for Information, Library, and Research Services (CILRS) of the Office of the National Assembly of Vietnam. The study is under progress and expected to be complete by September 2006.

This TA was carried out during the period between October and December of 2005 by the ILS. According to the agreed TORs, the ILS has disseminated the Draft Omnibus Law for WTO Agreements Implementation and collected comments from state agencies, domestic and international organizations, MPs and other stakeholders. A one-day workshop has been organized for this purpose.

One main product of this TA is an Overall Report on Study and Review of WTO-Related Laws and Regulations. The report has studied and assessed legal aspects relating to negotiating, signing and implementing WTO agreements and commitments under Vietnamese law, including those legal instruments adopted and effective by the end of 2005. The report has been circulated among concerned stakeholders in order to raise awareness and to seek better common understanding and actions with respect to the WTO legal issues. Two workshops have been held for this purpose.

Finally, a handbook on legal implementations of WTO regulations, using results of the Overall Report on Study and Review of WTO Related Laws and Regulations and emphasizing the approach of omnibus bill, has been produced.
Deliverables include the following:

- Check-list of WTO related legal issues for draft 2006 laws;
- Study report on the impacts of the Law on Conclusion, Accession and Implementation of international treaties, on the implementation of the WTO agreements;
- Proposals and recommendations on applying the omnibus legislative technique in the legislative process of Vietnam;
- Results of the survey on application of the omnibus law approach;
- Report on results of the WTO-related review of local regulations;
- Report on the study and review of some 2006 draft laws for WTO compliance;
- Study paper on the possible use of the omnibus legislative technique for implementation of Vietnam's WTO obligations and commitments;
- Updated report on study and review of relevant Vietnamese laws and regulations for the WTO accession;
- Report on the Workshops "Possible Use of the Omnibus Legislative Technique for Implementation of Vietnam's WTO Obligations and Commitments";
- Report on the Workshops “Dissemination on the WTO-Related Legal Review's Results for the WTO Compliance”.
- Handbook on Legal Implementations of WTO Regulations.
CHECK-LIST OF WTO RELATED LEGAL ISSUES
FOR DRAFT 2006 LAWS

By conducting the study and review of six draft laws, namely draft Law on Cinema, draft Law on Lawyers, draft Revision of the Law on Civil Aviation of Vietnam, draft Law on Standardization, draft Code on Execution of Judgments, and the draft Law on Public Notary, the national consultants make some recommendations and awareness for the legal issues and matters in relation to those draft laws as follows:

I. GENERAL MATTERS

In respect to drafting legislation of trade-in goods, the attention should be paid to the review and comparison between the draft laws and obligations of the World Trade Organization (WTO), in particular the GATT 94 and the 12 multilateral agreements of trade in goods (de jure conformity). The common obligations of none-discrimination (Most-Favored Nation (MFN) and National Treatment (NT)) also should be considered during the process of drafting legislation, and the implementation of the legislation after promulgated should not cause any distortion/restriction for trading goods (de factor conformity).

In respect to drafting legislation of trade in services, the main principle is to review and compare with the draft of legislation (draft Law on Cinema, draft Law on Lawyers and the draft Law on Public Notary) with general obligations of the GATS, which include the none-discrimination (MFN), monopolies and exclusive service suppliers, payments and transfers, restrictions to safeguard the balance of payments. In the service sectors or sub-sectors where Vietnam has WTO commitments a careful analysis of the commitments should be conducted in order to reflect the commitments precisely in the law. Otherwise, the law should open opportunities for the implementing regulations to accommodate the specific WTO commitments in the relevant service sector.

II. SPECIFIC LEGAL ISSUES AND MATTERS

2.1. Draft Amendments of the Law on Civil Aviation of Vietnam

- In respect to, application of provisions of Agreement on Technical Barriers to Trade, it needs to set out specific and detailed stipulations in its future guidelines for the implementation of the Law on criteria of aviation safety and security and national security that must be met in the sale and purchase of aircraft, their engines, aircrews and components.

- In respect to the trade restriction, it is to consider including provisions on specific criteria or conditions of the sale and purchase in case such sale and purchase is decided by the Prime Minister. Furthermore, the phrase “special needs” and mechanisms for exercising the power of the Prime Minister should also be clearly stipulated to make the rule transparent.
• In respect to the three service sectors: (i) repair and maintenance of aircraft; (ii) sale and marketing of air transportation services; and (iii) computer reservation system services. It is necessary to provide in the Draft Law general provisions on three types of those services; and these general provisions should be detailed in the implementing regulations to accommodate the possible Schedule of the WTO commitments.

1.2. Draft Law on Standardization

• In respect to the Preparation for adoption and application of technical provisions, it is necessary to provide for the principle of non-discrimination treatment based on the origin of products, commodities and services; not to create barriers to production, business or trade activities, except for reasons of protection of national defense, security, public health, the environment, and prevention of fraudulent practices; The National treatment to imported goods should be guaranteed in guidelines to be issued to implement the Law. Inspection regimes (procedures and criteria etc.) should apply to all goods, whether imported or domestic; The draft Law on Standardization should provide for the adoption of corresponding technical provisions of other Members to make Vietnam technical provisions more conform with the WTO provisions; It is desirable to add to the draft Law a provision on the obligation to explain technical provisions, where the preparation for, adoption or application of a technical provision may cause considerable damage to trade of other member countries and a provision on the application of international standards that are existing or to be issued as the basis for issuing Vietnamese technical provisions.

• In respect to the preparation, adoption and application of a standard, it is necessary to add to the draft Law on Standardization or to provide for in the implementing regulations the obligation to notify ISO/IEC Information Center of Vietnam’s program for developing standards and list of newly adopted standards and to provide a draft standard upon request.

• In respect to the procedures for conformity assessment, the draft Law on Standardization of Vietnam does not provide specifically for procedures for assessing the conformity. Specific procedures are left for guiding documents to provide. Presently, the mutual recognition of conformity assessment results is mainly carried out according to bilateral and multilateral agreements to which Vietnam is a party. In the coming time, once Vietnam has become a member of the WTO, it must comply with the WTO rules, which, therefore, should be stipulated in this draft Law or in subsequent implementing regulations.

1.3. Draft Law on Lawyers

The draft Law on Lawyers basically meet the requirements of the US-Vietnam Bilateral Trade Agreement (USBTA); and complies with the schedule of service commitments in the WTO on market access and national treatment. The draft Law also is consistent with the trend of service commitments in the WTO. However, the establishment of
foreign organizations and individuals should be more open and entitled to the same treatment regarding the establishment of Vietnamese lawyer organizations.

1.4. Draft Law on Public Notary

- **In respect to the none-discrimination (MFN and NT)**, if Vietnam makes commitments on notary public services, the above said provisions of the Vietnamese draft Law may be not in conformity with the WTO provisions. Therefore, the draft Law should be changed to allow the foreign organizations and individuals to participate in providing the notary services; to eliminate the criteria of nationality for foreigners in providing the notary services.

- **In respect to licensing requirements**, it is necessary to regulate more clearly the plan for the system of public notary practicing organizations in provinces and cities under central authority. This regulation is inconsistent with the WTO’s obligations.

1.5. The Draft Law on Cinema

- **In respect to the fundamental principles in GATS**, the guiding documents should clarify national treatment in each sector of services, including conditions and procedures for setting up film distribution and dissemination establishments. The draft Law does provide for the ratio and hours of presentation of Vietnamese films (television system must also follow this requirement) according to the regulations of the Ministry of Culture and Information. Whether this provision is consistent with NT principle or not would depend on the outcome of negotiation by Vietnam with foreign partners on limits to NT in each specific area of services. In principle, after the draft Law on Cinema has been passed, the Ministry of Culture and Information shall issue a circular to guide the implementation of this Law. Such circular should, inter alia, provide in detail for the ratio and hours of showing Vietnamese films on television, as national consultants as in cinemas in Vietnam. The provisions on these matters in the future circular must consistent with the NT principle once Vietnam accedes to the WTO.

- **In respect to the general and security exceptions in GATS**, the exceptions are necessary to protect sovereignty of each country in international trade and the prohibitions set out in the Vietnamese draft Law on Cinema are acceptable. Restrictions on trade in services here may be implied in the provisions concerning the issuance of permission to disseminate films (films falling under containing the contents indicated in Article 11 are prohibited) or in cinema service supply. Since such phrase as ‘destruction of fine custom’ used in the draft Law is too general, it would be needed to define in a very clear manner in guidelines cases which fall under the coverage of Article 11 of the draft Law in order to avoid possible arbitrary actions by the licensing authorities.

- **In respect to the administration of law and licensing procedures**, the Drafting Committee should consider providing in a clearer way for these conditions in the draft Law or at least in its implementing regulations. Article VI of GATS requires
that licensing procedures in trade in services must be transparent and ensure that
the applicant be informed of the status of his or her application considered complete.

- In respect to the three service sectors: (i) film production technical services; (ii) film distribution services; (iii) and film presentation services, after the Schedule of service commitments is identified, the guiding implementation should be promulgated in doer to implement them effectively.

2. 6. Draft Code on Execution of Judgments

    The draft Code is in conformity with the WTO agreements. But, to have a full picture of the execution of judicial and quasi-judicial decisions, the Code may have certain indications to the execution of the trade remedies determinations as provided for in other legal instruments.
I. BACKGROUND

Vietnam has officially submitted its application for membership of the World Trade Organization (WTO) since January 1, 1995. To accede to this organization, Vietnam has to satisfy the admission requirements of this Organization. On the other hand, the negotiation for Vietnamese accession to the WTO must comply with Vietnamese laws and regulations on conclusion, accession and implementation of international treaties.

The study of the WTO provisions and other legal requirements for Vietnam to be a member of the WTO is beyond the scope of this Study and this Study only focuses on Vietnamese legal requirements and their impacts on negotiation, accession and implementation of the WTO agreements. With respect to domestic laws and regulations, until January 1, 2006, the negotiation of Vietnam’s accession to the WTO was conducted in compliance with the provisions of the Ordinance on Conclusion and Implementation of International Treaties (the 1998 Ordinance on Treaties) and Decree 161/1999/ND-CP Guiding the Implementation of the Ordinance on Conclusion and Implementation of International Treaties (Decree 161). Nevertheless, on June 14, 2005, the National Assembly enacted Law No 41/2005/QH11 on Conclusion, Accession and Implementation of International Treaties (Law on Treaties). This Law entered into force on January 1, 2006 and replaced the previous provisions of the 1998 Ordinance on Treaties and the Decree 161. By the time of completing this Study Report, Vietnam is on the way of negotiating for accession to the WTO. The domestic legal regulations on negotiation, conclusion, accession and implementation of international treaties have been revised and inevitably shall affect the process of negotiating accession to the WTO and its implementation of membership obligations.

One of the major changes of the Vietnamese laws and regulations on conclusion, accession and implementation of international treaties is the concept of a treaty. Pursuant to the provisions of the 1998 Ordinance on Treaties, a treaty was understood broadly to include treaties concluded in the names of the State, the Government, Supreme People’s Court (SPC), Supreme People’s Procuracy (SPP) and other treaties concluded in the names of ministries, equivalent ministerial agencies. However, the concept of an international treaty/agreement has been changed since the Law on Conclusion, Accession and Implementation of International Treaties entered into force. Pursuant to this Law, treaties are now classified into only two types: (i) the treaties concluded or acceded to in the name of the State; and the treaties concluded and acceded to in the name of the Government. The changes of this
concept resulted in a reform of procedures and decision-making levels for the negotiation, conclusion, accession, approval and ratification of a treaty in general and the WTO agreements in particular by comparison with the previous laws and regulations. In addition, some provisions on implementation of treaties in the Law on Treaties have been amended by providing more specific provisions and regulations and the Law on Treaties also reserves a separate chapter to govern the implementation of bilateral/multilateral treaties.

Accession to the WTO is one of the priority policies of the Communist Party and the State of Vietnam in the process of international economic integration. The study of new regulations of the Law on International Treaties regarding the procedures for negotiation, conclusion, accession, reservation and approval/ratification and implementation of the WTO Agreements, therefore, is necessary for Vietnamese agencies to raise common understanding and to be well prepared for the WTO accession.

The Study scope includes a general research on laws and regulations regarding conclusion, accession and implementation of international treaties; the study on impacts of the Law on International Treaties on the WTO accession and implementation of its agreements. The Study Report consists of three main parts:

1. Background.
2. An overview on laws and regulations on conclusion, accession and implementation of treaties.

II/ AN OVERVIEW ON LAWS AND REGULATIONS OF CONCLUSION, ACCESSION AND IMPLEMENTATION OF TREATIES

1. The Historical Development of Legal Framework on Conclusion, Accession and Implementation of International Treaties in Vietnam

Treaties have a close relationship with the development of the nation, because they are among the most important tools for the State to develop the external relations and integrate it into the international community. Treaties, in turn, allow the State to develop and improve its legal system in line with international standards and norms. The municipal law and international law have become important and effective legal instruments for the State to implement its functions effectively.

Historically, since the Independence Day (September 2, 1945), Vietnam has always paid due attention to the development and improvement of laws and regulations on international treaties. So far, the National Assembly and the Standing Committee of the National Assembly have enacted two ordinances and one law on negotiation, conclusion, accession and implementation, of treaties, namely:
- The Ordinance on Conclusion and Implementation of International Treaties of the Socialist Republic of Vietnam enacted by the State Council on April 17, 1989 (the 1989 Ordinance on Treaties);

- The Ordinance on Conclusion and Implementation of International Treaties enacted by the Standing Committee on August 20, 1998 replacing the 1989 Ordinance on Treaties; and

- The Law on Conclusion, Accession and Implementation of International Treaties enacted by the National Assembly on June 14, 2005 replacing the 1998 Ordinance on Treaties.

From 1998 to 2004, Vietnam has concluded and acceded to more than 700 international treaties (excluding the international treaties concluded or acceded in the names of ministries and agencies)\(^1\). During the last five years, the number of international treaties concluded by Vietnam is equal to the number concluded during more than 50 years before that. However, after five years of implementing the 1998 Ordinance and Decree 161 (that implements the Ordinance), there were pressing needs for reform of the legal framework on treaties to regulate more effectively the activities of negotiation, conclusion, accession and implementation of international treaties. To that end, the National Assembly promulgated the Law on Conclusion, Accession and Implementation of International Treaties on June 14, 2005.

The Law on Treaties entered into force on January 1, 2006 with the scope of regulation limited only to international treaties concluded in the names of the State and the Government. The international agreements concluded by the SPC, SPP, ministries, ministerial-agencies and agencies (hereinafter referred to as the ministerial-level treaties) are not subject to the Law on Treaties. To assure the effectiveness of those international agreements, the Law on Treaties sets out a transitional period article at Item 2 of Article 106, which states: “Treaties concluded in the names of the SPC, the SPP, ministries, ministerial-level agencies and agencies attached to the Government prior to the date on which this Law takes legal effect shall remain in force until the treaties are terminated in accordance with the provisions of respective treaties; in case a treaty provides that it shall be automatically extended, or does not provide for its duration, or provides that it remains in force for an infinitive period, the SPC, the SPP, ministries, ministerial-level agencies and agencies attached to the Government shall be responsible to make recommendations to competent state agencies for decisions on the termination of such treaty”. In addition, in accordance with the Legislative Agenda on the Promulgation of Laws and Ordinances in 2005 enacted by the National Assembly, the Ordinance on Conclusion and Implementation of International Agreements is being drafted and will be submitted to the Government and then to the Standing Committee of the National Assembly for approval and enactment.

\[^1\] The figure on the concluded treaties are provided by the Ministry of Foreign Affairs in the Conference on summarizing the 5 years implementation of the 1998 Ordinance on Treaties.

2.1. Classifications.

During the process of drafting Law on Treaties, there were two set of views on the types of treaties. According to the first set of opinion, the Law on Treaties should continue to stipulate four types of treaties concluded and acceded to in the names of: (i) the State; (ii) the Government; (iii) the SPC, SPP; (iv) and ministries, ministerial-level agencies and agencies. The second category of opinion suggested that the Law on Treaties should only provide for two types of treaties, namely treaties concluded and acceded to in the names of the State and the Government. Finally, both the Government and the National Assembly have accepted the second set of view because it is more appropriate to the constitutional framework of Vietnam and international law and practice, especially the 1969 Vienna Convention on Treaties to which Vietnam is a party. Besides, if Vietnam continues to regard a ministerial-level agreement as its international treaty, the legal responsibilities for the implementation of agreement under international law are still of the sovereign nation - that means the State and Government have to implement the agreement. A ministry in its own capacity cannot challenge a violation of the international agreement even when it has signed the agreement unless doing so with the authority of the Government. This shows that a ministry is only an arm of the Government and therefore, should act in the name of the Government for the treaty purposes.

2.2. Transformation of Treaties into domestic law

During the process of drafting the Law on Treaties, there were existing two options. According to the first option, the Law on Treaties should have provisions and regulations on mandatory transformation of treaties into domestic law. Nevertheless, the legal practice demonstrates that it is impossible to transform all concluded treaties. Further, since Vietnam is making efforts to integrate it into the international community, there will be more and more treaties to be concluded. Therefore, the Law on Treaties should have a flexible approach to legal transformation of treaties: the Law should not necessarily require legal transformation of all treaties into domestic law; and if a treaty can be directly applicable, there is no need to transform it into domestic law. That means a treaty should be transformed into domestic law, unless there is ground to apply directly it without necessary enactment of laws and regulations.

The practice of conclusion and accession to treaties by Vietnam shows that a majority of concluded treaties has been implemented directly without the need to promulgate legal normative documents for guiding their implementation. However, certain treaties have not been implemented directly in the legal system until they are incorporated into domestic law.

In the second option, the Law on Treaties should provide for a clear principle that a treaty, upon the completion of the relevant domestic legal procedures, can be applied directly as any other domestic legal normative documents. The competent authorities, including people’s courts at all levels, can directly refer and apply relevant provisions of treaties to make decisions.
The Law on Treaties which was passed by the National Assembly, follows the first option. That means a treaty, which has entered into force can be applied directly as it meets certain specific requirements, otherwise it must be implemented through legal enactments. Namely, if the provisions of a treaty are not sufficiently detailed or unclear for its direct application in whole or in part, the competent authorities are responsible to promulgate legal normative documents for implementation of such treaty (Article 6, paragraph 3 of the Law on Treaties). This option is more flexible and effective as the competent authorities may choose to directly apply treaties in whole part/in part, depending on the circumstances.

2.3. The Position of Treaties in Vietnamese Legal System

The Law on Treaties does not provide clearly for the position of a treaty in the Vietnamese legal system, nor does the Constitution. International laws and foreign experiences show that the position of a treaty in the national legal system should normally be provided in the Constitution.

According to the current laws and regulations on conclusion, accession and implementation of treaties, the treaties concluded or acceded must not contrary to the Constitution, but may have provisions different with legal normative documents enacted by the National Assembly and the Standing Committee of the National Assembly. That seems to state that a treaty has equal footing with a law passed by the National Assembly and even may have rules different with the law, but subject to the Constitution.

However, during the process of drafting the Law on Treaties, there were some arguments proposing that the Law should provide clearly for the position of a treaty as equal to domestic laws. By stipulating this provision in the Law, firstly, it would increase responsibilities of the State competent authorities in process of negotiation, conclusion and accession to treaties. Secondly, the State responsibilities should be further enhanced for the implementation of treaties. In many cases, the treaties can be used and referred as to a legal resource when applied by the competent agencies, including the courts, to relevant cases.

2.4. Legal Appraisal and Review of Treaties.

In accordance with the Law on Treaties, all proposed treaties before being submitted to the Government have to be appraised and reviewed for their legality. In comparison with the 1998 Ordinance on Treaties, the scope of review of treaties is broader. Under the 1998 Ordinance, only treaties, which contain provision which are inconsistent with or which are not regulated by any legal rule of legal normative documents of the National Assembly and the Standing Committee of the National Assembly must be reviewed for the legality. But, under the Law on Treaties, all proposed treaties must be reviewed and appraised for the legality.

The Ministry of Justice is the government agency responsible for reviewing treaties. For the treaties that are negotiated and concluded or acceded to by the Ministry of Justice and the treaties on which there are different views of government agencies on the negotiation and conclusion, an inter-agency Legal Appraisal Council is to be set up by the Justice Minister.
The Ministry of Justice and the Legal Appraisal Council shall be responsible to review the following aspects:

(i) The conformity with the Constitution;
(ii) The compatibility with the provisions of the legislation of Vietnam;
(iii) The possibility of direct application of the treaty in whole or in part;
(iv) The requirements for amendment, supplement, repeal or promulgation of legal normative documents for the implementation of the treaty.

III/ THE IMPACTS OF THE LAW ON TREATIES ON THE NEGOTIATION, CONCLUSION, ACCESSION AND IMPLEMENTATION OF THE WTO AGREEMENTS.

1. Procedures on Negotiation, Conclusion and Accession to the WTO Agreements

1.1. WTO Procedures on Negotiation, Conclusion and Accession.

WTO is a government organization and has about 150 Members. There are nearly 30 nations which are negotiating for accession to the WTO, including Vietnam. The accession to the WTO brings about three main benefits: (i) strengthening of domestic policies and institutions for the conduct of international trade (ii) improvement of market access to major export markets; and (iii) access to a dispute settlement mechanism for trade issues.

The Paragraph 1 Article XII "Accession" of the Marrakesh Agreement establishing the WTO stipulates that: “Any State or separate customs territory possessing full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement and the Multilateral Trade Agreement may acceded to this Agreement, on terms to be agreed between it and the WTO. Such accession shall apply to this Agreement and the Multilateral Trade Agreement annexed thereto”.

Vietnam is a sovereign country having full rights in the conduct of its external commercial relations and having independent external policies. Pursuant to conditions of the Article XII.1 of the Marrakesh Agreement, Vietnam has its right to negotiate to become a membership of the WTO. In fact, it has been doing this activity for more than 10 years. When becoming a membership of the WTO, Vietnam is responsible to implement all provisions of Marrakesh Agreement and the multilateral trade agreement annexed thereto. For the plurilateral agreements, Vietnam can consider whether it can accede or not. However, the decision of Vietnam accession to the WTO shall be taken by Ministerial Conference and the Ministerial Conference shall approve the agreement on the terms of accession by a two-third majority of the Members of the WTO (Article XII (2)).

In practice, to become a membership of the WTO, countries have to go through a length and difficult process of negotiation for accession. There are many countries need more
than 10 years to complete the accession. The process of accession to the WTO can be divided into several stages/phases.\(^2\)

The introductory phase does not take a long time in the whole process of negotiation. After receiving the application letter from a country, the WTO General Council, which composes representatives of all members, shall consider the application. The General Council sets up a working party to consider the accession application and nominates a chairman of the working party. The member of working party is open to all members of the WTO.

For Vietnam, at its meeting on January 31, 1995, the General Council established a Working Party to examine the application of the Government of the Vietnam to accede to the WTO under Article XII of the Marrakesh Agreement Establishing the WTO.

After that the three substantive phases consist of: (i) the preparation phase of the Memorandum on foreign trade regime; (ii) the fact-findings phase of regulations and practices on foreign trade activities; (iii) the negotiation phase. *In the first phase on preparing the Memorandum*, the accession countries are responsible for explaining its policies and institutions on foreign trade regime on goods and services, especially describing the trade regime of financial sector, insurance, telecommunications and professional services and other aspects of foreign exchange management and controls, investment, competition policy, protection of intellectual property rights and enterprise privatization. *In the second phase on fact findings*, the WTO members can ask questions and obtain clarifications on the applicants’ policies and institutions in the Memorandum. If the applicants answer question inadequately and unclearly, the questions shall be asked again in the next round of negotiation. In this phase, many meetings between representative members in the working party shall be organized to make sure that the legislation and institutions of the applicant are in compliance with the WTO provisions and requirements. The applicants also are requested to provide legal normative documents to the members of the working party. In respect to legislation and institutions, the working party only focuses on two major issues: (i) the degree of privatization in the economy; (ii) and the transparency of legislation and policies. Besides, the working party also considers some issues in relation to jurisdiction and capacity of national agencies and local authorities to implement policies and the WTO commitments. *In the final phase of negotiations*, the applicants are requested to submit its so-called initial schedule of offers in goods and services. This includes the detailed schedule of tariffs and the commitments on providing access to their markets for services. In addition, the applicant is requested to make commitments in respect to the level of supporting their agriculture (usually three years before the application for accession). When the offers are submitted, the accession process comes to its final phase and in this phase, the issues only involve specific bilateral negotiations between acceding countries and each the WTO member on tariffs and market access for services. At the same time of the negotiation process, the applicants also have to answer all questions in

relation to international trade policies posed by the WTO members. The negotiation phase can be long, depending on the degree of openness that applicants propose and the demands for market access made by members. When these bilateral negotiations are in the process of being finalized, the applicants have to ensure that the legislation and institutions comply with the WTO requirements. In this phase, the Secretariat shall prepare a draft report on accession to the WTO of the applicants (DR), including Schedule of agreed commitments on goods and services that should be considered by the working party. Upon approval by the working party, the report is submitted to the General Council and if the General Council approves the applicants shall be invited to sign a protocol of accession.


Vietnam is in the final stage of the accession process mentioned above as it has concluded bilateral negotiations with almost all WTO Members. Vietnam has also submitted its initial schedule offers in goods and services to the Working Party and conducting the question-answer phase. The Draft Report (DR) was circulated among the WTO member countries for clarifications and detailed explanations. The key events of the whole process of the WTO accession for Vietnam look as follows:

- August 1996: Vietnam completed and finalized its Memorandum on foreign trade regime and sent it to the Secretariat and the Working Party on Vietnam accession to the WTO.
- January 2002: Vietnam submitted its initial offers on goods and services to the WTO Secretariat for the circulation amongst the WTO member countries.
- April 2002: At the fifth meeting of the Working Party, Vietnam conducted a number of bilateral negotiations with other WTO member countries on the initial offers of goods and services.
- June 2004: Vietnam finalized and concluded the first bilateral negotiation with Cuba.
- By early March 2006: Vietnam has conducted 10 multilateral rounds of negotiation, finalized, and concluded bilateral negotiations with 22 countries and territories. At the present, Vietnam only has four countries left for the bilateral negotiations, including the United States, Mexico, Honduras and Republic of Dominica.

a) Legislation and Its Legal Implications on the Negotiation, Conclusion and Accession to the WTO.

The last 10 years (up to 2006) of negotiation to become a membership of the WTO was regulated by the provisions of the 1998 Ordinance on Treaties, which sets out the
procedures for negotiation, conclusion and implementation of the international treaties, including the WTO agreements.

Since January 1, 2006, the negotiation of the WTO accession and implementation of WTO agreements have to comply with the Law on Treaties. There are no substantial differences between the Law and Ordinance on the procedures of negotiation and accession to international treaties in general and the WTO in particular.

However, several factors should be taken into account with respect to the WTO accession under the new Law on Treaties. These include that the WTO negotiation has been long and initiated under the old 1998 Ordinance on Treaties and is expected to be concluded in accordance with the Law on Treaties. Since January 1, 2006 the Law has applied to the WTO negotiation, conclusion, ratification/approval and implementation. Regardless of the nature and form of the WTO negotiation activities taken before January 1, 2006, the WTO accession package may be signed under the new Law on Treaties in the name of either the State or the Government. But, given the special nature of the WTO rules, the accession package is more likely to be signed in the name of state, even though this does not bring any difference for the WTO under the *pacta sunt servanda* principle. Further, although the Law Treaties has taken into account the WTO accession, it is expected that the negotiation, conclusion and implementation of the WTO accession package will be regarded as "unusual" case to test the Law.

*b) Legal Appraisal of the WTO Accession Packages*

Pursuant to the 1998 Ordinance on Treaties and the Law on Treaties, the accession agreements with the WTO shall be reviewed and appraised by the Ministry of Justice for legality before they become binding on Vietnam. Although this has not yet taken place as a procedural step for conclusion of international treaties due to the process of negotiation is not finalized, the Government has assigned the Ministry of Justice to review and compare the WTO provisions and requirements with Vietnamese laws and regulations. Based on the result of review and comparison, the Ministry of Justice has proposed to the National

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3 Pursuant to the Decision No 37/2002/QD-TTg dated March 14, 2002 of the Prime Minister on the Government Agenda of Implementing the Resolution 07-NQ/TW dated November 27, 2001 of the Politburo on the International Economic Integration, the Ministry of Justice is responsible: (i) To review and compare initially the current laws and regulations in order to recommend the improvement of the legal system in complying the WTO provisions and requirements and other international commitments; (ii) based on the results of review and comparison, to submit the Government to recommend the National Assembly for the proposals of enacting new legal normative documents in conformity with the WTO requirements and provisions of the other organizations that Vietnam is a member; (iii) to recommend for amendment, supplement and repeal of the legal normative documents and policies that are not in conformity with Vietnamese commitments stipulated in the Legislative Agenda on Enacting Laws and Ordinances for the period of 2002-2003 and the whole period: 2002-2006; (iv) to cooperate with relevant ministries and agencies to study and propose the negotiation, conclusion, approval and ratification or accession to treaties in relation to international integration and to enact new legal normative documents in complying with international practices and the WTO provisions to protect reasonably the domestic industries.
Assembly and the Government the relevant changes or amendments of laws and sub-laws to implement effectively the WTO provisions and requirements. Therefore, the legal review and appraisal as required by the Law on Treaties has been de facto being done and will be completed upon the WTO accession package is available.

2. The Procedures on the Approval and Ratification of the WTO Agreements.

Since the WTO accession may result in amendments or enactments of legal normative documents by the National Assembly and the Standing Committee of the National Assembly (codes, laws and ordinances). Therefore, pursuant to the Law on Treaties, the WTO accession package must be subject to ratification. About the power to ratify, pursuant to Article 32 (1) and (2) of the Law on Treaties, there are two authorities having rights to ratify, including (i) the National Assembly shall decide to ratify treaties, which were directly signed by the State President and the Heads of other States; ratify other treaties at the request of the State President; (ii) the State President shall decide to ratify treaties as provided in Article 31 of this Law, except for cases belonging to the power of ratification of the National Assembly.

So, pursuant to the Article 32 of the Law, both the National Assembly and the President have rights to ratify the WTO agreements and accession to this organization. But, there are two following issues need to be considered.

Firstly, if the President ratifies the WTO agreements and accession, the proposing agency (Ministry of Trade) will have to submit the documents and recommendation of ratification to the Government and the Government shall submit this recommendation to the President for ratification, after receiving written opinions from the Ministry of Foreign Affairs and relevant ministries and agencies (Article 30 Item 1 of the Law on Treaties). However, the likelihood that the President ratifies the WTO agreements and accession is low. The reason is that the accession to the WTO may require amendments of many legal normative documents of the National Assembly (codes, laws and ordinances). The power to decide on enactments and amendments or repeals of those legal normative documents belong to the National Assembly.

Article 20 (3) of the Law on Treaties stipulates that: “In case where the appraised treaty contains provisions which are in conflict or not provided for in legal normative documents of the National Assembly or the Standing Committee of the National Assembly or the implementation of the appraised treaty requires amendment, supplement, repeal or promulgation of any legal normative documents of the National Assembly or the Standing Committee of the National Assembly, the Ministry of Justice shall be responsible to co-ordinate with the recommending agency to submit to the Government solutions for dealing with such issues”.

Article 31- Treaties subject to ratification of the Law on Treaties stipulates treaties shall be subject to ratification, including: (i) Treaties that contain provisions requiring the treaties be subject to ratification; (ii) Treaties signed in the name of the State; (iii) Treaties signed in the name of the Government containing provisions, which are in conflict with any provisions of legal normative documents of the National Assembly or the Standing Committee of the National Assembly or containing provisions relating to State budget.
Secondly, if the National Assembly is an authority to ratify the WTO agreements and accession, the President shall have an official letter to submit the WTO accession package to the National Assembly for ratification (Article 31.1 of the Law on Treaties). The agency responsible for assisting the President to make recommendation for the National Assembly to ratify is the Office of the President (Article 30.2 of the Law on Treaties). However, if the National Assembly is responsible for ratification, the WTO agreements and accession shall be examined, verified and appraised by the National Assembly Committees. In the past, the Foreign Affairs Committee of the National Assembly was responsible for verifying the US-Vietnam Trade Agreement. However, the WTO negotiation has been up to now under the responsibilities of the Economic and Budget Committee, which is likely to take care of the examination and verification of the WTO agreements and accession.

Therefore, the lead Committee of the National Assembly for examination and verification of the WTO agreements and accession may be done by the Foreign Affairs Committee or the Economic and Budget Committee. The lead Committee should coordinate with other Committees of the National Assembly in examining the WTO accession package, focusing on the following aspects:

- The necessity for ratification;
- The compliance with procedures for making recommendations on ratification of treaties;
- The conformity with the Constitution, the extent of compatibility with the provisions of legal normative documents of the National Assembly and the Standing Committee of the National Assembly;
- The possibility of direct application of treaties in whole or in part;
- Needs for amendment, supplement, repeal or promulgation of legal normative document(s) of the National Assembly or the Standing Committee of the National Assembly for the implementation of treaties.

After the completion of the Committee's examination and appraisal, the National Assembly shall ratify the WTO agreements and accession at its nearest session.

3. The Reservations of the WTO Agreements

The Ministry of Trade, as the lead negotiation ministry for the WTO accession is required under the Law on Treaties to propose and justify any reservation for the WTO rules (if allowed under the WTO rules).

4. The Implementation of the WTO Agreements

In the world, there are two basic theories on relationship between treaties and domestic law as well as the application of the treaties. Firstly, the monist considers the international laws and municipal laws are unified in a single system. That means the national legal system includes two parts: international law and domestic law. To implement a treaty, a
country may apply directly the treaty without requiring the legal transformation of such treaty into its domestic law. Secondly, the dualist considers the international law and municipal law separate and not unified in a single system. That means the national legal system only includes the municipal law. To implement a treaty, a country has to transform the treaty into municipal law through enactments and amendments of legal normative documents.

For Vietnam, pursuant to Article 6 (1) and (2) of the Law on Treaties stipulate followings:

i. In case, with respect to the same subject matter, a legal normative document contains provisions different from relevant provisions of a treaty to which the Socialist Republic of Vietnam is a party, the provisions of the treaty shall apply;

ii. The promulgation of legal normative documents shall not create any obstacles to the implementation of treaties to which the Socialist Republic of Vietnam is a party and which contain provisions on the same subject matters.

Those provisions of the Law on Treaties settle effectively the relationship between the international laws and municipal laws to the effect that the treaty, which Vietnam is a member, always prevail over domestic laws and regulations in case of conflict. Therefore, when Vietnam becomes a member of the WTO, if any legal normative document, including laws and sub-laws, contravenes to the WTO provisions, the WTO agreements shall prevail; and in drafting legal normative documents, Vietnam shall not create any conflicts, breaches and obstacles to the implementation of the WTO accession package.

With respect to the application of the treaties, pursuant to the Article 6.3, a treaty can be directly applied in whole part or in part if the provisions of the treaty are sufficiently detailed and clear for its implementation (the monist approach); or applied through amendment, supplement, repeal or promulgation of legal normative documents (the dualist approach). Therefore, the Law on Treaties is quite flexible to allow the WTO provisions to be applied in two ways: (i) direct application; (ii) and application through transforming the WTO agreements into domestic law.

a) Direct Application

The WTO provisions are mainly stipulated in the Annex A-Multilateral Agreements on Trade in Goods, including 12 agreements:

- Agreement on Agriculture.

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6 On the basis of the requirement, contents and nature of a treaty, the National Assembly, the State President or the Government, in making decision to accept to be bound by the treaty, shall at the same time make decision on direct application of such treaty, in whole or in part, with respect to agencies, organizations, and individuals, in case the provisions of the treaty are adequately detailed and clear for its implementation; make decision or proposal for amendment, supplement, repeal or promulgation of legal normative documents for implementation of such treaty.
• Agreement on Application of Sanitary and Phytosanitary Measures.
• Agreement on Technical Barriers to Trade.
• Agreement on Trade-Related Investment Measures.
• Agreement on Implementation of Article VI of the GATT 94.
• Agreement on Implementation of Article VII of the GATT 94.
• Agreement on Pre-shipment Inspection.
• Agreement on Rules of Origin.
• Agreement on Import Licensing Procedures.
• Agreement on Subsidies and Countervailing Measures.
• Agreement on Safeguards.

Other WTO rules are stipulated in the Annex 1B-Trade in Services and Annex 1C-Agreement on Trade-Related Aspects of Intellectual Property Rights.

Although Vietnam has conducted the legal review of the WTO agreements, based on which the WTO inconsistent laws and regulations have been adjusted, all the WTO commitments of Vietnam have not been made public. Therefore, it is possible that the WTO commitments will require more legal changes in Vietnam. Furthermore, the language of the WTO agreements and nature of the rules are not easily to be understood by the Government officials and agencies because international trade law and practice are still new to Vietnam. The translation of the WTO agreements into Vietnamese is hard to convey all the meaning and implications of the WTO rules. Therefore, the direct application in whole part of the WTO agreements in Vietnam is not very likely to happen. And if there is direct application, it should be application in part of the WTO agreements (that means only some small portions of the WTO accession package may be directly applicable).

b) Application through Transforming the WTO Agreements into Domestic Law

As mentioned-above, there is low or even no likelihood of direct application of the WTO agreements in whole part (but, in part), to implement obligations and requirements of the WTO, Vietnam has to apply the WTO agreements through legal transformation.

In practice, basically, Vietnam has conducted legal reviews and studies for the WTO compliance, and even has implemented the WTO agreements through recent legal enactments by the National Assembly and Government. The Ministry of Justice has been assigned to review and compare all existing legal normative documents with WTO agreements. Based on the results of review and comparison, the Ministry of Justice has recommended the Government and the National Assembly to amend, supplement and repeal or enact new legal normative documents (laws and sub-laws) accordingly. For example, in trade in goods, Vietnam has enacted the following legal normative documents:

• The enactment of the Ordinance on Safeguards against Foreign Import Goods into Vietnam 2002 to implement the Agreement on Safeguards.
The enactment of the Ordinance on Measures Against Subsidies of Goods Imported into Vietnam 2004 to implement the Agreement on Subsidies and Countervailing Measures.

The enactment of the Ordinance on Anti Dumping against Imported Goods into Vietnam 2004 to implement the Agreement on Implementation of Article VI of the GATT 94.

The enactment of the Ordinance on Protection of Domestically Developed New Plant Varieties 2004 to implement TRIPs Agreement.

The enactment of the Ordinance on Food Safety and Hygiene 2003 and the Ordinance on Plant Protection and Inspection 2001 to implement the Agreement on Application of Sanitary and Phytosanitary Measures.


The enactment of Decision 41/2005/QD-TTg of March 2, 2005 on Licensing goods imported into Vietnam to implement to the Agreement on Import Licensing Procedures, etc.

In addition, Vietnam is expected to pass some more laws and regulations in relation to trade in goods in 2006 to ensure the WTO compliance.

In trade in services, Vietnam has enacted many WTO related laws and regulations, such as Law on Insurance Business, Law on Tourism, Law on Accounting, Law on Auditing, the Ordinance on Post and Telecommunication, etc, to implement the GATS.

In the intellectual property rights, Vietnam has enacted the Law on Intellectual Property Rights 2005 and the Civil Code 2005 to implement the TRIPs Agreement. Both the Law and Code are in conformity with the TRIPs.

In the investment sector, Vietnam has enacted the Law on Investment in 2005 and Law on Enterprise.


III/ CONCLUSION

As mentioned-above, the Law on Treaties has certain impacts on the negotiation, accession and implementation of the WTO agreements. It is important that during the WTO negotiation, attention should be paid to comply with new changes with respect to the procedures on negotiation, ratification and implementation of the WTO agreements as required by the Law on Treaties.
PROPOSALS AND RECOMMENDATIONS
ON APPLYING THE OMNIBUS LEGISLATIVE TECHNIQUE IN THE LEGISLATIVE PROCESS OF VIETNAM

With the assistance and supports of the World Bank in connection with the activities of studying the feasibility of applying omnibus technique in Vietnam, the national consultants proposed proposals on applying the omnibus technique in the legislative process of Vietnam. Based on learned foreign experiences, assessment of Vietnam’s legislative practice and various comments and recommendations from many state agencies, organizations, MPs and interested persons, the national consultants hereafter focus on the question “how” to apply it in Vietnamese context. In other words, the following proposals and recommendations by the national consultants try to answer many practical or technical and policy questions which may arise when Vietnam applies the omnibus legislative technique. The proposals and recommendations focus on three main issues which are as followings:

1. Areas of Law Where The Omnibus Legislative Technique May Apply

As the Survey on possible application of the omnibus legislative technique conducted by the national consultants shows 243 out of the 353 people surveyed support the position to limited application of the omnibus legislative technique to matters or issues falling into one area or sector or multiple areas or sectors which are directly related (for instance civil, commerce and economics legal areas) and only 110 out of the 353 people surveyed support unlimited application of the omnibus legislative technique.

The national consultants view that the omnibus legislative technique may apply to all areas of law. The application of the omnibus legislative technique should not only limited to the WTO legal implementation objectives, but also (even more importantly) be used widely to meet the pressing needs of the current development period for better reforms and improvements of the whole legal system, building the rule of law and being proactive in international economic integration.

However, after assessing the current conditions and capacity of various Vietnamese agencies involved in the legislative process, the national consultants suggest to apply the omnibus legislative technique in two stages. The length of the first stage depends on the improvement of the perception, working conditions and capacity, but it should not be too long. Accordingly, in the first stage starting from now, the omnibus legislative technique be applied to amend or supplement laws and regulations within one area of law or multiple areas closely interrelated. In fact, Vietnam has tried the omnibus legislative technique in the last few months. After the first stage, the omnibus legislative technique be widely applied to any areas of law upon needs for reform.
2. Forms and Types of Legal Normative Documents be Applied the Omnibus Legislative Technique

The unique feature of Vietnamese legal system is having multiple forms or types of legal normative documents. Article 1 of the Law on Laws provides for the following types of legal normative documents:

“1. Documents adopted by the National Assembly: the Constitution, laws and resolutions.

Documents adopted by the Standing Committee of the National Assembly: ordinances and resolutions;

2. Documents issued by other state agencies at the national level to implement the legal normative documents adopted by the National Assembly and its Standing Committee:

a) Orders and decisions of the State President;

b) Resolutions and decrees of the Government; Decisions and directives of the Prime Minister;

c) Decisions, instructions and circulars of the Ministers or Heads of agencies of ministerial level;

d) Resolutions of the Judicial Council of the Supreme People’s Court; Decisions, instructions and circulars of the Chief Justice and Procurator General;

e) Inter agency resolutions and circulars between competent state agencies and socio-political organizations;

3. Documents issued by the local People’s Councils and People’s Committees to implement the legal normative documents of the National Assembly and its Standing Committee, and those of the state agencies at higher levels; Documents issued by People’s Committees are also to implement resolutions of People’s Council of the same level:

a) Resolutions of People’s Councils;

b) Decisions and instructions of People’s Committees.”

According to the Law on Laws, the areas which are regulated by laws, ordinances and resolutions of the National Assembly and its Standing Committee cover almost all respects of life\(^1\). Further, a legal normative document normally governs some different areas of the social life. For example, to put the Party new policy on investment, the investment law should be reformed. But, the investment policy affect many areas of life, such as labor, tax, land...to name a few. Therefore, the amendment and reform of the investment law lead to the amendments and reforms of the laws in those affected areas to ensure the consistency and uniformity for the whole legal system. It is very convenient and economical to apply the omnibus legislative technique to amend at one time all the relevant laws.

\(^1\) See Articles 20, 21 and 56 of the Law on Laws.
Similarly, the scope of Government’s resolutions and decrees is broad, especially the decrees implementing laws or ordinances. The same investment example mentioned above works well for the decree implementing the investment law. As a consequence, amendments of the implementing decrees on investment leads to subsequential amendments of implementing decrees on other related areas. Therefore, the omnibus legislative technique should apply to the issuance of Government’s decrees and resolutions.

As a decision of the Prime Minister normally focuses on the specific issues of operational nature, such as setting out the working rules of the members of the Government, Chairmen of the provincial People’s Committees and other issues within the competence of the Prime Minister (Article 57.1). Therefore, it is not necessary to apply the omnibus legislative technique to this type of legal document.

The national consultants have also found that there is no need to use the omnibus legislative technique for amending Directive of the Prime Minister, instructions, decisions and circulars issued at the ministerial level due to the nature and limited scope of these types of legal normative documents.

In short, the national consultants try to suggest that the omnibus legislative technique be applied to all the legal normative documents adopted or issued by the National Assembly, its Standing Committee and the Government. But, it is recommended that a special care should be taken (to find the need and advantages over the traditional ways for one by one amendment) before deciding the application of the omnibus legislative technique in specific cases and not to see the application is automatic in every situations.

3. Organizational Arrangements for the Application of the Omnibus Legislative Technique

As discussed in the Study Paper on "Possible Use of the Omnibus Legislative Technique for Implementation of Vietnam's WTO Obligations and Commitments", under the current Law on Laws, the omnibus legislative technique may be fully applied and the recent legislative developments have proved that. The Common Investment Law, Enterprise Law and Law on Amendments of Some Provisions of the VAT and Excise Laws... may be regarded as the first laws which have been applied the omnibus legislative technique in Vietnam. But, it is noteworthy that in the past there were certain legislative enactments under the name of codification by the competent agencies which reflect the application of features of the omnibus legislative technique. For example, in adopting the Civil Code, the National Assembly has included in the Code many legal rules existing at that time in other legislations, such as the Ordinance on Civil Contracts, Ordinance on Housing, Ordinance on Inheritance, Ordinance on Industrial Property Right Protection, Ordinance on Copyright Protection, Ordinance on Technology Transfer.... and repealed those legal documents.

In the Survey conducted by the national consultants on the application of the omnibus legislative technique, it is interesting to note that a majority of people (201 out of the 349) who were surveyed, responded that they did not see any difficulties with regard to the adoption of the Law on Amendments of Some Provisions of the VAT and Excise Tax Laws (for which the omnibus legislative technique were applied). It may be speculated that similar
answers would be for other recent legislations which were recently applied the omnibus legislative technique.

Although the recent legislative experiences have been positive, it is necessary to have firm legal bases for the application of the omnibus legislative technique by amending and supplementing some provisions of the Law on Laws. The amendments and supplements should recognize officially the omnibus legislative technique in the Law and change certain rules on procedures for drafting and approving omnibus bills and consolidating legislations which have been amended by the omnibus law. Accordingly, hereafter the national consultants try to make proposals and recommendations focusing on the following issues:

- Structure of an omnibus bill;
- Legislative initiatives for an omnibus bill and the organizing of the daft process;
- Legal appraisal and examination of an omnibus bill;
- Method of adopting an omnibus bill;
- Consolidation of legislations amended by an omnibus bill.

The national consultants view that the implementation of the above proposals and recommendations would allow an effective application of the omnibus legislative technique in the context of WTO accession and legal reform in general.

a/ Structure of an omnibus bill

An omnibus bill is used to amend and supplement at one time many existing legal normative documents, although the title/name of the bill does not contain the words “amendment or supplement”. The practice shows that a structure of a bill amending (amending bill) an existing legislation does not look like the structure of the bill setting new rules (new bill) on areas and is not subject to any existing legal rules. As a matter of fact, a new bill contains, in addition to the main substantive rules, chapter on “General Provisions”, chapter on “State Management”, chapter on “Rewards and Dealing with Violations” and chapter on “Implementing Provisions”. On the other hand, the normal structure of an amending bill looks much simpler and is rarely divided into parts and chapters and the bill goes directly to the amendments and supplements of the rules.

The recent experiences of the Law on Amendments and Supplements of Some Provisions of the VAT Law and Excise Tax Law shows that the normal structure of amending bill is followed. The national consultants view that the current structure of the amending bill may be a basic model, with a minor adjustment, for an omnibus bill. If an omnibus bill is developed to amend many rules of different existing legislations, its structure should be divided into chapters or sub-chapters, each of which deals exclusively with all relevant amendments and supplements of one legislation. In one chapter, each article deals with the amendment and supplement of one existing article. If the omnibus bill is divided into chapters, it is recommended to have a separate chapter on effective dates or coming into legal force.

As discussed early, foreign experiences show that an omnibus act for implementation of WTO obligations and international trade agreements amends tens of other existing legislations and different amendments may have different legal effective dates. For instance,
the amendment of the Customs Law enters into force immediately, but the amendment of the Tariff Law may enter into force later. There are two basic ways dealing with provisions on entry into legal force. The first way is to have one big general article/chapter on legal effective dates where different specific effective dates are provided for different amendments. This way seems to concentrate all rules on effective dates in one place, but hard to follow. The second way is to specify the effective date right after each of the substantive amendments to be transparent and clear for application. But, this second way leads to the cumbersome repetition of the effective date provisions in many places of the bill.

In this regard, the national consultants propose a flexible approach to set the effective dates of the amendments in an omnibus bill, depending on specific cases and not to follow “rigidly” either the foreign first way or the second way mentioned above.

b/ Legislative initiatives for an omnibus bill and the organizing of the drafting process

i. Under the current legal framework, those who have the right to propose/introduce a draft law or draft ordinance, include the State President, Standing Committee of the National Assembly, Government, different Committees and Councils of the National Assembly, Supreme People's Court and Supreme People's Procuracy, Members of the National Assembly, Vietnam’s Fatherland Front and its member organizations. A draft government decree or resolution may be proposed by the ministries, agencies equivalent to ministry, concerned organizations and individuals. The national consultants suggest that basically, all the persons who have the right to introduce a bill, should be given the right to introduce/propose an omnibus bill. It is important that those who propose an omnibus bill should prove the need, benefits and reasonableness of having such a bill, the advantage over having individual bills, sufficient capacity and other conditions to draft the bill, impacts of the bill on other legislations.

Under the current legislative procedure for drafting an individual bill, if the Government introduces the bill, the bill is actually proposed by a ministry or agency of the ministerial level. As discussed above, an omnibus bill is broad and covers many issues and different areas of law; therefore, before proposing the omnibus bill the ministry or agency should consult with all the other ministries and agencies whose areas of responsibilities will be affected by the bill.

ii. As an omnibus bill covers many areas of law, the drafting committee should be of inter-agency nature to have its members coming from all related ministries and agencies. Depending on the nature, scope and complexity of the bill’s contents and the bill’s forms (law or under law regulation), the drafting committee may be set up by the Standing Committee of the National Assembly or Prime Minister. But, every effort should be made to simplify the administrative and drafting process. Basically, the drafting committee should coordinate the drafting process, but the actual drafting of specific rules should be the inputs made by the line ministries that administer the issues covered by the rules. Any way, in setting up the drafting committee, there should be clear division of responsibilities among the related ministries and agencies among other things.

iii. In the context of WTO accession, if an omnibus bill is required to implement Vietnam’s WTO obligations, several considerations should be taken into account. First, as
the bill is designed to “catch all” remaining legal adjustments required by the WTO accession, it is important that those who have involved in the WTO negotiation are encouraged to take part in proposing the bill and the bill drafting, especially regarding the substantive rules of the bill which reflect the implementation of relevant WTO obligations.

Second, with respect to the lead drafting agency, there are two options: setting up an ad hoc drafting committee or assigning a ministry to lead the drafting (the traditional way). There are pros and cons for each option. The national consultants view that the second option that is assigning a ministry to be overall responsible for the drafting of the bill, should be preferred in Vietnamese context. The choice is particularly good when there is no need to clear many bureaucratic procedures and other administrative matters as may be required for the ad hoc drafting committee option. But, which particular ministry should lead the drafting of the bill. The national consultants leave the answer to the competent agency, but try to suggest some considerations before making the decision.

The lead drafting ministry should have direct responsibilities for the matters covered by the bill to the extent more than any other ministries. This should be compromised with the need to have certain understanding of the omnibus legislative technique and capacity to ensure the consistency and uniformity among all the rules of the whole bill and between the bill and other existing legislations. The lead drafting ministry is responsible for the overall drafting process, but the specific rules of the bill should be drafted to the maximum extent by the ministries which administer the matters covered by the rules.

iv. Most of the current rules of the Law on Laws are still good for the omnibus bill drafting committee/agency. However, some adjustments of certain rules are necessary to facilitate the drafting of the bill. In the long run, it is appropriate to add separate rules or chapter on omnibus legislative technique to the Law.

   c/ Legal appraisal and examination of an omnibus bill

Under the Law on Laws, the Ministry of Justice is the government agency that evaluates and appraises the legality of a bill before the bill is being introduced the competent agencies. An Appraisal Council is set up to appraise the bills for which the lead drafting agency is the Ministry of Justice or the bills which are complex and subject to different views. These rules are, basically, good and if apply to an omnibus bill, should be adjusted to require only that an Appraisal Council be set up for any omnibus bill.

With respect to the timing for legal appraisal, due to the complexity, the broad scope, inter-agency and multisectoral nature of the bill, the time limits for legal appraisal should be longer than those applicable to normal individual bills.

Under the current Law on Laws, any bill submitted to the National Assembly or its Standing Committee must be scrutinized and examined by its relevant Committees and Councils. It is normal practice that one of the Committees or Councils is designated as the lead examination Committee and other related Committees and Councils have the right to have its own comments on the bill. This rule is, basically, fine for an omnibus bill if there is no difficulty in designating the lead examination Committee. Otherwise, an ad hoc examination committee may be set up by the Chairman of the National Assembly to have its members coming from all related Committees and Councils.
In short, the national consultants found the current rules of the Law on Laws on legal appraisal and examination may work well for an omnibus bill with some minor adjustments of technical nature.

**d/ Method of adopting an omnibus bill**

Generally, the current legal rules on adoption of a normal bill may be applied to the adoption of an omnibus bill. However, due to the scope and nature of the omnibus bill, there should be given more time for discussion and debate on the bill preferably before the bill is introduced to the floor.

Similar rules may be applied to the issuance of a government omnibus decree or resolution.

**e/ Consolidation of legislations amended by an omnibus bill**

In the legislative practice the legal amendments and supplements may take either forms.

- *First*, to have fundamental amendments and supplements to the effect that the new bill when adopted, replaces [repeals] the amended legislation. For this form, there is no need to have any consolidation as all the rules of the amended legislations have gone.

- *Second*, to amend some provisions of an existing legislation. This form of amendment is more popular than the previous form and is quite frequent in practice. As a consequence, after the amending bill is adopted there are two legislations on the same subject matter: the amending and the amended legislations. To ensure the uniformity and integrity of the legal system, it is necessary to consolidate the legislations.

Up to now, the legal consolidation upon relevant amendments are made, has not been regulated by law. In practice, the consolidation is done solely by the publishing houses which, at their own discretion, may consolidate some legislations but not the others. More importantly, such consolidation is not standardized and does not have any legal binding effect. This may come from the view that consolidation of adopted legislations is the only technical work. But, a careful analyses found that there is a pressing need for Vietnam to have a proper consolidation of legislations to be transparent and facilitate the law implementation as well as to save a great deal of time and resources by not having to look at two different legislations to find the same legal rule. This is particularly true for an omnibus legislation which is designed to amend several existing legislations. Therefore, the national consultants recommend that a proper consolidation of legislations should be done and for the long run this matter must be covered by the Law on Laws. With respect to the actual consolidation work, it may be assigned by law to the Official Gazette or a special legal publishing house, but this should not mean to prevent other publishing houses from doing the consolidation of legislations at their own responsibilities.

In conclusion, the national consultants found that even though Vietnam has tested recently the omnibus legislative technique to the developments of some legislation, there unanswered time questions on the technique. Further, the national consultants view that it is now a good time to have specific legal rules on the use of omnibus technique to allow more frequent use of this technique. In the context of the WTO accession, the development and
adoption of an omnibus bill, if required, is feasible and the best option for Vietnam to implement effectively its own obligations and commitments.

The national consultants believe that the above mentioned proposals and recommendation on how to apply the omnibus legislative technique in Vietnam have answered many questions.
RESULTS OF THE SURVEY
ON APPLICATION OF OMNIBUS LAW APPROACH

I. PURPOSE, SCOPE AND OBJECT OF THE SURVEY

1.1. Purpose of the survey

Currently, Vietnam is in the need of building up and reforming its legal system in the short time to meet the socio-economic development demands, including international economic integration needs. In many case, it is no need for Vietnam to replace all legal documents that contain provisions not in accordance with international customs and commitments, but amend and supplement such provisions for compliance.

Recently, this approach has been applied in the legal practice of Vietnam, particularly in promulgation of the Law on Amendments of and Additions to Some Articles of the Law on VAT and Excise Tax in 2005 and the Decree 17/2006/ND-CP of the Government dated January 27, 2006 on amendment and supplement of some provisions of Decrees guiding the Law on Land and Decree 187/2004/ND-CP on conversion of state-owned enterprises into joint-stock companies. However, this approach was only used in the small scope and has not yet systematically applied in Vietnam.

With the assistance and supports of the World Bank in connection with the activities of studying the feasibility of applying “Omnibus Law” approach in the legal practice of Vietnam, a group of national independent consultants has conducted the survey on application of omnibus law approach.

The purpose of this survey is to gather public opinions on the fact of promulgation and amendment of the legal documents of Vietnam and assess the feasibility of applying “Omnibus Law” approach to reform the legal system of Vietnam in the coming time.

1.2. Scope and object of the survey

The survey was conducted in December 2005. The survey site is the big provinces, cities having dynamic economic and commercial activities such as Ha Noi, Hai Phong, Ho Chi Minh, Binh Duong, Long An and Can Tho. The interviewees are National Assembly deputies, legal experts and others.

One of the main method of survey was made through in-depth interview and filling the Questionnaires with around 365 interviewees.

II. RESULT OF THE SURVEY

2.1. Summary of the result

Regarding the interviewees, the number of legal experts are 285 (accounting for 79 percent), the National Assembly deputies are 40 (accounting for 11 percent), others are six (accounting for 10 percent).
In response to the question about the current process of promulgation and reform of legal document in the way of each bill at a time (one-by-one), most of interviewees do not satisfy with this process (accounting for 62.1 percent) and express their willingness to further reform such process (accounting for 85.4 percent).

The collected figure also show that a majority of interviewees ever know and/or access to the “Omnibus Law” approach (accounting for 58.4 percent). In their opinion, there is no difficulty or disadvantage in applying this approach in promulgating the Law on Amendments of and Additions to Some Articles of the Law on VAT and Excise Tax in 2005 (accounting for 57.6 percent).

Most of interviewees expressed their interest in having regulations on applying “Omnibus Law” approach in process of promulgating legal documents of Vietnam (accounting for 83.4 percent) and if such approach is applied, the priority should be given to the economic, commercial and civil field (accounting for 68.8 percent).

Regarding the question on which type of legal documents the “Omnibus Law” approach should be applied, majority of interviewees favored the type of legal document - the Law (accounting for 40.5 percent) and all type of legal normative documents (accounting for 30.6 percent).

The survey results also show that most interviewees do not satisfy with the current ability of concerned agencies in applying “Omnibus Law” approach and there is the urgent need in enhancing the ability of such agencies (accounting for 62.1 percent).

2.2. The detailed data

2.2.1. Does the current process of promulgation of the legal document in the way of drafting individual bills on the basis one by one (each at a time) satisfy the need of reforming legal system of Vietnam in the coming time?

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<th>No. of interviewees</th>
<th>Percentage (%)</th>
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<td>100.0</td>
</tr>
</tbody>
</table>

2.2.2. How does the process of reforming of the legal documents should be carried out?

<table>
<thead>
<tr>
<th></th>
<th>No. of interviewees</th>
<th>Percentage (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>As the current way</td>
<td>51</td>
<td>14.6</td>
</tr>
<tr>
<td>In the shorter way</td>
<td>299</td>
<td>85.4</td>
</tr>
<tr>
<td>Total</td>
<td>350</td>
<td>100.0</td>
</tr>
</tbody>
</table>
2.2.3. Have you ever known and/or accessed the “Omnibus law” approach?

<table>
<thead>
<tr>
<th></th>
<th>No. of interviewees</th>
<th>Percentage (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ever</td>
<td>212</td>
<td>58.4</td>
</tr>
<tr>
<td>Never</td>
<td>151</td>
<td>41.6</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>363</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

2.2.4 Is there any difficulty in applying the “Omnibus Law” approach in the process of promulgation of the Law on Amendments of and Additions to Some Articles of the Law on VAT and Excise Tax in 2005?

<table>
<thead>
<tr>
<th></th>
<th>No. of interviewees</th>
<th>Percentage (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>201</td>
<td>57.6</td>
</tr>
<tr>
<td>Yes</td>
<td>148</td>
<td>42.4</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>349</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

2.2.5. Is it necessary to apply the “Omnibus Law” approach into the process of reforming the legal system of Vietnam?

<table>
<thead>
<tr>
<th></th>
<th>No. of interviewees</th>
<th>Percentage (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>302</td>
<td>83.4</td>
</tr>
<tr>
<td>No</td>
<td>60</td>
<td>16.6</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>362</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

2.2.6. Which areas the “Omnibus Law” approach should be applied?

<table>
<thead>
<tr>
<th>Question</th>
<th>No. of interviewees</th>
<th>Percentage (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Economic, commercial, civil area)</td>
<td>243</td>
<td>68.8</td>
</tr>
<tr>
<td>No limit</td>
<td>110</td>
<td>31.2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>353</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

2.2.7. Which type of legal documents the “Omnibus Law” approach should be applied?

<table>
<thead>
<tr>
<th>Question</th>
<th>No. of interviewees</th>
<th>Percentage (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Law</td>
<td>179</td>
<td>40.5</td>
</tr>
<tr>
<td>Ordinance</td>
<td>74</td>
<td>16.5</td>
</tr>
<tr>
<td>Decree</td>
<td>46</td>
<td>10.4</td>
</tr>
<tr>
<td>All types of legal document</td>
<td>143</td>
<td>32.6</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>442</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>
2.2.8. Does the current capability of the concerned agencies satisfy the requirement in applying the “Omnibus Law” approach?

<table>
<thead>
<tr>
<th>Question</th>
<th>No. of interviewees</th>
<th>Percentage (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>133</td>
<td>37.9</td>
</tr>
<tr>
<td>No</td>
<td>218</td>
<td>62.1</td>
</tr>
<tr>
<td>Total</td>
<td>351</td>
<td>100.0</td>
</tr>
</tbody>
</table>

2.2.9. General information

**Occupation**

<table>
<thead>
<tr>
<th>Question</th>
<th>No. of interviewees</th>
<th>Percentage (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>NA deputy</td>
<td>40</td>
<td>11.1</td>
</tr>
<tr>
<td>Legal expert</td>
<td>285</td>
<td>78.9</td>
</tr>
<tr>
<td>Others</td>
<td>36</td>
<td>10.0</td>
</tr>
<tr>
<td>Total</td>
<td>361</td>
<td>100.0</td>
</tr>
</tbody>
</table>

**Sex**

<table>
<thead>
<tr>
<th>Question</th>
<th>No. of interviewees</th>
<th>Percentage (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>256</td>
<td>70.7</td>
</tr>
<tr>
<td>Female</td>
<td>106</td>
<td>29.3</td>
</tr>
<tr>
<td>Total</td>
<td>362</td>
<td>100.0</td>
</tr>
</tbody>
</table>
REPORT
ON RESULTS OF THE WTO-RELATED REVIEW
OF LOCAL REGULATIONS

I. CONTEXT OF THE REVIEW

In the recent years, Vietnam has intensively carried out the reviews of its legal system for the international economic integration and WTO accession. In addition to the regular activities of studying and reviewing the legal documents issued by the central agencies, the review of local regulations has also been conducted and produced certain tangible encouraging achievements.

To gather the information, especially the proposals and recommendations on possible WTO-related changes of local regulations, with the assistance and supports of the World Bank, a group of independent national consultants have visited and conducted a survey on the review of the legal documents and regulations in localities.

The visit and survey were conducted in both Northern and Southern provinces where economic and trade activities are dynamic, namely Hanoi, Hai Phong, Can Tho, Binh Duong, Long An in late 2005 and early 2006. It is noted that to have a complete picture of WTO-related local regulations, the national consultants have used the information and findings from the visit and survey together with other relevant information on the WTO-related local legal review of the cities and provinces other than those visited under the Bank’s exercise.

Hereafter are the main results and findings of the WTO-related review of local regulations.

II. PURPOSES, REQUIREMENTS AND SCOPE OF THE REVIEW

1. Purposes and Requirements

This review is set to meet the following purposes and requirements:

Firstly, the review is to serve the needs for international economic integration of Vietnam, especially the target of becoming WTO membership. Paragraph 4, Article XVI of the Marrakesh Agreement Establishing the WTO states “Each Member shall ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed Agreements”. This means, once becoming a WTO member, Vietnam has to ensure that legal regulations and administrative procedures issued not only by central agencies but also by the local governments comply with WTO regulations. The review helps us to understand the current state of the local legal documents and regulations and their level of compliance with WTO rules and obligations.

Secondly, this review is also aimed at providing the local competent authorities a better understanding of the WTO regulations and getting accustomed with reviewing activities. Overall, it contributes to the reform of the local regulations for the purpose of international economic integration and WTO accession.
Thirdly, this review helps Vietnam realize more comprehensively factual situation of the local regulations and make appropriate recommendations for reforming them for the purpose of international economic integration and WTO accession.

2. Scope of Review

The scope of review covers legal normative documents and administrative procedures issued by local agencies relating to international trade and WTO agreements. Since WTO rules and regulations cover or affect not only the legal normative documents issued by People’s Committees and People’s Councils but also any other government standards or measures of general application. Therefore, the scope of review is comprehensive to cover all local government measures that relate to the WTO.

III. INITIAL FINDINGS OF THE REVIEW

3.1 Organizational Matters

In general, all local governments have understood the importance of the Review and drawn up specific action plans to review their legal documents and regulations for the purpose of international economic integration. It is to note the diverse organizational forms and ways used by local governments to conduct the review. Basically, most local governments have chosen to set up an ad hoc inter-agency review committee or group headed by one of the leader of local government. The participants in the committee or group includes all relevant local government agencies. But, in certain provinces, the review was led and carried out by the local Justice Department in close cooperation with other local government agencies.

3.2 Method of the Review

In the first review year, most local governments conducted an intensive special WTO-related review of local legal documents, but since the second review year, the WTO-related activities of reviews have been conducted in conjunction with the regular reviews of legal documents and regulations at the localities. This approach seems to be suitable to the actual situation of localities where the budget, time and human resource are still limited. This allows the mobilization of the participation of experienced officials and helps the reviews performed more regularly and favorably.

3.3 Results

Generally, the legal documents and regulations issued by local agencies are in compliance with those issued by central agencies and WTO regulations. However, in some localities, there are several legal documents that are not in conformity with WTO regulations or in the lack of specific guidance. Though, these documents just cover narrow fields or even have no tangible adverse effect on the implementation of WTO obligations, the local agencies have plan to amend, supplement, annul or replace them.

IV. SOME GENERAL OBSERVATIONS AND RECOMMENDATIONS

4.1 General Observations

From the results of this survey, the national consultants has come to general views as follows:

\footnote{Under the laws of Vietnam, there is a mandatory regular domestic legal review and check.}
a) Local governments issue very few legal normative documents that may relate to WTO obligations. Those, which are issued, are based on the national laws and regulations with some exceptions.

In general, the legal documents and regulations issued by local agencies are in compliance with those issued by central agencies and WTO regulations.

b) With regards to organization for the implementation, all local governments have understood the importance of the review and drawn up specific action plans to review their legal documents and regulations for the purpose of international economic integration. However, due to the new and difficult review requirements and objectives, all of them have faced difficulties in implementation, especially the lack of capacity, knowledge, resources and budget for the review.

c) With regards to the skills of WTO-related reviews, this is a new and complicated task for local agencies. It is the fact that the local experts involved in the reviews still lack of adequate skills of review and knowledge of international trade laws.

4.2 Recommendations

From above general observations, the independent national consultants make some recommendations below so as to improve the local legal review:

Firstly, there is a need to have a plan to support local agencies in terms of appropriate knowledge and reviewing skills as well as provide them with necessary materials, organize training courses and assist them to do the review in professional way with better review quality.

Secondly, there is a need to build a database on international treaties and regularly provide them to localities in order to facilitate the reviews.

Thirdly, there is a need to set up a coordination mechanism between central and local agencies for the exchange of information, experiences and dealing with obstacles arising out of the review in localities.
ANNEX
RESULTS OF THE REVIEW IN SOME SPECIFIC LOCALITIES

1. Hanoi

The Hanoi Department of Justice has been assigned to lead the review of its local legal documents for the purpose of international economic integration and WTO accession. In its implementation, Hanoi has established a multi-agency Working Group to review all relevant legal documents, including representatives from related departments, committees, branches in which Director of the Hanoi Department of Justice is the group leader.

In 2005, the review was carried out and gained encouraging results. Out of the results, there are 74 legal normative documents found directly relate to international economic integration and most of them basically comply with WTO regulations. The review also recommends amending 15 documents for better implementation of WTO obligations.

During the review, Hanoi faced some difficulties in relation to reviewing skills and resources. Hanoi suggested that the central agencies should continuously and regularly organize training courses, disseminate knowledge, compile books, materials in order to improve skills and expertise of local expert in charge of reviewing legal documents.

2. Hai Phong

The Hai Phong Department of Justice has been assigned to lead the reviewing activity. The review is implemented through a Steering Committee on International Economic Integration in which the Department of Justice is a member.

In its implementation, the Department of Justice has finished two phases of reviewing: (i) phase I in the second quarter of 2002 and (ii) phase II in the fourth Quarter of 2004. The review results show that there are 47 out of 423 legal documents directly relating to the implementation of WTO obligations and most of them are in conformity with the WTO regulations.

During the review, Hai Phong faced some difficulties in relation to reviewing skills, technique and budget for the review.

In order to solve such difficulties, Hai Phong made some suggestions as follows:

(i) It is necessary to provide more detailed interpretation of international treaties and WTO agreements for correct understanding of the commitments and efficient implementation of the review.

(ii) It is necessary to have more supports and assistance from central government and set up closer coordination mechanism between the central and local agencies in reviewing activities.

(iii) A database of international treaties needs to be built.

3. Binh Duong

In order to implement the review in Binh Duong, the Chairman of People’s Committee of Binh Duong has issued a Decision to establish a Working Group on reviewing legal
documents for purpose of international economic integration and WTO accession. The review has been taking place since 2004.

In 2005, the review was carried out in connection with regular and periodical review of legal documents in locality. This is considered appropriate to the actual situation of Binh Duong due to the limitation of resource, time and budget. Such review could mobilize the participation of the local experts who have experience in reviewing local documents and make the review conduct more regularly.

The review results show that there are not many legal documents in Binh Duong relating to international economic integration (only 26 documents). Most of them are complying with the WTO regulations. Through the review, there are four legal documents (three Decisions and one Official Letter) recommended to be amended or replace for better implementation of the WTO obligations.

On recommendation, Binh Duong suggested that it was necessary to regularly organize training classes, disseminate knowledge, compile books, materials in order to guide, improve skills, expertise of officials in charge of reviewing the legal documents.

4. Can Tho

The Can Tho Department of Justice has been assigned to lead the review of legal documents for the purpose of international economic integration in the locality. The review was carried out through the coordination between the Department of Justice and other relevant agencies, departments, and branches.

The review of legal documents was conducted in Can Tho in 2005 and as a result, it is found that all local documents are in conformity with the WTO regulations.

On recommendation, Can Tho requested for supports for participation in training courses, dissemination of knowledge, compilation of books, materials in order to guide, improve skills, expertise of officials in charge of the legal documents and other officials in branches, fields relating to international economic integration.

5. Long An

The Long An Department of Justice has been assigned to lead the review of legal normative documents for the purpose of international economic integration in the locality.

On progress, until the time the survey took place, the review had not been completed due to the difficulties and lack of capacity in practice. However, the Long An government had set up the inter-agency reviewing team and work plan.

As requested by Long An, independent consultants organized a training day to disseminate, guide reviewing skills for Reviewing Group of the province. As scheduled, the Long An Department of Justice would try its best to complete preliminary review shortly.
I. INTRODUCTION
1. Necessity of the Study

In 2005 Vietnam made enormous efforts to develop and improve its national legal system governing commercial and economic areas, especially those laws and regulations relating to international integration in general and supporting Vietnam’s accession to the World Trade Organization (WTO) in particular. In 2005 alone, the National Assembly of Vietnam passed 29 laws and given its opinions on more than 10 other draft laws. Out of the legislations passed, there are important laws relating to the Vietnam’s negotiation on its WTO accession, such as the Law on Investment, Law on Enterprise, Law on Bidding and Law on Intellectual Property, etc. To ensure that Vietnam could become a member of the WTO in a soonest possible time, the National Assembly has planned to adopt in 2006 a series of laws and to give its opinions on some other bills that relate to the WTO provisions. In its Resolution 49/2005/QH11 dated November 19, 2005 on laws and ordinances making programs for the year 2006, the National Assembly will pass 11 laws and ordinances and give its opinions on other 13 draft laws at its session in May 2006 and pass 14 laws and give its opinions on 12 other draft laws at its session in October of the same year.

Assurance of the conformity and consistence of provisions of national laws to be enacted with the WTO’s agreements is essential because the WTO obligates all member countries to ensure that their domestic laws must be in conformity with the provisions of this Organization. Therefore, any newly enacted law that contains any provision inconsistent with any agreement of the WTO must be amended – a work that usually takes a long time. The Government of Vietnam clearly realizes this obligation and has adopted specific policies to fulfill it.

The selection of a number of draft laws planned to be passed in 2006 for reviewing and commenting their conformity with the provisions of the WTO is necessary to maintain Vietnam's continued efforts to gain the WTO membership. This is important as in drafting any legal normative document, in addition to ensuring its constitutionality and legality, it is necessary to take into account all international treaties/agreements to which Vietnam is a party. This requirement is specified in Article 6(2) of the Law on Conclusion, Accession and Implementation of International Treaties. Comments and results of the previously conducted

1 Article 6 (2) of the Law on Conclusion, Accession and Implementation of International Treaties states: “the enactment of legal normative documents shall not cause any obstacle to the
review and this review. hopefully, will provide inputs for designing a check list of key issues to be considered in drafting and enacting laws and regulations relating to the provisions of WTO.

To this end, a national consultant team was formed to study and review the draft laws listed in the laws and ordinances making program in 2006. The team has selected six draft laws to study and review, namely: draft Law on Cinema, draft Law on Lawyers, draft Revision of the Law on Civil Aviation of Vietnam, draft Law on Standardization (expected to be passed at the National Assembly’s meeting in May 2006), draft Code on Execution of Judgments, and the draft Law on Public Notary (expected to be passed when the National Assembly meets in October 2006). The reason for this selection is that those draft laws contain many provisions concerning trade in goods and trade in services stipulated in the WTO’s Agreements more than the remaining drafts do. Out of the six draft laws selected, only the draft Law on Standardization contains provisions relating to trade in goods and the remaining five mainly concern trade in services and uniform administration of law (Article X of the GATT).

2. Scope and Methodology of Review

The scope of review covers provisions of the six bills produced until February 2006. These provisions have been compared with the corresponding provisions of the WTO, such as the provisions in the Agreement on Technical Barriers to Trade (the TBT Agreement), General Agreement on Trade in Services (GATS), and relevant provisions of the GATT. As Vietnam’s WTO commitments have not been made public, to study and review the selected draft laws, the national consultants take into account the commitments on trade in services under the Vietnam – US Bilateral Trade Agreement (USFTA) and commitments on trade in services undertaken by China and Cambodia, respectively.

The study of and comments on the draft laws national consultants conducted and made by using comparative, assessing and commentary methods. First, for trade in services related bills, the Consultants Team has compared the provisions in the bills with the general provisions in GATS and the commitments under the USFTA, taking into consideration of the similar commitments made by China and Cambodia. As Vietnam has not yet completed the negotiation on its accession to the WTO, a final schedule of Vietnam’s commitments are not now publicly available. The possible commitments of Vietnam may range from the commitments under BTA and the commitments made by Cambodia in trade in services are therefore useful benchmarks to make comments and recommendations on the draft laws. Second, for the draft Law on Standardization which contains provisions concerning trade in goods, the team has made a comparison of those provisions with the relevant provisions in the TBT Agreement.

By commenting and comparing provisions in the six draft laws with the WTO provisions, the team has drawn a number of differences between them and found some Vietnamese provisions inconsistent with or even contradictory to the WTO provisions. Based
on these results, the team has then made recommendations on how to make the provisions in
the Vietnamese bills conform with the WTO provisions.

3. Structure of the Report

This Report includes the following contents:

1. Introduction
2. Contents of the Study - Findings
3. Conclusions

II. CONTENTS OF THE STUDY - FINDINGS

1. Draft Amendments of the Law on Civil Aviation of Vietnam

The Draft Revisions of the Law on Civil Aviation of Vietnam is expected to be
adopted by the National Assembly of the 11 legislature at its May 2006 session. This bill was
introduced to and commented by the National Assembly in November 2005 and has officially
been included in the laws and ordinances making program in 2006 of the National Assembly.
According to the WTO provisions, civil aviation operations relate to trade in goods and trade
in services activities. First, trade in goods is regulated in the Agreement on the Sale and
Purchase of Civil Aircraft. It is a non-mandatory plurilateral agreement and whether to
become its members remains the right of countries to decide. However, once becoming
contracting parties to this Agreement, States shall be bound by it. Second, trade in services is
governed by GATS and its Annex on Air Transportation Services.

1.1. Comments on the Draft Revision of the Law on Civil Aviation of Vietnam against
the Provisions of the Agreement on the Sale and Purchase of Civil Aircraft

The Agreement on the Sale and Purchase of Civil Aircraft of the WTO comprises of 9
Articles and 1 Annex. This Agreement mainly regulates sale and purchase of: (i) all civil
aircrafts; (ii) all engines, their parts and components; (iii) all other parts, components and sub-
assemblies of civil aircraft; and (iv) all ground flight simulators and their parts and
components whether used as original or replacement equipments in the manufacture, repair,
maintenance, rebuilding, modification or conversion of civil aircraft. The sale and purchase
of the products listed above must be in conformity with the provisions of: (i) this Agreement;
(ii) the TBT Agreement, Agreement on Implementation of Articles VI, XVI and XXII of
GATT; (iii) the member countries shall not impose any trade restriction to this sale and
purchase. By reviewing and comparing the provisions in the draft revision of the Law on
Civil Aviation of Vietnam with the provisions of the Agreement, the team has made the
following findings:

a) Scope of Regulation

The scope of regulation of the Law on Civil Aviation of Vietnam concerning
commercial activities is basically consistent with the scope of regulation of the Agreement on
the Sale and Purchase of Civil Aircraft by two reasons: (i) it allows the purchase of civil
aircraft, their engines, parts, components and equipments; and (ii) it is not applied to the sale and purchase of military aircraft and aircraft used for other public purposes.

b) Application of Provisions of Agreement on Technical Barriers to Trade

The general principles of the TBT Agreement requires that all members of the WTO, in enacting their domestic laws, shall not affect or distort trade activities. Thus, once adopted, the revised Law on Civil Aviation of Vietnam must not hinder the sale and purchase of civil aircrafts and their engines, parts or components. Article 40 (1) of the draft revision of this Law still contains general principles but not specific provisions on the sale and purchase of engines, airscrews and components of civil aircraft. Specifically, it only stipulates that the sale and purchase must ensure aviation and national security, and must be made to meet operational and business needs and in compliance with the provisions of this Law and of other relevant legal provisions. The draft thus does not provide for any concrete criterion on aviation safety and security, etc.

Recommendations: The Government should set out specific and detailed stipulations in its future guidelines for the implementation of the Law on criteria of aviation safety and security that must be met in the sale and purchase of aircraft, their engines, airscrews and components.

c) Trade Restriction

Article 40(3) of the Law on Civil Aviation of Vietnam does provide generally that the Prime Minister may permit the importation of civil aircraft and their engines, airscrew and components. In this case, it is not so clear what the conditions for a permit are? Are they quantitative or qualitative? Article 5 of the Agreement on the Sale and Purchase of Civil Aircraft requires that members countries shall not impose any quota upon the importation of aircraft and their engines, parts and components. Unfortunately, the Aviation Law of Vietnam provides that the Prime Minister may permit the import of these things only where special needs arise. This provision partly restricts or may give rise to the imposition of quantitative limitation upon the procurement of aircraft and their engines, airscrews and components. Moreover, the term “special” should be clarified in guiding documents.

Recommendations: The Drafting Committee should consider including provisions on specific criteria or conditions of the sale and purchase in case such sale and purchase is decided by the Prime Minister. Furthermore, the phrase ‘special needs’ and mechanisms for exercising the power of the Prime Minister should also be clearly stipulated.

1.2. Comments on the Draft Revision of the Law on Civil Aviation of Vietnam against the Provisions in GATS

The provisions contained in GATS are concerning civil aviation services by: (i) the provisions of this Agreement (Article XVI – Market Access; Article XVII – National Treatment (NT); and Article XI – Payment and Transfer); and (ii) Annex on Air Transportation Services.
a) *Provisions in GATS*

Commitments to open aviation services markets\(^2\) have been made in bilateral air transportation agreements between Vietnam and some foreign countries. However, bilateral negotiations on air transportation do not associate with Vietnam’s negotiation on the WTO accession. GATS provides for various rules, including those on transfer of funds. The provisions in the Vietnamese Aviation Law regarding the issues are fortunately in conformity with Article XI of GATS.

b) *Annex on Air Transportation Services*

The Air Transportation Services Annex covers not only: (i) repair and maintenance of aircraft; (ii) sale and marketing of air transportation services; and (iii) computer reservation system services. BTA does not contain any commitment on air transportation services, but the general provisions concerning services in GATS are nevertheless applied. China and Cambodia have made commitments regarding these three services, specifically:

- Commitments by Cambodia - CPC 8868 in these three services are “non”- for Modes 1, 2 and 3 and “unbound” for Mode 4, except indicated in horizontal commitments. Thus, the commitments by Cambodia regarding these three services are high.

- Commitments by China on aircraft repair and maintenance for Mode 1 is “non” with an explanation of technical infeasibility. China has made a commitment “non” for Mode 2, i.e. repair of aircraft abroad does not subject to any restriction. For Mode 3, China requires that foreign services providers must form joint ventures with Chinese domestic enterprises, provided that Chinese enterprises hold controlled shares and the provision of these services must depend on economic demands. China made no commitments as to the air transportation sale and marketing services. With respect to computer reservation system services, for Mode 1, China has made the following three points:

  - Point A: computer reservation system services of foreign enterprises must gain agreements of Chinese enterprises and must be linked to the booking system of Chinese enterprises before they could provide services to Chinese air transportation enterprises and agents.

  - Point B: computer reservation system may provide services to representative offices or air tickets booking offices opened by foreign airlines in Chinese cities under their bilateral air transportation agreements.

  - Point C: Chinese transport enterprises and agents of foreign transport enterprises can access to and use computer reservation system only after they have obtained approval by the Civil Aviation Administration of China (CAAC).

Thus, for China, Mode 2 is “non”; Mode 3 is “unbound”; and Mode 4 is “unbound”, except indicated in horizontal commitments.

\(^2\) Aviation services, which are mainly air transportation services, are not provided in Chapter VI dealing with air transportation (Articles 103 to 152).
The draft revision of the Law on Civil Aviation of Vietnam mainly deals with air transportation services. Assuming that Vietnam has made specific commitments on the three mentioned above services, the national consultants would make the following comments:

**Aircraft repair and maintenance services.**

Article 1 of the draft revisions do mention civil aviation operations, including designing, manufacture, repair and maintenance of civil aircraft and aviation components and equipment. However, the draft contains no provision on aircraft repair and maintenance services. It also keeps silent on market access and conditions for providing the said services (Mode 3).

**Recommendations:**

The Drafting Committee should consider adding to the draft revision general provisions on aircraft repair and maintenance services and these general provisions should be detailed in the implementing regulations to accommodate the possible WTO commitments.

**Aviation product sale and marketing services.**

The provisions concerning services in the sale or issuance of air tickets and air bill of lading in Article 116(1) are basically consistent with the provisions in Point 6a of Annex on aviation services of GATS. Accordingly, the distribution or sale of passenger air tickets and bill of lading shall be carried out freely through designated agents or electronic transactions.

Article 116(3) assigns the Transportation Minister to stipulate conditions and procedures for opening ticket sale offices of foreign airlines. Regarding this point, national consultants recommend that conditions and procedures for opening a ticket sale office of a foreign airline should be provided in compliance with non-discrimination principles (MFN and NT). Besides, the Government and the Ministry of Transportation should issue guidelines for implementing the roadmap for opening the market according to the WTO Final Services Commitments Schedule.

**Computer reservation system (CRS).**

The definitions of CRS in Item 6c of Annex on Air Transportation Services of GATS and in Article 117 (1) of the Vietnamese draft are similar in term of flight schedules, sits status and freight. However, the draft revision of the Law on Civil Aviation of Vietnam does not provide for this kind of service concretely in term of: commitments to open the markets (which enterprises with foreign invested capital can engage in this service?), conditions for supplying this service, and permission for doing this business. The draft revision authorizes the Transportation Minister to stipulate these matters.

**Recommendations:** The Chinese commitments to these services are: the State can control CRC, foreign firms are required to cooperate with Chinese domestic companies to provide services by Mode 1; and Mode 3 is “unbound”. Therefore, the Government and the Ministry of Transportation of Vietnam shall, depending on its final services commitments, issue guidelines for implementing the revised Law on Civil Aviation once adopted, in which the compliance by Vietnam with its commitments must be ensured.
2. Draft Law on Standardization

The draft Law on Standardization provides for adoption and application of technical standards and norms to the standardized objects; assessment of the conformity of standardized objects with the technical standards and norms. These issues are stipulated in the TBT Agreements. The purposes of this Agreement are to ensure that provisions on technical standards, including requirements for packages, coding system, marks and procedures for assessment of their conformity with the technical provisions and standards will not constitute unnecessary barriers to international trade.

2.1. Assessment of the Conformity:

In drafting this Law, the Drafting Committee has studied a series of foreign and international legal instruments governing this matter, such as the draft Standardization Law of UNIDO, materials of the International Standardization Organization (ISO), particularly the TBT Agreement of the WTO, etc. The Committee has found that the provisions of the Vietnamese draft are basically consistent with the provisions in the TBT Agreement in two aspects. Firstly, the Vietnamese draft adheres to the technical terms used in the Agreement in formulating its own provisions. Secondly, it can meet the need to develop a comprehensive national legal system on standardization with a view to promoting scientific and technological progress within the country while complying with the purposes of the TBT Agreement.

2.2. Inconsistent Points to be Corrected

Based on the results of the conducted study and comparision of the provisions currently contained in the draft Law on Standardization of Vietnam and the TBT Agreement, national consultants recommend that the Drafting Committee should consider carefully the following three issues: (1) Preparation for adoption and application of technical provisions; (2) Preparation for adoption of standards; and (3) Assessment of the conformity with the established standards. Specifically:

2.2.1. Preparation for Adoption and Application of Technical Provisions

a) Provisions of the TBT Agreement:

Article 2 of the Agreement provides for the application of MFN and NT to technical provisions and products imported from the territories of any member state; not to draft, enact or maintain any technical provision that would constitute necessary barriers to international trade; adoption of corresponding technical provisions of other members; application in part or in whole the existing or future international standards as the basis for issuing their own technical provisions, except where such standards are not effective or inappropriate; explanation of technical provisions, if required, where the preparation for, adoption or application of a technical provision may cause considerable damage to the trade of other member countries; obligation to report and provide drafts so other member countries could have opportunity to make comments when the issuance of a technical provision which is not in conformity with the international guided standards and may seriously hinder trade of other member countries.
b) Provisions in the Draft Law on Standardization:

Article 4 of the draft Law provides for: (i) non-discrimination treatment to origin of goods and services; (ii) basic principles of standardization activities (must not create barriers to production, business and trade activities, except for reasons of protection of national defense and security, human life and health and the environment and prevention of fraudulent practices; (iii) use of international and regional standards as the basis for formulating national standards and technical norms, except where such standards are not suited to special geographical, climate, existing technical and technological levels in Vietnam or may affect the national defense and/or security of Vietnam; (iv) assurance of the involvement and consent by the parties concerned in developing standards; and (iv) assurance of transparency and publicity.

Article 6 of the draft Law encourages and facilitates the conclusion of bilateral and multilateral international agreements on mutual recognition of results of assessment of the conformity of their domestic laws with the WTO provisions with a view to facilitating international trade.

Comments: The draft Law on Standardization of Vietnam provides for the principle of non-discrimination treatment based on the origin of products, commodities and services; not to create barriers to production, business or trade activities, except for reasons of protection of national defense, security, public health, the environment, and prevention of fraudulent practices. Therefore, the draft Law on Standardization is basically in conformity with the WTO provisions regarding MFN and NT to imported goods and the obligation not to constitute unnecessary barriers to international trade. However, due attention should be paid in issuing guidelines for implementing this Law in order to ensure that there will be consistent legal stipulations on this matter.

The draft Law on Standardization also contains provisions on encouragement and facilitation of the conclusion of bilateral and multilateral agreements on mutual recognition of conformity assessment results to promote international trade. However, the phase “conformity assessment results” is of rather general nature and refers to procedures more than to characteristics of products or manufacturing process or methods.

The issue of application of international standards as the basis for issuing national standards is also stipulated in the draft Law. The draft, however, does not contain any specific provision on the use of international standards that are existing or to be issued as the basis for issuing Vietnamese technical norms.

Recommendations:

- The NT to imported goods should be guaranteed in guidelines to be issued to implement the Law. Inspection regimes (procedures and criteria etc.) should apply to all goods, whether imported or domestic.

- The draft Law on Standardization should provide for the adoption of corresponding technical provisions of other members to make Vietnam technical provisions more conform with WTO provisions.
- It is desirable to add to the draft Law a provision on the obligation to explain technical provisions, where the preparation for, adoption or application of a technical provision may cause considerable damage to trade of other member countries and a provision on the application of international standards that are existing or to be issued as the basis for issuing Vietnamese technical provisions.

2.2.2. Preparation, Adoption and Application of a Standard

a) Provisions of the TBT Agreement:

With respect to the preparation, adoption and application of technical regulations under Annex 3 of the TBT Agreement, the standardizing body shall (i) accord treatment to products originating in the territory of any other Member of the WTO no less favorable than that accorded to like products of national origin and to like products originating in any other country (Section D); (ii) at least every six months, publish a work program containing its name and address, the standard it is currently preparing and the standards which it has adopted in a national or regional publication and notify the ISO/IEC Information Center of its standard’s development program and list of standards it has adopted (Section J); and (iii) provide draft standard upon request and allow a period of at least 60 days before adopting a standard for submission of comments on the draft standard by interested agencies, organizations and individuals within the territory of a Member of the WTO (Section L).

b) Provisions of the Draft Law on Standardization:

Article 4 of the draft Law provides for the principle of non-discrimination treatment to products, goods and services regardless of origin. Article 19 of the draft Law mentions about announcement, dissemination and register of a national standard. Article 15(3) of the draft Law contains provisions on the adoption of a national standard and on the solicitation of public comments on a draft national standard. The time limit for public opinions on a draft national standard shall be at least 60 days as from the date of the notice, except in special cases as may be decided by the Ministry issuing the national standard.

Comments: The Vietnamese draft Law is in conformity with the provisions of WTO. However, this draft does not provide concretely for the application of the code good practice for the preparation, adoption and application of standards. The obligation to provide information is stipulated in the draft Law. The draft, However, does not provide for the obligation to (i) notify the ISO/IEC Information Center of its standard’s development program and list of newly adopted standards; and (ii) to provide a draft standard, where requested.

Recommendations:

To add to the draft Law on Standardization or to provide for in the implementing regulations the obligation to notify ISO/IEC Information Center of Vietnam’s program for developing standards and list of newly adopted standards and to provide a draft standard upon request.

2.2.3. Procedures for Conformity Assessment

a) Provisions of the TBT Agreement:
The Agreement sets out procedures for conformity assessment, such as: the application of the NT in conformity assessment, not to draft, adopt or apply those procedures for conformity assessment that may create unnecessary obstacles to international trade; provide other members with the opportunity to submit comments on procedures for conformity assessment before issuing; inform of procedures newly issued; allow a period of time reasonable to give effect to newly issued standard; and recognize conformity assessment systems of other members, etc.

b) Provisions in the draft Law on Standardization

Article 43 of the draft Law stipulates that the Ministry which is in charge of the state administration of standardization shall stipulate in detail procedures for conformity assessment.

Article 6(2) of the draft Law states that the conclusion of and accession to bilateral and multilateral agreements on mutual recognition of conformity assessment results shall made with a view to facilitating trade.

Comments and recommendations:

The draft Law on Standardization of Vietnam does not provide specifically for procedures for assessing the conformity. Specific procedures are left for guiding documents to provide.

Presently, the mutual recognition of conformity assessment results is mainly carried out according to bilateral and multilateral agreements to which Vietnam is a party. In the coming time, once Vietnam has become a member of the WTO, it must comply with the WTO rules, which, therefore, should be stipulated in this draft Law or in subsequent implementing regulations.

3. Draft Law on Lawyers

The draft Law on Lawyers (the draft Law) consists of 9 chapters with 105 articles. In addition to general provisions, the draft Law contains stipulations concerning lawyers, practice of law by lawyers, remuneration and costs payment, socio-professional organizations of lawyers, practice of law in Vietnam by foreign lawyer organizations and individual lawyers, dealing with violations, settlement of disputes, complains and denunciations, and management of the legal profession. The draft Law also covers legal services (PCPC 861), especially the provisions on legal advisory services (consultancy) in Vietnam supplied by foreign organizations and individuals. The followings are the comments on the draft Law.

3.1. General Principles of GATS

a) Most-Favored Nation Treatment (MFN)

Comparing the provisions in Article 62 of the draft Law with the provisions in Article II of GATS, one may see that the Vietnamese provisions conform with the provisions on MFN contained in GATS. According to the draft Law of Vietnam, a foreign lawyer’s organization shall be licensed to operate in Vietnam if (i) that organization has been
established and is practicing law legally in the foreign country concerned; and (ii) has good will toward the State of Vietnam.

Thus, under the draft Law, any foreign lawyer who meets all the conditions envisaged in Article 62 of the draft and wishes to practice law in Vietnam, shall be permitted to do so in Vietnam. The draft Law does not contain any provision that may result in discrimination in breach of the MFN principle.

b) National Treatment Principle (NT)

GATS states: Each member shall accord to services and service suppliers of any other member, in respect of all measures affecting the supply of services, treatment no less favor than that it accords to its own like services and service suppliers.

Establishment of a lawyer’s organization.

The establishment of a Vietnamese lawyer’s organization is stipulated in Articles 33 and 34 of the draft Law. Under these articles, the establishment of a lawyer’s organization by Vietnamese organizations or individuals shall only subject to registration procedures prescribed in Article 35. However, for foreign individuals and organizations, such establishment shall subject to licensing procedures stipulated in Section III of the draft. So, there is a discrimination in term of procedures for establishment of domestic and foreign lawyer organizations.

Recommendations: The Drafting Committee should re-consider these provisions to ensure that Vietnamese and foreign organizations and individuals will be entitled to the same treatment regarding the establishment of lawyer organizations.

Scope of law practice.

Article 71 of the draft Law says that foreign lawyers are not allowed to provide advices concerning Vietnamese law (except where they have obtained a bachelor degree from a Vietnamese law university) or to participate in proceedings before a Vietnamese court. Vietnamese lawyers can do this job, however. Thus, these is a discrimination as between Vietnamese and foreign lawyers. The provisions in Article 71 of the draft Law are, however, consistent with the Vietnam’s commitments in its bidding for WTO’s membership. Other countries in their application for membership of the WTO have reserved that foreign lawyers cannot practice their national laws (except for those who obtain their bachelor of law degree) and not allowed to involve in legal proceedings in their domestic courts. National consultants, therefore, deem that the provisions of the draft Law are appropriate.

c) Regarding Licensing Procedures (Article VI of GATS)

According to the licensing procedures required by GATS, where authorization is required for the supply of a service on which a specific commitment has been made, the competent authorities of a member shall, within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the member shall provide, without undue delay, information concerning the status of the application.
The draft Law does provide for the time limit for granting licenses to foreign lawyers organizations. It says that within 60 days as from the date when duly submitted application and application fees have been received and paid, the Ministry of Justice shall consider the application and decide whether to issue a license. If refused to issue a license, it must inform in writing and explain the reasons of such refusal.

Comment: The provision concerning time limit for granting a license in the draft Law is fairly clear and consistent with the WTO provisions.

3.2. Commitments in Legal Advisory Services

a) Regarding Market Access (Article XVI of GATS)

Under the USBTA, Vietnam has undertaken commitments to the US in legal services (PCPC-861), except for the practice of Vietnamese law. Vietnam has undertaken "non" commitments for Mode 1 and Mode 2 and “unbound” for Mode 4;

For Mode 3, Vietnam has committed that the US service suppliers can provide services in the forms of branches, wholly foreign owned companies or joint venture enterprises; the US lawyers cannot involve in legal proceedings before Vietnamese courts; foreign branches and wholly foreign owned companies and joint venture enterprises can give advices on Vietnamese law only if their solicitors have obtained bachelor of Vietnamese law.

b) National treatment (Article XVII of GATS)

The commitments made by Vietnam under the USBTA, and commitments undertaken by China and Cambodia are similar, i.e.: "non" for Modes: 1, 2 and 3 and "unbound" for Mode 4, except indicated in horizontal commitments.

The draft Law is basically consistent with the commitments which Vietnam has undertaken in the USBTA and are similar to the commitments made by China. It is needed, however, to further consider the NT mentioned in Section 3.1. (b) above.

4. Draft Law on Public Notary

It is expected that the draft Law on Public Notary will be passed by the National Assembly in 2006. The bill has been included in the official legislative agenda for 2006. The draft Law on Public Notary comprises of 8 chapters with 60 articles. Besides general provisions, the draft provides for public notaries; public notary practicing organizations; public notary activities, service fees and professional insurance responsibility; the state administration of public notary activities; dealing with violations and settlement disputes and complains and denunciations arisen in public notary activities. According to the WTO provisions, public notary activities are relating to trade in services classified by CPC 86130 code - Services in authentication and document drafting. These services are provided to drafting of documents relating to law and the authentication of documents. These services are relating in some aspects to legal services, such as giving advices in drafting papers or direct drafting of papers or documents authentication.

Commitments under BTA are limited to legal services (PCPC 861), except the practice of law. There is no commitment in public notary services. However, China and Cambodia
have not undertaken any commitment in this area during their negotiation on membership of the WTO.

Supposing that Vietnam has to undertake this kind of commitment in order to be accepted to the WTO, it should comply with the following main principles of the WTO:

4.1. Provisions of GATS on MFN and NT (Article II and Article XVII)

GATS provides for non-discrimination treatment principles, namely: MFN and NT, in which NT would depend on specific commitments in services.

Article 1 ‘Scope of Regulation’ and Article 22 ‘Organization Forms of Public Notary Practice’ only provides for organization forms of public notary practice set up by the Vietnamese State and private persons. Foreign organizations and individuals are not mentioned in the draft. Under Article 131 of the draft Law, a public notary must be a Vietnamese citizen.

Comment and recommendations: If Vietnam makes commitments on notary public services, the above said provisions of the Vietnamese draft Law may be not in conformity with the WTO provisions.

4.2. Provisions of GATS on Domestic Regulation (Article VI)

a) Licensing

Concerning licensing procedures, GATS states: where authorization is required for the supply of a service on which a specific commitment has been made, the competent authorities of a member shall, within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the member shall provide, without undue delay, information concerning the status of the application.

Article 27(2) of the draft Law, which deals with registration of public notary, states “The Director of Department of Justice shall, within 10-day period of time after receipt of an application considered complete, consider issuing a certificate of registration to the applicant based on the plan for the system of public notary practicing organizations in provinces and cities under central authority; if the application is refused, the applicant must be informed of the reasons of such refusal.

Comment and recommendations: The time limit for granting a certificate of registration set out in the draft Law is fairly reasonable and consistent with the provisions in GATS. However, the establishment and operation of a public notary office must depend on the plan mentioned above, and this restriction is not in conformity with GATS provisions.

b) Qualification Requirements

GATS contains a provision which says “.... With a view to ensure that measures relating to qualification requirements ... and licensing requirements do not constitute unnecessary barriers to trade in services ...
The provision concerning qualification requirements in Article 13 of the draft Law is not in conformity with the requirements of GATS. The draft Law, in addition to the requirement of nationality, ethics and willingness to practice, states that in order to be appointed as a public notary, the person concerned: (i) must obtain a bachelor of law degree; (ii) have worked for at least 5 years consecutively in the legal field in an agency or organization for a fresh bachelor of law degree or have practiced for at least two years for a lawyer; and (iv) have been trained in public notary.”

Comments: If the Vietnam’s negotiation for acceding to WTO so requires, Vietnam should consider revising the Public Notary Law to remove the nationality and other unreasonable requirements in order to comply with the commitments that Vietnam has undertaken.

5. The Draft Law on Cinema

It is expected that the draft Law on Cinema will be passed by the National Assembly in 2006. Some provisions in this draft relate to GATS and commitments in services made by Vietnam in order to join the WTO. The team has studied and made comments on the draft Law on the basis of: (i) general provisions of GATS, such as MFN and NT; general exceptions and national security, administration of domestic regulation, subsidy; and (ii) commitments to open markets for three kinds of services specified in the draft Law on Cinema, namely film production technical services, firm distribution services and film dissemination services.

5.1. General Provisions of GATS

5.1.1. Fundamental Principles in GATS

Basically, the draft Law is consistent with the main principles stated in GATS, such as MFN and NT. Articles 2 and 13 of the draft Law clearly say that this Law shall apply to foreign organizations and individuals and oversea Vietnamese engaging in cinema activities in Vietnam and the State of Vietnam shall adopt policies to encourage them to invest in establishing film production technical services, film distribution and film dissemination businesses in Vietnam. The draft Law does not contain any provision that would give rise to discrimination treatment to cinema service suppliers of any member, and thus is in conformity with non-discrimination treatment policy (MFN and NT) of GATS. However, this would depend further on the outcomes of Vietnam’s negotiation on trade in services in each particular area.

Recommendations: Guiding documents should clarify the NT in each sector of services, including conditions and procedures for setting up film distribution and dissemination establishments. The draft Law does provide for the ratio and hours of presentation of Vietnamese films (television system must also follow this requirement) according to the regulations of the Ministry of Culture and Information. Whether this provision is consistent with NT principle or not would depend on the outcome of negotiation by Vietnam with foreign partners on limits to NT in each specific area of services. In principle, after the draft Law on Cinema has been passed, the Ministry of Culture and Information shall issue a circular to guide the implementation of this Law. Such circular
should, inter alia, provide in detail for the ratio and hours of showing Vietnamese films on television, as well as in cinemas in Vietnam. The provisions on these matters in the future circular must consistent with the NT principle once Vietnam accedes to the WTO.

5.1.2. General and Security Exceptions in GATS

Another important issue is one which relates to exceptions permitted under GATS, which would constitute barriers to trade in services. Article XIV provides for general exceptions where members of the WTO may adopt or enforce measures necessary to protect public morals, maintain public order, human, animal or plant life or health or to secure compliance with laws and regulations. These provisions are too general because such concepts as ‘public morals’, and public order are vague and difficult to be defined. Article 11 of the draft Law provides for prohibited acts, such as propaganda and provocation of aggression wars, hostility among nations and people, violence, reactionary ideas, lewd and degenerate way of like, crimes, social evil, superstition, destruction of fine customs, distortion of historical truth, denying revolutionary achievements, outraging the nation, great men and heroes of the nation, etc. Cinema activities carrying any of these prohibitions shall be construed illegal. All films that contain any of the contents specified in Article 11 of the draft Law shall not be allowed to be imported, distributed or presented in Vietnam. These prohibitions will probably constitute certain barriers to the importation, distribution and presentation of films in Vietnam, i.e. affecting trade in services in the cinema area.

Recommendations: These exceptions are necessary to protect sovereignty of each country in international trade and the prohibitions set out in the Vietnamese draft Law on Cinema are acceptable. Restrictions on trade in services here may be implied in the provisions concerning the issuance of permission to disseminate films (films falling under containing the contents indicated in Article 11 are prohibited) or in cinema service supply. Since such phrase as ‘destruction of fine custom’ used in the draft Law is too general, it would be needed to define in a very clear manner in guidelines cases which fall under the coverage of Article 11 of the draft Law in order to avoid possible arbitrary actions by the licensing authorities.

5.1.3. Administration of Law and Licensing Procedures

The requirement that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner is stated in Article VI of GATS. This is a matter of law enforcement and is difficult to evaluate if there are no concrete criteria. Article 14 of the draft Law regarding conditions for establishment of a cinema enterprise requires that a cinema enterprise must have a head office, legal capital and physical and technical facilities necessary to its operation. However, the establishment conditions as prescribed in Article 14 are uncertain as it contains very general stipulations, such as: “must have a head office, legal capital and physical and technical facilities necessary to its operation”.

Recommendations: The Drafting Committee should consider providing in a clearer way for these conditions in the draft Law or at least in its implementing regulations.
Article VI of GATS requires that licensing procedures in trade in services must be transparent and ensure that the applicant be informed of the status of his or her application considered complete. Article 35 of the draft Law of Vietnam provides that the competent body shall, within 15-day period of time after receipt of an application for disseminating a film deemed complete, grant a license, if refused, the reasons thereof must be specified in writing. Thus, this provision is basically consistent with the provisions of GATS.

5.2. Market Access

The draft Law on Cinema regulates three forms of service supply, consistent with the CPC classification, namely: film production technical services, film distribution services and film presentation services. The study, comparison of and recommendations on these services are based on the four modes of services supply indicated in GATS, namely (1) cross-border supply, (2) consumption abroad, (3) commercial presence, and (4) presence of natural persons.

5.2.1. Film Production Technical Services

While China and Cambodia have not made any commitment in these services during their negotiation for acceding to WTO, Vietnam has undertaken this kind of commitment in the USBTA.

Mode 1: In the USBTA, the term used in Annex G regarding film production -PCPC 9611 (except video cassettes) is “unbound”. This means that Vietnam may adopt and enforce any measure to control or limit cross-border supply of these services. As mentioned above, Cambodia and China have not made any specific commitment in film production services. The commitments in the USBTA are floor in the process of negotiation on Vietnam’s accession to the WTO.

Article 20 ‘Issuance of licenses on cooperation in producing and supplying film production services to foreign organizations and individuals’ of the draft Law states "Cooperation in production of a film to foreign organizations and individuals may be permitted after the literary script or scenario of the film has been verified by the Ministry of Culture and Information". Thus, the draft Law tends to restrict the supply of services via Mode 1 by requiring verification of script by the Ministry of Culture and Information. If the schedule of final commitments in services that Vietnam can negotiate successfully is "unbound" or it will make a commitment that the supply of film production technical services to foreign organizations and individuals shall subject to verification by the Ministry of Culture and Information, then the retention in the draft of the provision said above would be appropriate.

But if that final schedule of commitments is “non”, the draft Law on Cinema or its subsequent guiding documents should not provide for any restrictions on the supply of these services by Mode 1.

Mode 2: The term used in BTA is “unbound”. The draft Law on Cinema has no provision on this matter. So, even the final schedule of commitments that Vietnam would make is “non”, the draft Law on Cinema already meets the commitments.
**Mode 3:** Under the commitments in the USBTA, foreign organizations and individuals can provide these services only under cooperation business contracts signed or through joint ventures with Vietnamese partners. Also under the USBTA the capital contributed by the US partners in joint ventures cannot exceed 49 percent and 51 percent after five years.

Article 13 of the draft Law on Cinema states: "The State shall adopt policies to encourage … foreign organizations and individuals … to invest in the establishment of film production technical services entities …". Cinema entities referred to in Article 12 include foreign invested capital enterprises. So, the draft Law on Cinema is more ‘open’ than the USBTA because it allows wholly foreign owned enterprises to supply these services and does not impose any limitation on capital to be contributed by foreign partners to joint ventures.

**Mode 4:** The draft Law on Cinema has no provision on this matter and there are specific USBTA commitments except as indicated in horizontal commitments.

### 5.2.2. Film Distribution Services

**Mode 1:** Regarding these services, Vietnam’s commitment in the USBTA is “unbound”. China has made commitment “non” while Cambodia had not made any commitment relating to Mode 1 of these services.

If the final commitment by Vietnam on Mode 1 is the same as in BTA, then the draft Law on Cinema and its guiding documents can provide for various restrictions on these services. Contrarily, if the final commitment is “non”, then in the current context, the distribution of films can be made through Internet. Therefore, the draft Law on Cinema should not contain any provision that would constitute barrier to the distribution of films by Mode 1.

**Mode 2:** The draft Law on Cinema does not address the consumption abroad of film distribution services. So, it is recommended that the draft Law should not provide for any limitation on this kind of services if Vietnam has a commitments on the services (note: Vietnam’s commitments would not lower than Chinese).

**Mode 3:** Article 13 of the draft Law allows foreign organizations and individuals to set up film distribution entities, including foreign invested capital enterprises. So, the draft Law on Cinema is more ‘open’ than the USBTA because it allows wholly foreign owned enterprises to supply these services and does not impose any limitation on capital contributed by foreign partners in joint ventures.

**Mode 4:** The draft Law is silent on this Mode.

### 5.2.3. Film Presentation Services:

The draft Law has no provision regarding Mode 1 and Mode 2 and there is no commitment made in the USBTA on modes of supplying this kind of service. Chinese commitment is “non” for Mode 1 and Mode 2. The Drafting Committee should, therefore, consider not to limit these two Modes of supplying services.
Regarding Mode 3, like for film production and distribution services, the provision in the draft Law on film presentation services is more liberal than that in the USBTA because it allows wholly foreign owned enterprises to supply these services and does not impose any limitation on capital contributed by foreign partners in joint ventures.

6. Draft Code on Execution of Judgments

The draft Code on Execution of Judgments covers a wide range of issues: general principles, procedures for execution of civil, criminal, and administrative judgments, responsibilities of concerned agencies and organizations and the state administration on judgment execution. This Code is expected to be adopted in 2006. Reviewing and comparing the provisions of the draft with the WTO Agreements are necessary.

Results of the review and comparison showed that the agreements of the WTO do not directly provide for execution of court judgments. However, some “indirect” provisions may be found in Article X of the GATT 1947, such as: "Each Contracting Party shall administer the laws, rules, decisions or regulations mentioned above… in a uniform, impartial and reasonable manner". Or Article VI of GATS states: "In sectors where specific commitments are undertaken, each member shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner". In addition, the WTO also has provisions on complaints and dispute settlement. The provisions mentioned above do not directly deal with the execution of judgments but their spirit indicates that, for a state, a “good, uniform, impartial and reasonable legal system” and a dispute resolution by arbitration, courts or other tribunals cannot stand alone without an effective system of execution and enforcement of court judgments and arbitral awards. Therefore, a good execution system is, to a certain extent, a requirement of the WTO.

Article 2 of the draft Code provides for the execution of the following court judgments and decisions:

1. Judgments and decisions rendered by Vietnamese courts, which have acquired legal force;

2. Judgments and decisions rendered by Vietnamese courts, which have not acquired legal force but subject to immediate execution according to law;

3. Judgments and decisions rendered by foreign courts and recognized for execution in Vietnam by Vietnamese courts;

4. Awards rendered by Vietnamese commercial arbitration tribunal; judgments and decisions on labor matters rendered by foreign arbitration tribunals and recognized for execution in Vietnam by Vietnamese courts;

5. Other judgments and decisions stipulated by law”.

Thus, the draft Code mainly covers the execution of judgments and decisions rendered by Vietnamese courts, including execution of judgments and decisions made by foreign courts which have been recognized by Vietnamese courts. In addition, the draft Code also provides for the execution of arbitral awards, including awards made by the Commercial Arbitration Tribunal of Vietnam; judgments and decisions on labor matters issued by foreign arbitration...
tribunals, which are recognized for execution in Vietnam by Vietnamese courts. The draft Code also provides that the execution of "other judgments and decisions stipulated by law". This provision is designed to anticipate the need for execution of other kinds of judgment and decisions that may arise in the future or may be stipulated in other legal normative documents. The draft Code neither defines "other judgments and decisions" nor procedures for their execution.

Thus, is clear that the draft Code does not mention the execution of judgments/rulings and recommendations adopted by the WTO dispute settlements mechanism and trade remedies determinations. That means these matters are covered by other legal instruments. For example, the trade remedies determinations implementation is governed by the Ordinance Against Dumping of Imported Goods into Vietnam, Decree No. 90/ND-CP dated 11 July 2005 of the Government on Guiding the Implementation of a Number of Articles of the Ordinance Against Dumping of Imported Goods into Vietnam; the Ordinance on Measures against subsidized Goods Imported into Vietnam, Decree No. 89/ND-CP dated 11 July 2005 of the Government on Guiding the Implementation of a Number of Articles of the Ordinance on Measures against subsidized Goods Imported into Vietnam

Comments and recommendations:

The draft Code is in conformity with the WTO agreements. But, to have a full picture of the execution of judicial and quasi-judicial decisions, the Code may have certain indications to the execution of the trade remedies determinations as provided for in other legal instruments.

III. CONCLUSIONS

After having conducted the study and comparison of the draft laws mentioned above, the National Consultants found that basically, all the studied and reviewed draft laws are in conformity with the current WTO rules. This shows the efforts of the draft men to make the draft laws subject to the WTO discipline.

However, depending on the specific commitments of Vietnam in the relevant areas, some draft laws may need to be adjusted to comply with the commitments. The other alternative for the WTO compliance (if the commitments requires legal implementation) is to have more general rule in the draft law and more specific rules in the implementing regulations.
REFERENCES

1. Basic documents of the WTO
4. Draft Revision of the Law on Civil Aviation of Vietnam;
6. Draft Law on Standardization
8. Draft Law on Lawyers
10. Draft Law on Cinema
REPORT
WORKSHOPS ON POSSIBLE USE OF THE OMNIBUS LEGISLATIVE TECHNIQUE FOR IMPLEMENTATION OF VIETNAM’S WTO OBLIGATIONS AND COMMITMENTS”

With the assistance of the World Bank, the independent national consultants carried out a Study on the applicability of the omnibus legislative technique to the Vietnamese legislative process in order to effectively implement Vietnamese commitments in the World Trade Organization (WTO). The results of the Study are now in the Study Paper (hereinafter referred to as Draft Paper). In order to seek comments from national consultants, relevant agencies, government on the Draft Paper and improve the study results, two workshops were organized. All the views and comments expressed at the workshops are to be taken in account by the national consultants to produce the final Study Paper.

The contents and objectives of two workshops are similar; therefore, this Report covers both these workshops.

I. THE LOCATION AND TIME

The workshops were organized in Hanoi (March 10, 2006) and Ho Chi Minh City (March 13, 2006).

II. THE PARTICIPANTS

2.1. Participants in the Hanoi Workshop include 50 representatives from the National Assembly, research institutes, universities, legislative departments of ministries, particularly the Ministry of Justice, the Government Office, the National Assembly Office, the Legislative Committee of the National Assembly, the Ministry of Trade, Lawyer Offices, the State and Law Research Institute, the Ministry of Planning and Investment, the Economic and Budget Committee of the National Assembly, the External Affairs Committee of the National Assembly, the Hanoi Law University, the Ministry of Finance, the International Economic Integration Division of the Hanoi People’s Committee, the Hanoi Department of Justice, the Information Center of the National Assembly Office, and the Ministry of Foreign Affair.

2.2. Participants in the Ho Chi Minh City Workshop include 35 representatives from the International Economic Integration Division of the Ho Chi Minh City People’s Committee, the Department of Justice, the Department of Finance, the Department of Planning and Investment, the Department of Trade, the International Economic Integration Division of the Binh Duong People’s Committee, the Binh Duong Department of Justice, the International Economic Integration Division of the Dong Nai People’s Committee, the Dong Nai Department of Justice, members of the National Assembly in the South, and some foreign lawyer offices.
III. THE CONTENTS

The workshop contents include two main parts.

**Part One**: Presentation of the Study Paper "Possible Use of the Omnibus Legislative Technique for Implementing Vietnam's WTO Obligations and Commitments". The national consultants presented three theme papers: (i) analyses and assessments of Vietnam's possible WTO obligations; (ii) foreign experiences on using and non-using omnibus legislative techniques for implementation of WTO and other international trade agreements obligations and commitments; and (iii) proposals and recommendations on the needs for using the omnibus legislative technique in the WTO context (and for the longer and wider use in other areas of law) and how to do it in Vietnam.

**Part Two**: Discussion

Dr. Duong Thanh Mai presented her critical comments on the Draft Paper. Her comments are attached to this Report.

Then, the participants discussed actively, commented and made recommendations to the Draft Paper, which focused on the following issues:

*The necessity of the studying.* The participants agreed that the studying on the applicability of the omnibus law technique into Vietnamese legislative process to implement Vietnamese commitments in WTO is necessary, especially in the case where Vietnam is speeding up the negotiation to access WTO as soon as possible. Furthermore, according to the Deputy Chief Negotiators of Vietnam (who was present at the Hanoi Workshop), the studying should not limit to a research project, but should be disseminated to the central agencies for use.

*Structure and contents of the Draft Paper.* In general, the participants agreed with the structure and contents of the Draft Paper.

*Specific contents.* The discussions of participants focused on Part III of the Draft Paper on Proposals and Recommendations as follows:

- Regarding the legal basis, many opinions agreed that the Law on Promulgation of Legal Normative Documents does not have any regulations to prohibit the application of the legislative technique to issue a legal normative document to amend and supplement some legal normative documents. In the reality, Vietnam applied this technique on different levels. In particular, in 2005 Vietnamese National Assembly adopted Common Investment Law, Unified Enterprises Law and Law on Amending and Supplementing Some Articles of Law on Special Consumption Tax and Law on Value Added Tax; The Government issued Decree 17/2006/ND-CP in beginning of this year to amend and supplement some articles of several decrees which are related to the implementation of the Land Law. Therefore, from the legal and practical perspectives, Vietnam may apply this kind of technique for the legal normative documents at different levels.

In addition, some opinions proposed that the application of this technique be limited to Vietnam’s WTO accession and not be a wider and long time application. However, a majority of opinions preferred that in the coming time the omnibus law technique serves the
WTO accession. After that, it should be applied to the development and improvement of the Vietnamese legal system in other areas of law.

- Regarding the method for applying the omnibus law technique, the suggestions were to have more detailed discussion in the Draft Paper on the drafting process with the attention to collaboration mechanism, leading agency in drafting, reviewing, examining legal documents which are drafted by omnibus law technique.

- There is a need to have more considerations on how the statistic, systemization and consolidation of legal normative documents will be implemented. The legal dissemination and education should be paid more attentions. Vietnam may need more working on omnibus technique.

- The general supports for the studying on applicability of omnibus law technique was emphasized, especially appropriate for the improvement of legal system to implement Vietnamese commitments in WTO. This should be open for other areas of law for the long run.

- In general, the leading agency in drafting and submitting omnibus law should be the Government. The Government may designate an agency as focal point. In examining this document, the National Assembly can establish an ad hoc examination committee.

- Some participants also analyzed the advantages and disadvantages of the omnibus law technique. Notably, the applying of omnibus law technique would save time; however, the implementation of this law would be difficult because it covers many areas difficult for people to follow.

- The omnibus law should follow the sector approach in order to make it easy to follow.

- In applying of omnibus law technique, the most importance is to clearly define the scope of the issues, which need to be amended, especially to the issues relating to the implementation of WTO commitments because they have the relationship with many areas, ministries and agencies.

- Some opinions suggested that the Study results should be submitted to competent agencies for appropriate use.

IV. CONCLUSION

4.1. The Workshops were successful organized and achieved its objectives in providing the information on Study and collecting comments and views from concerned agencies, organizations and individuals.

4.2. All views and comments should be taken into account by the national consultants and studied to improve the Draft Paper.

4.3. The Study results should be widely disseminated to create the common understanding and actions during the WTO accession negotiations as well as implementation of the Member obligations in the future.
4.4. Studying of the omnibus law technique should be continued to help Vietnam apply the technique not only for the implementation of its WTO commitments but also for the improvement of areas of laws.
These comments are made on the Draft Study Paper "Possible Use of The Omnibus Legislative Technique for Implementation of Vietnam's WTO Obligations and Commitments" and presented at the workshops held in Hanoi on March 10, 2006 and in Ho Chi Minh City on March 13, 2006. The comments are made after a careful and thorough reading and studying the Draft Study Paper.

1. Structure of the Draft Study Paper

In our opinion, the structure of the Draft Study Paper is reasonable as it is divided into four main parts including Introduction, Substance of the Study Findings, Proposals and Recommendations, and Annexes.

2. Introduction

Basically, we agree with the discussions on the context, the need of a Study on Possible Use of The Omnibus Legislative Technique for Implementation of Vietnam's WTO Obligations and Commitments. However, since the necessity of the Study has been demonstrated further by other reports (e.g. the Draft Study Paper on the Impacts of the Law on Conclusion, Accession and Implementation of International Treaties upon the Conclusion and Implementation of WTO Agreements), the national consultants should consider and include in the Draft Study Paper their studies' conclusions which are important, such as it is unlikely that WTO rules and obligations will be directly applied in Vietnam. It is required to transform the WTO agreements into domestic laws (legal adjustment) and there is great probability that the National Assembly will ratify Vietnam’s WTO accession and has the competence to adopt the “Omnibus bill”.

Further, the national consultants should reconsider the way of expressing the idea at the end of the page 3 of the Draft Study Report which was written that" the omnibus technique eliminates many steps of legislative process, compared with the traditional legislative techniques where the same contents of an omnibus bill are put in different smaller individual bills”. This sentence seems to conflict with the following parts and proposals of the Draft Study Paper. This conclusion also is hard to persuade law makers and legislative body because of a high quality “omnibus bill” procedure can not be made under this shortened way.
3. Substance of the Study Findings

3.1. Analyses and assessments of Vietnam's possible WTO obligations and commitments. The Draft Study Paper has used an objective and careful approach, which was based on publicly available information and made good suggestions, and made reference to experiences of the recently acceded countries to come to the convincing conclusion that there is a likelihood that Vietnam has to accept all WTO requirements for legal adjustments in the WTO accession process.

3.2. Foreign Experiences. These are useful and necessary information. However, it would be better if there were some more information of other countries having the same accession context and conditions of Vietnam such as China and Russia (Do they use this technique? If they do, what are the advantages and disadvantages? If they do not, what are the reason and impacts?). Some points should be analyzed further in order to explain these arguments clearly. For example, why the US Congress may say yes or no to the bill, but may not ask the Administration to change the bill contents? (This issue may relate to a proposal whether Vietnamese National Assembly should adopt an omnibus bill on the basis of article by article and chapter by chapter as it does for a normal bill.

3.3. The Need for Application of the Omnibus Technique for Vietnam. Generally, this part has well analyzed the shortcomings of the existing legislation making process with regard to implementation of the WTO commitments. However, this part only deals with the law and law making process, but did not analyzed shortcomings of the whole legal system. It is necessary to have some observations of the legal framework and shortcomings of the process of drafting and issuing implementing legal documents of the Government. This should be done because in the next part the Draft Study Paper has a proposal on applying the Omnibus technique for government decrees.

3.4 The Possibility of Applying the Omnibus Approach. The Draft Study Paper has clearly presented the followings:

Reflecting the orientations in the Resolutions of the Party and documents of the State on innovating, improving the legislation making process based on Vietnam's practice and learned foreign experiences.

The legal basis for applying the new technique. Although there is no specific regulation on this legislative technique existing in laws, the application of this omnibus technique does not violate any laws.

Practical consideration. There are some cases in which the National Assembly issued one law to amend two laws or abolished some related laws and ordinances. These are good experiences for applying this technique.
The acceptance of the society and specialists. The Survey Report has shown the initial support and acceptance of the society and specialists for proposal of applying the Omnibus legislative technique in Vietnam in current situation.

3.5. However, in our opinion, some assessments on difficulties, obstacles of applying this new omnibus legislative technique should be added to the Draft Study Paper in order to have more comprehensive and objective picture. This will make the explanations for proposals and recommendations more precise and convincing.

4. Proposals and Recommendations:

4.1. On the Areas of Law Where the Omnibus Legislative Technique May Apply. The Draft Study Paper proposed to apply the omnibus legislative technique in two stages. In the first stage starting from now, the omnibus legislative technique be applied to amend or supplement laws and regulations within one area of law or multiple areas closely interrelated. After the first stage, the omnibus legislative technique will be widely applied to any areas of law depending on the needs for reform.

In principle, we agree with this proposal. However, there are some unclear issues in the principle; for example, are certain areas of law such as the business law, commercial law and administrative law or criminal law closely interrelated? Can other non criminal law provide for offence and punishment, which normally are stipulated in Penal Code?

4.2. On the Forms and Types of Legal Normative Documents be Applied the Omnibus Legislative Technique. In our opinions, the national consultant's suggestion that this technique just only apply to the legal documents of the National Assembly, the Standing Committee of the National Assembly, and the Government is reasonable. However, we have the worries for ordinances because of the following reasons: there is clear authorization from the National Assembly to its Standing Committee on the legislative areas of the Standing Committee; there are some shortcomings of the legislative process of the Standing Committee as well as of its legislative capacity; the Standing Committee does not have competence to decide and approve the accession to international agreements; the orientation in Resolution 48 of the Politburo on Improvement and Development of a Legal System Strategy is to reduce the issuing of ordinances and step by step to terminate the authority to issue ordinance of Standing Committee….

4.2. On the implementation model

On the legal basis. The national consultant's suggestion is to amend and supplement the Law on Promulgation of Legal Normative Documents. We think that this suggestion should be carefully considered as Decree 61 guiding the implementation of this Law just came into effect. The reasonable more alternative is to issue a new Decree (together with
three other decrees which were proposed to the government from 909 Project regarding the legislative process). For the long run, the amending technique should be included in the proposed Law which unified the Law on Promulgation of Legal Documents and the Law on Promulgation of Legal Documents of Local Authorities.

On the structure of omnibus bill.

- The national consultant's suggestion is reasonable however it is only suitable for the issuing of the legal documents to modify the existing legal documents. But this technique can apply for new omnibus legal documents, which modify the existing legal documents or to regulate a new area of social relationships. This should be discussed more in the Report. In this case, the structure of the omnibus bill should be changed: the first part of the bill follows the ordinary legal document, and the following part will modify the related legal normative documents;

- Setting up a mechanism to ensure those, which are directly affected by omnibus law, especially the enterprises, business associations, VCCI, investors and donors community in Vietnam… to have rights to comment on the development of an omnibus law;

- Setting up a information mechanism on legal policies, contents of draft laws, and comments, and a mechanism for receiving, considering and responding to the comments from the directly affected agencies, organizations and individuals.

- Other important requirements should be ensured in the application of the omnibus bill technique. The suggestions and recommendations of national consultants just only refer to the application of this technique. This is the issuance of laws, ordinances and decrees to modify the equivalent legal normative documents. The question is whether the omnibus technique should apply to the implementing regulations of the omnibus law. Is there any difference in issuing implementing regulations? The other option is to require the omnibus bill be such detailed that the implementing regulations are not needed or reduced to minimum.

    Contents of the omnibus bill should be studied and reviewed for it's conformity with the international agreements in general and the WTO Agreements in particular.

    - Finally, the legal effect of the consolidated legal documents coming from omnibus bill. We do not fully agree with the national consultants’ point of view that this is the technical work and can be given to Publishing House or Official Gazette to publish as the Annex of Official Gazette.

    Overall, we see the Study is a good one. It has both theoretical and practical values for Vietnam. More importantly, the Study is good not only for the WTO implementation but also for the legal reform process of Vietnam.
REPORT
WORKSHOPS ON “DISSEMINATION OF THE WTO-RELATED LEGAL REVIEW RESULTS FOR THE WTO COMPLIANCE”

With the assistance of the World Bank, in early 2005 a group of national consultants has conducted the study, review and comparision of the relevant Vietnamese laws and regulations with the provisions and requirements of the World Trade Organization (WTO) in order to facilitate Vietnam negotiation and accession to WTO. The study and review were carried out by five teams of experts to cover five areas of law, namely Trade in Goods, Trade in Services, Investment, Intellectual Property Rights, and Dispute Settlement. The results of the study and review have been compiled in a very comprehensice review report. At that time, one of the recommendations made by the national consultants involved in the study was to disseminate widely the study and review results to raise the awareness and understanding of Vietnamese government agencies, officials and people at large. This is important as Vietnam is approaching the final stage of its WTO negotiations.

Under the new Bank sponsored WTO legal implementation exercise, the Institute of Law Science (ILS) has been chosen to disseminate the WTO related legal review. In early 2006, two workshops were held for the dissemination purpose.

The two workshops were organised in different locations (the North and the South). However, the contents and objectives of the two workshops are similar, therefore, this Report covers both workshops.

1. The Location and Time

The Workshops were organized in Hanoi (March 9, 2006) and Ho Chi Minh City (March 14, 2006).

2. The Participants

Speakers include the national consultants who have been involved in the Bank sponsored legal study and review for WTO compliance.

Participants in the Hanoi Workshop include 60 representatives from the National Assembly, research institutes, universities, legislative departments of ministries, particularly the Ministry of Justice, the Ministry of Trade, the Ministry of Planning and Investment, the Ministry of Construction, the Ministry of Science and Technology, the Ministry of Information and Culture, the Ministry of Transportation, the Ministry of Industry, the Ministry of Foreign Affairs, the Ministry of Finance, the Government Office, the National Assembly Office, the Legislative Committee of the National Assembly, Lawyer Offices, the State and Law Research Institute, the Economic and Budget Committee of the National Assembly, the External Affairs Committee of the National Assembly, the Hanoi Law
University, the International Economic Integration Division of Hanoi People’s Committee, the Hanoi Department of Justice, the Information Center of the National Assembly Office, and the Ministry of Foreign Affair.

2.2. Participants in the Ho Chi Minh City Workshop include 40 representatives from the International Economic Integration Division of Ho Chi Minh City People’s Committee, the Ho Chi Minh City Departments of Justice, Finance, Planning and Investment, Trade, Transportation, Industry, the International Economic Integration Division of Binh Duong People’s Committee, the Binh Duong Department of Justice, the International Economic Integration Division of Dong Nai People’s Committee, the Dong Nai Department of Justice, and members of the National Assembly in the South.

3. The Contents

The workshop contents include three main parts

**Part One.** Presentation of the WTO’s major provisions and requirements.

The national consultants briefed the WTO’s major provisions and requirements in respect to Trade in Goods, Trade in Services, Intellectual Property Rights, Investment, and Dispute Settlement. In their presentation, the national consultants also noted that the provisions and regulations of the WTO are broad, complicated and difficult to understand. The briefing has provided basic information for the participants to move to the information and discussions on legal study and review for WTO compliance.

**Part Two.** Presentation of the Results of the Study and Review of Relevant Vietnamese Laws and Regulations for WTO Compliance.

- A national consultant representing for the Team of Trade in Goods presented the scope of reviewing and comparing the WTO’s provisions, in particular the GATT 94, the Agreement on Agriculture, the Agreement on Technical Barriers to Trade, the Agreement on Custom Value, the Agreement on Import Licensing, the Agreement on Application of Sanitary and Phytosanitary with Vietnamese relevant laws and regulations (the Law on Commerce, the Law on Import and Export Duties, the Law on State Enterprises, the Decision of the Prime Minister on management of import-export activities for the period 2001-2005, the Decision of the Prime Minister on application of tariff quota for imported goods, the Decision of the Prime Minister on establishment, use and management of Export Support Fund, etc). The national consultant stressed that in general, the laws and regulations of Vietnam basically were in conformity with the WTO’s obligations in the Trade in Goods. In recent years, the National Assembly made enormous efforts to enact laws that comply with the WTO’s obligation and facilitate Vietnam accession to the WTO. However, the national consultant also pointed out some laws and regulations which should be changed or amended to be in full conformity with the WTO provisions rights.
A national consultant representing for the Team of Trade in Services presented the study service related laws and regulations, focusing on comparison of the GATS and the USBTA commitments with Vietnamese relevant laws and regulations (the Maritime Code, the Law on Insurance Business, the Law on Tourism, the Law on Accounting, the Law on Auditing, the Law on Credit Institutions, the Ordinance on Telecommunication and Posts, etc). The national consultants indicated that almost all the legal normative documents at the law level (code and laws) were consistent with the general provisions of the GATS (assuming the service commitments of Vietnam is not too high), however, the provisions of certain sub-laws might be inconsistent with some GATS rules. The national consultant also briefed the WTO related experiences of China for reference.

A national consultant representing for the Team of Intellectual Property Rights presented the study of reviewing and comparing the WTO’s provisions of intellectual property rights (TRIPS) with Vietnamese relevant laws and regulations (the Civil Code, the Law on Intellectual Property Rights). The national consultant indicated that the Vietnam’s legal normative documents on intellectual property rights (IPR) were basically in conformity with the WTO obligations, since the National Assembly had enacted the Civil Code (in May, 2005) and the Law on Intellectual Property Rights (in December, 2005). However, the national consultant noted that the implementation and enforcement of the laws and regulations on IPR might be a headache of state authorities.

A national consultant representing for the Team of Investment presented the study of reviewing and comparing the WTO’s provisions of investment (the Agreement on Trade-Related Investment Measures, the GATS, the Agreement on Subsidies and Countervailing Measures) with Vietnamese relevant laws and regulations (the Investment Law, the Law on Enterprises, the Decree Guiding the Implementation of the Law on Investment and the Law on Enterprises). The national consultant indicated that before enacting the common Law on Investment and Enterprises, the Vietnam’s legal system on investment had the two parallel systems: domestic investment and foreign direct investment. The enactment of the common Law on Investment and Enterprises created the equal environment, eliminating discriminations between for the domestic and foreign enterprises in doing business. In the coming time, the national consultant recommended that the Government of Vietnam enact more legal normative documents for guiding the implementation of both Laws.

A national consultant representing for the Team of Transparency and Dispute Settlement presented the study of reviewing and comparing the WTO’s provisions of transparency and dispute settlement with Vietnamese relevant laws and regulations (the Law on Promulgation of Legal Normative Documents, the Decree Guiding the Implementation of the Law on Promulgation of Legal Documents, the Ordinance on Arbitration, Law on Court Organization, etc.). In respect to this area, the laws and
regulations of Vietnam were basically in conformity with WTO’s obligations on transparency and dispute settlement. The Law on Promulgation of Legal Normative Documents and the implementing decree stipulated that all the laws and sub-laws should be published in the Official Gazette, if not, they might not have legal effect. The Revised Law on Denunciations and Complaints allowed complainants to bring action to court to challenge an administrative decision or action.

**Part Three: Discussion.**

After listening to the national consultants of the five teams, the participants raised many questions in relation to WTO’s provisions and the review results of relevant laws and regulations to meet the requirements of the WTO. Many participants also shared views that laws and regulations should be changed before Vietnam becomes a member of the WTO, but how Vietnam could do that timely and effectively. The ILS also briefed on the possible use of the omnibus legislative technique for the WTO legal implementation.

**4. Conclusion**

- The two Workshops were successfully organized and achieved its objectives in providing the information on Study and Review of Relevant Vietnamese Laws and Regulations for the WTO Compliance to various stakeholders and related entities.

- The results of Study and Review should be further disseminated to raise awareness and seek the better common understanding for actions in changing laws and sub-laws to meet the WTO’s regulations and provisions.