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David A. Gantz

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Doi Moi, the VFTA and WTO Accession: The Role of Lawyers in Vietnam's No Longer Cautious Embrace of Globalization

DAVID A. GANTZ*

During the past thirty years, Vietnam has evolved from a closed, communist/socialist state with little respect for the rule of law—or lawyers—to a still-communist state but one which is increasingly driven by market forces, global competition, and development of a more smoothly functioning and predictable legal system. The article traces this process from the end of the Vietnam War, through the initial economic opening under “Doi Moi,” to negotiation of the bilateral trade agreement with the United States and, finally, to the WTO accession process. In each instance, emphasis is placed on the growing role that the law and lawyers have played in what is promising to be a successful embrace of globalization.

The enthusiastically communist/socialist state that was Vietnam from the departure of U.S. troops in 1974 until about 1985, what Carol Rose terms a “command economy,”¹ had no use and little respect for attorneys, whether in the very limited domestic private sector, in government, or from overseas. A few U.S.- and French-trained attorneys remained after 1974, mostly in the Saigon area, but most Vietnamese who had been trained in the law left after the Communist takeover in 1975. During this more than twenty-year period, few lawyers were educated at law schools in Vietnam—probably no more than 200 to 500 per year. A limited number were sent overseas, usually to the U.S.S.R., where it has been argued that the “legal” education was in fact far more focused on socialist ideology.²

But by the early 1980s, first in the agricultural sector and then more broadly, it was becoming painfully obvious that the collectivization of agricultural production and the virtual prohibitions on private business were damaging what was left of the post-war economy,³ making it virtually impossible for the nation to generate, from foreign or domestic

* Samuel M. Fegtly Professor of Law and Director, International Trade and Business Law Program, University of Arizona, Rogers College of Law. Copyright © 2006, 2007, David A. Gantz.

1. Carol V. Rose, *The “New” Law and Development Movement in the Post-Cold War Era: A Vietnam Case Study*, 32 LAW & SOC’Y REV. 93, 97 (1998) [hereinafter Rose].

2. *Id.* at 97-99.

3. ROBERT TEMPLER, *SHADOWS AND WIND: A VIEW OF MODERN VIETNAM* 57-59 (Penguin Books, 1999) [hereinafter TEMPLER].

investment, jobs for the estimated one million Vietnamese entering the work force each year.⁴ (Other causes of severe economic problems, including disastrous wars with Cambodia's Pol Pot regime beginning in 1978⁵ and China in 1979⁶, were important but are beyond the scope of this essay).

The end result of these challenges was the so-called "Doi Moi" ("renovation") policy officially adopted by the Vietnamese Communist Party in 1986 after several years of debate, discussion, and more than a little dissent from those in the government who feared an economic opening would threaten the stability of the regime.⁷ The essence of Doi Moi, as originally enacted, was political and social renewal through rapid industrial growth and development.⁸ Doi Moi was the beginning of a twenty-year period that brought normalization of political and economic relations with the United States through the U.S.-Vietnam Bilateral Trade Agreement (VBTA) in 1995 and 2001, respectively,⁹ and, in January 2007, saw Vietnam become a member of the World Trade Organization¹⁰ after approval of the WTO General Council in November 2006.¹¹ For purposes of this essay, the most important aspects of Doi Moi were the initiation of policies aimed at encouraging foreign investment, stimulating exports, and increasing the competitiveness of the local economic structure, both state-owned and private. Legal reform flowed from such policies, although much more slowly than in retrospect was desirable and with more than a little backsliding, in turn bringing about a resurgence of the legal profession and legal education.

Part I of this essay briefly summarizes the economic and, to a much more limited extent, political developments from 1974 to 1986. Part II views the development of the Doi Moi policies from 1986 to about 1995. Part III discusses developments in the 1995-2000 period, focusing on the negotiation and conclusion of the VBTA. Part IV discusses the WTO accession process, completed with Vietnam's formal accession to membership in January 2007. Finally, Part V discusses some recent developments in Vietnam, indicating an awareness by Vietnamese officials that the legal system continues to have shortcomings, and sets forth plans for far-reaching reforms in the legislative process and the functions of the judiciary as well as the role of lawyers in society.

In each section, much of the emphasis is on the growing role and importance of the legal profession. The profession consists first of indigenous Vietnamese attorneys staffing the Trade, Justice, and other ministries responsible for negotiating and drafting the trade

4. *Id.* at 342 (1998-1999 estimates).

5. STANLEY KARNOW, *VIETNAM: A HISTORY* 54-56 (Penguin Books, 1997) [hereinafter KARNOW].

6. TEMPLER, *supra* note 3, at 114 & 285.

7. *Id.* at 3-4.

8. Luke Aloysius McGrath, *Vietnam's Struggle to Balance Sovereignty, Centralization, and Foreign Investment under Doi Moi*, 18 *FORDHAM INT'L L. J.* 2095, 2096 (1995) [hereinafter McGrath].

9. Agreement Between the United States of America and the Socialist Republic of Vietnam on Trade Relations, U.S.-Vietnam, Jul. 13, 2000, available at http://www.ustr.gov/assets/World_Regions/Southeast_Asia_Pacific/Vietnam/asset_upload_file804_5101.pdf (last visited Aug. 31, 2006) [hereinafter VBTA].

10. See Marrakech Agreement Establishing the World Trade Organization, April 14, 1994, 1867 U.N.T.S. 154, available at http://www.wto.org/English/docs/e/legal_e/04-wto.doc [hereinafter WTO Agreement] (creating the World Trade Organization in April 1994).

11. Press Release, WTO, General Council Approves Viet Nam's Membership (Nov. 7, 2006), available at http://www.wto.org/english/news_e/pres06_e/pr455_e.htm (last visited Dec. 11, 2006) [hereinafter WTO Press Release]; WTO, *Vietnam to join WTO on 11 January 2007*, Dec. 12, 2006, available at http://www.wto.org/english/news_e/news06_e/acc_vietnam_12dec06_e.htm (last visited Dec. 12, 2006).

agreements, preparing the legislation and presenting those laws for enactment to the National Assembly, and assuring the implementation process, including myriad regulations, continues at the ministry and sub-ministry levels. At least three other groups of attorneys, however, played a significant role. The Australian, French, British, American, and other foreign attorneys staffed branch offices in Saigon and/or Hanoi beginning in the late 1980s. An even larger number of legal consultants from those nations, Canada, Singapore, Sweden, and other EU nations, usually funded by bilateral aid agencies or the international financial institutions, provided technical assistance of varying quality and relevance to government ministries, the National Assembly, and various law faculties, among others.¹² Finally, one should not underestimate the legal “education” provided to a very bright, dedicated group of Vietnamese government lawyers by the lawyers and other negotiators at the Office of the U.S. Trade Representative (USTR), the Department of State, and other U.S. government agencies, as well as delegations of foreign governments negotiating other trade and investment agreements with the Government of Vietnam during this period.¹³

I. Creating an Economic Crisis, 1975-1985

From the late 1940s to at least 1979, the policy of Vietnam was one of collectivization. Post-1975, the emphasis was on land redistribution, both in the north and the south. When the state entered into rice purchasing and distribution, yields decreased and much of the stockpiled rice was wasted. Food imports increased with an impact that went beyond the rice market *per se*, to the point where cooperatives were again authorized. However, continuing state intervention, along with heavy taxation, reduced many of the gains of the late 1970s and ultimately produced famine in some parts of the country.¹⁴

The collectivization was not, of course, limited to land under the communist system. Industry already in place was also brought under state ownership and control, embracing a Soviet style economic system.¹⁵ The impact on Vietnam’s then existing legal system was predictable. Vietnam’s legal system historically is considered a mix of the various invading powers: Chinese (neo-Confucian), French (parallel to the existing system at the end of the Nineteenth Century) and American (overlying Vietnam’s own “ancient tradition of law”).¹⁶ An “Indochina Law School” operating between 1920-1950 in Hanoi trained many Vietnamese lawyers in the French system; during the U.S. period, 1960 to 1975,

12. By way of example, the author has made six trips to Vietnam to consult with the Ministry of Justice, the National Assembly, and a large group of actual or hopeful international trade law professors, supported at various times by the United Nations Development Programme, the Swedish International Development Agency, the World Bank, and the U.S.-Vietnam Trade Council.

13. See United Nations Conference on Trade and Development [UNCTAD], Total Number of Bilateral Investment Treaties Concluded, June 1, 2005, available at http://www.unctad.org/sections/dite_pccb/docs/vietnam.pdf (last visited June 7, 2006) (indicating that Vietnam had concluded 40 BITs, primarily during the 1990s, of which 38 were in force).

14. TEMPLER, *supra* note 3, at 57-58. The diet of the average Vietnamese did not increase between 1960 and 1990, with malnutrition remaining a serious problem for thirty years. *Id.* at 61.

15. Rose, *supra* note 1, at 97.

16. *Id.* at 95-96.

some Vietnamese lawyers were trained by visiting American lawyers and law professors or in the United States.¹⁷

Almost everything changed in 1975 in the south as well as the north after the withdrawal of U.S. forces and the Communist takeover of the entire country. There was, understandably, both an anti-legal and anti-colonialist attitude within the Vietnamese government. In a process that was not unique to Vietnam, the government ruled by decree, no objection to administrative orders was permitted, legality became at best a formality, and even the Ministry of Justice was eliminated from 1961 to 1981.¹⁸ When Vietnamese lawyers were sent abroad to train, it was usually to the Soviet Union or Eastern Europe; many of today's most important upper to middle level legal bureaucrats were, in fact, trained in such institutions, training that, in the author's view, produced a number of first-rate lawyers. The climate for traditional members of the legal profession was thus not the most positive one.

Reevaluation of these policies was stimulated by the obvious concerns: an agricultural production crisis, an absence of foreign investment, and insufficient domestic financial resources for economic development and job creation. There were shortages of common goods, the annual inflation rate was more than 100 percent, and the Soviet Union had recently reduced economic assistance.¹⁹ "[T]he Vietnamese economy was dysfunctional" with the failure of heavy industry to develop production, the bureaucracy blocking all market forces, and the emergence of a black market.²⁰ Ultimately, the result of these factors was the adoption of a limited market-based system and policies to encourage foreign investment and stimulate the economy, formally occurring at the Sixth Communist Party Congress in 1986.

II. Doi Moi and the Economic Opening, 1986-1995

The steps taken under Doi Moi included a substantial decrease in the reach of central planning, with price controls lifted on many commodities and decollectivization of agricultural land.²¹ There was not, however, an elimination of state enterprises or even a reduction in their substantial role in the economy.²² Efforts to "equitize" (privatize) state enterprises in the early and mid-1990s were official policy, but lagged in practice.²³

A major goal of Doi Moi was to stimulate an increase in foreign investment; that goal required a legal structure, and such reform, however imperfect, began to take place. During the period 1987-1995, a new constitution was adopted (1992) and over 100 laws, in-

17. *Id.* at 97.

18. *Id.* at 97-99.

19. Phong Tran, *Vietnam's Economic Liberalization and Outreach: Legal Reform*, 9 LAW & BUS. REV. AM. 139 (2003) [hereinafter Phong Tran].

20. *Id.* at 142.

21. McGrath, *supra* note 8, at 2103.

22. At least one author argues that not only did Doi Moi not decrease the role of the state in the Vietnamese economy, but it actually increased it due to new foreign investment in state firms. TEMPLER, *supra* note 3, at 144.

23. William A.W. Nielson, *Asia's Economic Crisis Poses Challenges for Vietnam as Doi Moi Enters Second Decade*, 20 No. 2 E. ASIAN EXECUTIVE REP. 9 (1998).

cluding a Civil Code, were enacted.²⁴ Doi Moi was expanded in 1991 to explicitly include legal reform, with the predictable references to "running the nation by law."²⁵ Legislation alone, of course, did not resolve potential problems for foreign investors due to a lack of regulations and other guidelines, a lack of effective dispute settlement mechanisms and other ways of forcing national and local officials to comply with the laws, and, perhaps most significantly, a continuing lack of competition in many sectors of the economy. For example, the "peoples' courts" were dominated by Party officials who were ill-trained, particularly for dealing with commercial disputes, and lacked independence from the executive. The Vietnamese Communist Party was also subject to criticism, occasionally in public and more vehemently after the collapse of Communism in the Soviet Union and Eastern Europe, for mismanagement, corruption, muzzling of the press and over-rigidity; it was said to be out of touch with the "real situation in the country."²⁶

The success of the Doi Moi in stimulating investment was mixed, at best, with a falling off experienced in the mid-1990s, well before the broader Asian financial crisis in 1997.²⁷ This was probably a result of continued influence of, and favoritism toward, the state sector coupled with the fact that the initial package of business legislation was more a control mechanism than one focused on economic growth. Under key laws, for example on private enterprises and companies, various restrictions remained, including onerous state approval requirements, high costs of incorporation, high minimum capital requirements, a variety of special licenses and limits on access of foreign investors to some sectors, and the general frustrations of dealing with the government.²⁸

However, it was significant that this shift under Doi Moi to some semblance of a nation of laws implied that lawmakers, both in the National Assembly and in the government, would have to improve their legal skills. The Ministry of Justice, which had been back in business since 1981, increased its influence in the government hierarchy, and by the end of the first ten years of Doi Moi, available law school slots had increased to 2,000, fourfold from a decade earlier.²⁹ Legal and foreign training for lawyers remains, however, determined in significant part by their age. The oldest generation is French; the middle, Russian; and the youngest, home-grown Vietnamese with significant American influences.

In the early 1990s, foreign legal assistance grew in volume, with visiting foreign lawyers and academics as well as a Swedish-sponsored economic law and legislative drafting project in 1991. By 1996, various donors, including governments, NGOs, foundations, and law firms, had pledged or spent over \$13 million in legal assistance, often described as supporting Vietnam's movement toward freer markets. The major players included the UNDP, the World Bank, and the Asian Development Bank as well as the governments of Denmark, Sweden, Canada, France, Japan, and Australia,³⁰ all of which are still active in Vietnam today. U.S. efforts remained very limited, at least until 1988, but later blos-

24. McGrath, *supra* note 8, at 2117; see Rose, *supra* note 1, at 100-01 (discussing the laws and ordinances that had been adopted).

25. See Rose, *supra* note 1, at 99 (quoting from Prime Minister Vo Van Kiet).

26. See TEMPLER, *supra* note 3, at 120-121 (recounting a BBC speech by Party member and military officer Bui Tin in December 1990).

27. Phong Tran, *supra* note 19, at 153.

28. *Id.* at 150, 152-53.

29. Rose, *supra* note 1, at 101.

30. *Id.* at 106-08

somed, as discussed below. Certainly, many dozens if not hundreds of foreign lawyers had the opportunity to participate in the various projects.

Around the same time, no doubt encouraged by the increase in foreign investment, foreign law firms began operations in earnest in Vietnam, with more than thirty estimated to be operating by 1998 primarily from Europe, Australia, Hong Kong, and the United States. As in many other developing countries, foreign legal professionals served private clients (primarily in foreign investment and establishment areas), hired and trained Vietnamese attorneys, and, from time to time, assisted Vietnamese government agencies in reviewing drafts of proposed laws and ordinances.³¹ However, foreign legal activities were apparently viewed with suspicion by the Vietnamese government, which reacted with onerous licensing requirements, restrictions on hiring local attorneys, restricting legal advice to international law, and, occasionally, interfering with such basic aspects as renting office space and obtaining telephone lines. Notably, this changed significantly with the advent of the VBTA.

III. Negotiating the U.S.-Vietnam Bilateral Trade Agreement, 1996-2000

The mixed success of Doi Moi and the remnants of failed economic policies for attracting foreign investment and improving living standards, the demise of the Soviet Union, the Asian financial crisis, and the increase in the export successes of China along with the normalization of political relations with the United States in 1995 gave Vietnam both challenges and opportunities. In different ways, the Chinese and U.S. influences were likely most important in convincing Vietnamese officials at the highest levels to conclude the VBTA.

It is probably difficult to overemphasize the importance of China in influencing Vietnamese economic policies over the last ten years or so. China, even before WTO accession in November 2001, was highly successful in attracting foreign investment, far more so than Vietnam or its Association of South-East Asian Nation (ASEAN) partners.³² Moreover, in 1996, more than half a decade after Tiananmen, the rapidly increasing economic opening of China did not appear to be threatening the Communist regime. Vietnam had to find some way to compete. Doi Moi and related legal reforms did not cease during the second half of the 1990s. Rather, the same pressures that ultimately led to the VBTA and to WTO accession encouraged continuing efforts with regard to new incentives, or removal of disincentives, to foreign investment through further amendment of relevant legislation.³³ It was becoming obvious, however, that Doi Moi, alone, was not enough.

31. *Id.* at 119-20.

32. In 1995, direct foreign investment in China was \$36 billion, compared to about \$4 billion each for Indonesia and Malaysia, and only \$1.4 billion in actual investment commitments for Vietnam. See ASIAN DEVELOPMENT BANK, ASIAN DEVELOPMENT OUTLOOK 1996 & 1997 109, 113 (1997) (Vietnam data); Press Release, Asian Development Bank, Foreign Direct Investment Spurs Asia's Development 1 (1999) (China, Indonesia, Malaysia data).

33. Phong Tran, *supra* note 19, at 154.

In 1995, Vietnam joined ASEAN³⁴ and became a party to the ASEAN Free Trade Agreement (AFTA),³⁵ no doubt hoping that AFTA membership would increase exports to other ASEAN/AFTA members, particularly Singapore and neighboring Thailand. In 1998, during the midst of VBTA negotiations, Vietnam became a member of Asian Pacific Economic Cooperation (APEC)³⁶ and hosted the 2006 APEC annual meeting.

The obvious reasons for Vietnam to improve diplomatic and economic relations were highly practical. Unlike other members of ASEAN and China, after 1951 for Communist-controlled areas and then for the entire country between 1975 and 2001, Vietnam had only limited access to the highly lucrative U.S. market because the lack of "most favored nation" (MFN) treatment for its exports to the United States made the exports prohibitively expensive.³⁷ Such status is automatically conferred by GATT/WTO membership, but otherwise is normally available only through the conclusion of a bilateral trade agreement with the United States, such as the agreement the United States and China concluded in 1979.³⁸ With its back nearly against the wall in the second half of the 1990s, the prospect of increased exports to and investment from the United States must have seemed very attractive to Vietnamese officials. Some observers believed that concluding a trade agreement with the United States was important to Vietnam for political reasons as well as a part of its continuing efforts to balance its relations between China and the United States.³⁹

According to the principal U.S. negotiator of the VBTA,⁴⁰ both President Clinton and Secretary of State Warren Christopher expected the opening of diplomatic relations in 1995 to be followed with a process of economic normalization. The United States, particularly USTR, had a very clear idea of what that meant. Rather than follow the practice undertaken with China in 1978 whereby China obtained MFN trading status on the basis of a narrow commercial agreement,⁴¹ USTR was intent on negotiating a comprehensive accord which could be an effective tool to open up the still largely closed Vietnamese market and would include not only trade in goods but trade in services, protection of

34. See Association of Southeast Asian Nations [ASEAN]: Overview, <http://www.aseansec.org/64.htm> (last visited Jun. 1, 2006).

35. Protocol for the Accession of the Socialist Republic of Vietnam to the Agreement on the Common Effective Preferential Tariff Scheme for the ASEAN Free Trade Area, Dec. 15, 1995, *available at* <http://www.aseansec.org/12372.htm> (last visited Jun. 1, 2006).

36. See Asian Pacific Economic Cooperation [APEC], Member Economics, *available at* <http://www.apec2006.vn/subpage/page/4> (last visited June 5, 2006) (listing members and dates of joining).

37. For example, large screen color television receivers normally dutiable at 5% ad valorem are subject to a 35% duty when imported from a non-MFN "Column 2" country. Item 8525.12.32, Harmonized Tariff Schedules of the United States, *available at* <http://www.usitc.gov>.

38. Agreement on Trade Relations between the United States and the People's Republic of China, U.S.-P.R.C., July 7, 1979, *available at* <http://www.fas.usda.gov/itp/agreements/chintra.html> (last visited June 1, 2006) [hereinafter China MFN Agreement]. This is a roughly 20-page document limited to trade in goods and a few commercial establishment issues.

39. See Joseph M. Damond, Give Trade a Chance: The Negotiation of the U.S. Vietnam Trade Agreement 65 (2004) (unpublished manuscript, on file with author) [hereinafter Damond] (attributing the view to one of Vietnam's senior negotiators); Michael R. Gordon, *Rumsfeld, Visiting Vietnam, Seals Accord to Deepen Military Cooperation*, N.Y. TIMES, June 6, 2006, at A8 (positing that the bilateral decision to increase military contacts resulted in part from Vietnam's efforts to "establish more balance with its neighbor to the North").

40. Damond, *supra* note 39, at 2.

41. China MFN Agreement, *supra* note 38.

intellectual property, and possibly investment.⁴² The VBTA thus ended up looking more like the North America Free Trade Agreement (NAFTA) in terms of its scope than the typical commercial agreements concluded by the United States in the past.

The comprehensive trade agreement approach prevailed, but only after some four and a half years of difficult negotiations and an additional year, from mid-1999 to mid-2000, in which the Vietnamese Government agonized over whether the completed agreement should be formally concluded. Ultimately, the VBTA was signed almost exactly five years after political relations were normalized.⁴³ Even in the last months before signature in July 2000, there was apparently "an intensive period of analysis and soul-searching" within the highest levels of the Vietnamese government in which the defenders of inefficient state-owned enterprises and those concerned with "security" clashed with the freer traders.⁴⁴ Ultimately, the VBTA was approved by both the Vietnamese National Assembly and the U.S. Congress and became effective December 10, 2001.⁴⁵

The U.S. negotiators had taken the position that the size of the Vietnamese economy was such that its economic development, if it were to follow the paths of Japan, Korea, Taiwan, China, and other countries in Southeast Asia, would be successful only if Vietnam were willing to accept in the VBTA WTO-type disciplines, such as national treatment/nondiscrimination and the avoidance of non-tariff barriers like import quotas and government subsidies. There was no "WTO-Lite" option. If Vietnam was not willing to conclude a comprehensive agreement, the United States would wait until they were.⁴⁶ It is also clear that U.S. negotiators saw the VBTA as just a step toward WTO accession, a process where additional market opening concessions would be demanded⁴⁷ even though, in principle, the U.S. negotiators accurately assured Vietnamese officials that they supported Vietnam's WTO accession. How clearly the Vietnamese realized this at the time of the VBTA negotiations is much less evident, as Vietnamese officials were concerned that some of the VBTA obligations went well beyond WTO rules and wanted the United States to treat the VBTA commitments as the basis for later WTO accession.⁴⁸ (The Vietnamese were certainly correct in the area of investment, as the current WTO Agreements contain nothing on investor protection that approaches the scope of Chapter IV of the VBTA.)

Equally significant for Vietnam, the VBTA negotiations, and the subsequent efforts to implement the agreed obligations under Vietnamese law, became a long and painful but vitally important educational process in the legal requirements of the world training sys-

42. Damond, *supra* note 39, at 5-6, 11.

43. *Id.* at 131.

44. *Id.* at 114.

45. In the United States, such agreements with communist countries are approved by Congressional joint resolution under a variant of "fast-track" legislation. See Trade Act of 1974, Pub. L. No. 93-618, ch. 5, §§ 151, 404, 405, 407, 88 Stat. 1978 (1975); VLADIMIR N. PREGELJ, CONGRESSIONAL RESEARCH SERVICE, VIETNAM TRADE AGREEMENT: APPROVAL AND IMPLEMENTING PROCEDURE (July 6, 2001). The VBTA was approved in Vietnam by Res. 48-2001-NQ-QH-10 of the National Assembly (Nov. 28, 2001); see UNITED STATES-VIETNAM TRADE COUNCIL EDUCATION FORM [USVTC], CATALOG OF LEGAL UPDATES: VIETNAM TRADE POLICY REGIME 11 (Aug. 2006) [hereinafter CATALOG], available at <http://www.usvtc.org/updates/legal/Catalog/CatalogAug06.pdf> (last visited Aug. 31, 2006).

46. CATALOG, *supra* note 45, at 54.

47. *Id.* at 95.

48. *Id.* at 120.

tem, a critically necessary first step toward WTO membership. The VBTA inevitably also generated a major legal reform through rewriting of many laws and regulations in order to implement the agreement, a consideration that became obvious to the Vietnamese negotiators early on.⁴⁹

The educational process was not primarily driven by the lawyers, as the chief negotiators on neither side were attorneys, and the principal non-governmental facilitator was another non-lawyer, U.S.-Vietnam Trade Council (USVTC) President Virginia Foote.⁵⁰ However, USTR and other U.S. and Vietnamese government attorneys played a critical role at virtually all stages of the negotiations and drafting processes, and a former USTR attorney and official, providing "technical assistance" to the Vietnamese through the good offices of the USVTC, apparently played a key role in helping the Vietnamese negotiators understand the implications of what the United States was demanding, particularly in the area of protecting foreign investment.⁵¹ Also, private foreign attorneys, many practicing law in Vietnam, provided important feedback to the U.S. negotiators.⁵²

During the negotiations, Vietnam also continued to benefit from a variety of foreign government and institutionally funded foreign legal assistance projects, such as those of the UNDP headed by then regional legal adviser John Bentley, an American attorney who had worked for over thirty years on international investment and business transactions and on legal and institutional reform in Egypt before moving to Vietnam in the mid-1990s.⁵³ In the second half of the 1990s, USAID expanded its technical assistance on legal and commercial reform issues, initially in support of the VBTA negotiations and later to assist in the implementation process. Just before entry into force of the VBTA in late 2001, the latter resulted in the creation of the multi-year "Support for Trade Acceleration" or "Star-Vietnam" program, which provided legal and economic analysis and recommendations as well as a variety of training workshops, study tours, and publication and translation of reference materials.⁵⁴

There seems little doubt that the combination of "educational" activities from the outset of the negotiations until the conclusion reflected, at least in the view of the U.S. negotiators, a "much greater level of sophistication with respect to the [VBTA] issues"⁵⁵ on the part of the Vietnamese negotiators than had been evident at the outset.

49. *Id.* at 53.

50. *Id.* at 13.

51. *Id.* at 58. By the mid-1990s, Daniel Price, a partner in a private law firm, had been one of the principal negotiators of the NAFTA investment chapter. See generally Daniel M. Price, *An Overview of the NAFTA Investment Chapter: Substantive Rules and Investor-State Dispute Settlement*, 27 INT'L LAW. 727 (1993) (discussing Chapter 11 in part from the point of view of a negotiator).

52. Damond, *supra* note 39, at 45.

53. Among Bentley's many contributions to Vietnamese legal reform was his work with several Vietnamese and foreign lawyers on "Completion of Vietnam's Legal Framework for Economic Development," which was prepared for the Minister of Justice. See Media Release, United Nations Development Programme [UNDP], UNDP Paper Recommends Changes to Legal Framework (Apr. 20, 1999), available at [http://www.undp.org.vn/mr/1999/eng/990420e\(undp\).htm](http://www.undp.org.vn/mr/1999/eng/990420e(undp).htm) (last visited June 5, 2006).

54. Embassy of the United States-Vietnam, *USAID Vietnam Program*, http://hanoi.usembassy.gov/usaaid_programs.html (last visited Jun. 5, 2006).

55. Damond, *supra* note 39, at 112.

The end result, the VBTA, was a comprehensive agreement.⁵⁶ The VBTA is not and was not designed to be a free trade agreement or customs union as those terms are used in the GATT/WTO context (Article XXIV) because it does not eliminate restrictions on substantially all trade within a reasonable period of time. It is more accurately a “freer” trade agreement in that it causes a reduction of Vietnamese tariffs and gives Vietnam MFN access to the U.S. market. However, in the most basic measure, increased trade, it has been wildly successful, with Vietnamese exports to the United States between 2000 and 2006 increasing from about \$822 million to \$9 billion, and U.S. exports to Vietnam increasing from less than \$400 million to \$1.1 billion, after peaking at over \$1.3 billion in 2003.⁵⁷ U.S. investment in Vietnam rose to about \$3.3 billion based on implemented (rather than registered) projects.⁵⁸

The VBTA includes chapters on trade in goods (reducing tariffs and tariff barriers on the part of Vietnam and providing MFN treatment on the part of the United States); intellectual property rights (similar to WTO obligations under TRIPS⁵⁹); trade in services (incorporating most of the WTO GATS⁶⁰ disciplines, the U.S. GATS schedules, and an extensive series of Vietnam services market access obligations, including hotly-debated rights relating to financial and telecommunications services); investment relations (a sort of “BIT-lite” but including the basic investor protection obligations and international arbitration of investor-state disputes); various business facilitation measures; extensive transparency obligations (including publication of laws and administrative or judicial review of administrative decisions); and a series of exceptions and general provisions.⁶¹

In terms of the impact on lawyers and on legal system reform, the intellectual property chapter is likely proving to be the most difficult to implement. The basic obligation under Article 11 “[e]ach Party shall ensure that its enforcement procedures are fair and equitable, are not unnecessarily complicated or costly, and do not entail unreasonable time limits or unwarranted delays,” along with the specific legal and procedural obligations, have proved difficult to achieve in practice for most LDCs, even those with Western-style legal systems.⁶² The VBTA also provides detailed requirements for judicial enforcement procedures and for “provisional measures.”⁶³

Other provisions that have required significant changes in laws and regulations include those on business facilitation and transparency. In the latter instance, they are designed to

56. U.S.—Vietnam Trade Council [USVTC], *Summary of the Agreement between the U.S. and Vietnam on Trade Relations* (2000), available at http://www.usvtc.org/trade/bta/summary_EN.pdf.

57. Vietnam Ministry of Planning and Investment & U.S. Agency for International Development, *Assessment of the Five-Year Impact of the U.S. – Vietnam Bilateral Trade Agreement on Vietnam’s Trade, Investment, and Economic Structure*, Jul. 2007, at 1, available at <http://www.usvtc.org/misc/STAR%20BTA%20Impact%20Report%207-3-07.pdf> (last visited Aug. 27, 2007).

58. *Id.*; see also Jane Perlez, *U.S. Competes with China for Vietnam’s Allegiance*, N.Y. TIMES, Jun. 19, 2006, at 3 [hereinafter Perlez].

59. Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299 (1994) [hereinafter TRIPS], available at http://www.wto.org/english/docs_e/legal_e/27-trips.doc.

60. General Agreement on Trade in Services, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1B, 1869 U.N.T.S. 183 (1994) [hereinafter GATS] available at http://www.wto.org/english/docs_e/legal_e/26-gats.doc.

61. VBTA, *supra* note 9, chs. I–VII.

62. *Id.* art. 11.

63. *Id.* art.12.

create a more open economic and commercial system for Vietnam, similar in many ways to Article X of GATT but with much more detail. The objective is a legal and administrative process that avoids unpleasant surprises to business and provides an opportunity for interested parties, whether foreign or domestic, to comment on regulations that will affect them *before* the regulations go into force. Administrative and judicial tribunals for review and correction of administrative actions must be maintained.⁶⁴

The VBTA has constituted a massive implementation challenge. As one expert suggested in late 2001, “[i]t is an open question whether the Vietnamese government has the will or the wherewithal to implement the pervasive reforms required by the U.S.-Vietnam bilateral trade agreement.”⁶⁵ The answer, with the benefit of six years’ hindsight, is emphatically “yes.” The Vietnamese government, after a review of existing laws, began in 2002 to amend dozens of legal instruments (laws, ordinances, regulations, etc.) as required for compliance with the VBTA’s provisions,⁶⁶ and almost all such changes have been enacted, although not always in ideal form.

Interestingly, Vietnam ultimately agreed to open up its legal services market to a significantly greater degree than has been the case in many other Asian nations, with the exception of Singapore, apparently because officials were convinced by foreign attorneys, both private and within the U.S. government, that the presence of foreign lawyers would facilitate foreign investment. Foreign law firms may establish 100 percent equity ownership in legal firms, joint ventures, and branches and have a five year renewable license. While foreign lawyers may not appear in Vietnamese courts, their firms may advise on Vietnamese law if they hire Vietnamese lawyers qualified for practice in Vietnam.⁶⁷ Implementing regulations have been issued,⁶⁸ although some law firms believe that in the absence of the right of Vietnamese lawyers to hold equity interests in the foreign firms, it is and will be difficult to keep Vietnamese lawyers on staff.⁶⁹

IV. Vietnam’s Accession to the WTO, 2001-2006

The WTO Agreement provides no detailed guidance on the admission of new members.⁷⁰ It simply provides that “[a]ny state . . . may accede to this Agreement, on terms to be agreed between it and the WTO.”⁷¹ Decisions on accession are taken by the “Ministerial Conference,” the trade ministers of the Member nations, specifying a two-thirds vote.⁷² In practice, however, accession decisions have always been taken by consensus, as with virtually all other decisions under the WTO Agreement by the Members.

64. *Id.* ch. IV, art. 7.

65. MARK E. MANYIN, CONGRESSIONAL RESEARCH SERVICE, THE VIETNAM-U.S. BILATERAL TRADE AGREEMENT 15 (Dec. 11, 2001), available at <http://www.usvtc.org/info/crs/bta-dec01.pdf>.

66. CATALOG, *supra* note 45, at 13-15.

67. VBTA, *supra* note 9, at G4.

68. Decree 175-2003-ND-CP (Sept. 1, 2003).

69. USVTC, THE U.S.-VIETNAM BILATERAL TRADE AGREEMENT: A SURVEY OF COMPANIES ON IMPLEMENTATION ISSUES 35 (May 10, 2004), available at <http://www.usvtc.org/trade/bta/survey.pdf> (last visited Aug. 31, 2006).

70. See generally WTO Agreement, *supra* note 10.

71. *Id.* art. XII:1.

72. *Id.* art. XII:2.

The accession process normally begins with the candidate first providing detailed information on its trade and economic policies to a "working party" of interested Members, followed by a series of parallel bilateral talks between the candidate and individual members who request such talks on tariff rates, access commitments, and other goods and services policies. As the WTO guidance accurately suggests, "[t]he talks can be highly complicated. It has been said that, in some cases, the negotiations are almost as large as an entire round of multilateral trade negotiations."⁷³ Once the bilateral negotiations have all been concluded, the working party finalizes the terms of accession, in effect combining the bilateral agreements into a single package because, under the principle of non-discrimination, the benefits garnered by any Member in its bilateral agreement with the candidate are applied to all other WTO Members.⁷⁴ In most cases, including that of Vietnam, the prospective member is providing information to and negotiating with the working party simultaneously, focusing its efforts to conclude bilateral agreements with those Members that have requested such negotiations.

The process of Vietnam accession, like that of China, Saudi Arabia, and Russia, has been a long, complex, and frustrating one. While application was initially made in 1995, virtually no major progress toward accession was made until 2001, after the Vietnamese government at the highest levels made the political decisions necessary to open the market, initially by signing the VBTA. That decision, itself, was likely motivated in part by the fact that by late 2000, it had become increasingly obvious that China's twenty-year quest for WTO membership would be concluded soon, a step which would likely make it even more difficult for Vietnam to compete with China for foreign investment and trade opportunities. Another likely factor was the prosecution of U.S. anti-dumping cases against tri and basa (catfish) and shrimp,⁷⁵ which provided, *inter alia*, an excellent lesson as to why it could be useful for Vietnam to have access to the WTO's Dispute Settlement Body⁷⁶ to challenge national administrative decisions imposing trade remedies in Geneva.

More rapid progress made during the 2004-2006 period likely reflects an important political lesson as well: China's WTO accession, with the accompanying opening of competition and markets, has confirmed earlier indications that the requirements of accession had not in any significant way threatened the "stability" of the communist regime in China. This remains, logically enough, a matter of extreme importance in Vietnam. The recent prime minister, Nguyen Tan Dung, and the president, Nguyen Minh Triet, have both been described as persons who support economic change but as "political diehards

73. See WTO, Understanding the WTO: The Organization, Membership, Alliances, and Bureaucracy, *How to Join the WTO: The Accession Process*, available at http://www.wto.org/english/thewto_e/whatis_e/tif_e/org3_e.htm (last visited June 6, 2006) (summarizing the accession process).

74. *Id.*

75. See Joshua Startup, *From Catfish to Shrimp: How Vietnam Learned to Navigate the Waters of "Free Trade" as a Non-Market Economy*, 90 IOWA L. REV. 1963 (2005) (discussing the challenges Vietnam faced in defending itself against these trade actions).

76. Understanding on Rules and Procedures Governing the Settlement of Disputes, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 2, 1869 U.N.T.S. 401 (1994). Ecuador, one of the six countries affected by the U.S. anti-dumping case against shrimp, challenged the U.S. antidumping determination and prevailed. Panel Report, *United States—Anti-Dumping Measure on Shrimp from Ecuador*, WT/DS335/R, (Jan. 20, 2007, adopted Feb. 20, 2007), available at http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds335_e.htm (last visited Sep. 12, 2007). Brazil, Chile, China, EC, Japan, Korea, Mexico, and Thailand participated as "third Parties," although Vietnam, not a Member of the WTO at the time, could not do so.

who favor the Chinese model: economic transition to open markets with firm Communist Party political control."⁷⁷

On the more positive side, some Vietnamese policymakers likely realized, then and now, that WTO membership for Vietnam would make Vietnam a very good place for companies that wished to hedge their bets by not placing all of their manufacturing assets in China or in any other single nation.⁷⁸ Vietnamese wages have reportedly been 25 to 30 percent lower than in China, with anecdotal evidence suggesting that even some Chinese factories are relocating to Vietnam.⁷⁹

Nevertheless, Vietnam missed its primary target date for admission at the Hong Kong WTO Ministerial Meeting in December 2005 and had to settle instead for the beginning of 2007 (with accession celebrated [. . .] at the APEC Summit in Hanoi in November 2006).⁸⁰ In any event, Vietnam did not submit any major new materials, including tariff schedules with reduced tariff commitments, a new services offer, and an "action plan" for implementing legislation, to the Working Party until October 2003.⁸¹ Working party negotiations were held periodically, once or twice a year, with Vietnam at each session making major or minor new concessions, and the working party essentially asking for more after explaining the insufficiency of what was currently on the table.

At the same time, some thirty WTO Members, including the United States, the European Union, Japan, China, Korea, Australia, New Zealand, Brazil, and Mexico, had concluded bilateral agreements, the last being Mexico in April 2006 and the United States in May 2006.⁸² The bilateral process represents, for most WTO Members, the last and best opportunity they will have for demanding that an existing or potential world trading power open its own goods and services market to outside competition. Additionally, there is the view that by concluding a strong WTO accession agreement, the terms of which constitute a binding treaty obligation, the economic and legal reforms agreed to by the candidate nation will effectively become irreversible.

For the United States, the sticking points in its bilateral negotiations included: reduction of most Vietnamese non-agricultural tariffs to 15 percent or less *ad valorem*; significant reduction of agricultural tariffs, many to 15 percent or less; and improved market access for the financial, telecom, distribution, courier, and energy services.⁸³ The United States may treat Vietnam, as they may China under China's accession agreement, as a "non-market economy" for the purposes of anti-dumping actions for up to twelve more years, a generally unfavorable approach typically resulting in higher anti-dumping duties

77. See Perlez, *supra* note 58, at 3 (attributing these views to "analysts" of the current regime).

78. See Seth Mydans, *A Fervor for Capitalism Sweeps Vietnam*, INT'L HERALD TRIB., Apr. 26, 2006 (quoting John Pincus, the Vietnamese country representative for the UNDP, as indicating that Vietnam was seen as a stable hedge for firms that have invested heavily in China).

79. Perlez, *supra* note 58, at 3.

80. WTO Press Release, *supra* note 11.

81. See WTO, Accessions: Vietnam, available at http://www.wto.org/english/thewto_e/acc_e/a1_vietnam_e.htm; CATALOG, *supra* note 45 (the primary sources for information and documents concerning Vietnam's accession process). Interestingly, the E.U. concluded its negotiations a year and a half earlier to great fanfare in Vietnam and elsewhere. However, for the E.U., early conclusion and any resulting political benefits were economically risk-free because the final WTO agreement with Vietnam would roll in the benefits negotiated by the holdouts, the United States and Mexico.

82. CATALOG, *supra* note 45, at 6, 9.

83. *Id.* at 6-7.

when such duties are imposed. Vietnam also agreed to eliminate prohibited agricultural subsidies at the time of accession (*i.e.* without any grace periods). In virtually all these areas, Vietnam's commitments go somewhat beyond what was agreed in the VBTA.

The United States, for its part, agreed to drop its bilateral textile and apparel quota agreement in return for a one year "safeguards" mechanism in the event of surges in exports to the United States and Vietnam's undertaking to immediately end all WTO-illegal subsidies related to those products. This was a critical victory for Vietnam, although it was potentially undermined later, as noted below. Since WTO Members were effectively required to eliminate textile quotas for other Members as of January 1, 2005,⁸⁴ Vietnam had been in a difficult competitive situation as the only major textile and apparel exporter subject to quotas on exports to the United States through a bilateral agreement.⁸⁵ The United States also agreed to modify the so-called "Jackson-Vanik" legislation so as to be able to provide "permanent normal trade relations" treatment (MFN) without the need for annual action by the President. This process was not finally completed until early December 2006 because of internal wrangling in Congress, and with the controversial undertaking of the Bush Administration to self-initiate anti-dumping investigations against Vietnamese textile and apparel exports under certain circumstances.⁸⁶ Ironically, it was thus a strong possibility that when Vietnam finally became a WTO member in early January 2007, the United States would have been in the very unfortunate position of having to invoke the "non-application" clause, depriving both countries temporarily of the full benefits of Vietnam's WTO accession.⁸⁷ Fortunately, that did not happen.

Despite the continuing bilateral and working party negotiations, by 2004 the focus of implementation had changed from the VBTA, *per se*, to what Vietnam was doing domestically with regard to enacting the national laws, ordinances, and regulations that would be necessary for Vietnam to comply with the parallel and additional obligations it was in the

84. Agreement on Textiles and Clothing, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, art. 2:8(c), available at http://www.wto.org/english/docs_e/legal_e/16-tex.doc.

85. Office of Textiles and Apparel [OTEXA], *Agreement Relating to Trade in Cotton, Wool, Man-Made Fiber, Non-Cotton Vegetable Fiber and Silk Blend Textiles and Textile Products Between the Governments of the United States of America and the Socialist Republic of Vietnam* (Apr. 25, 2003), available at <http://www.usvtc.org/trade/other/textiles/otexa-TextileAgreement.htm> (last visited July 7, 2006).

86. U.S. legislation to give Vietnam PNTR status was introduced on June 13, 2006, but was not enacted by Congress until December 9, 2006, ultimately by a comfortable bipartisan margin in the House and overwhelmingly in the Senate. The PNTR vote was delayed due to concerns of U.S. textile producers regarding the sufficiency of the safeguard measures in the U.S. bilateral and a tight pre-election Congressional calendar. A Bush Administration undertaking to self-initiate anti-dumping actions against Vietnamese textiles and apparel under certain conditions, certainly a more troubling prospect to Vietnam than the safeguards, in order to placate several textile state senators raised concerns with importers and was roundly criticized by textile importers as a terrible precedent. See Press Release, United States Trade Representatives [USTR], USTR Susan Schwab Welcomes Congressional Action to Increase Trade with Vietnam (June 13, 2006) (noting introduction of the legislation that day); Christopher S. Rugaber, *Trade Policy: Dole Places Hold on Vietnam PNTR; Senate Consideration Likely to Slip to September*, 23 INT'L TRADE REP. 1162 (Aug. 3, 2006) (reporting on objections by Senators Dole and Graham); American Chamber of Commerce Vietnam, *Textile Interests Fight Over Interpretation of Sep [sic] 28 Letter from USTR/Commerce Secretary* (Oct. 6, 2006) (discussing the circumstances under which the Commerce Department would self-initiate).

87. See Permanent Mission of the United States, *Invocation by the United States of Article XIII of the Marrakesh Agreement Establishing the World Trade Organization with Respect to Viet Nam*, WT/L/661 (Nov. 7, 2006) (invoking the non-application clause at the time of General Council approval of Vietnamese membership, a reservation withdrawn with the enactment of PNTR).

process of accepting with WTO accession. The Working Party insisted that Vietnam enact essentially *all* the legislation that the Working Party deemed necessary for implementing Vietnam's accession obligations *before* accession was granted for review, in English translation, by the Working Party. Presumably, this reflected some dissatisfaction with the rapidity with which China had issued implementing laws and regulations in the period since China's WTO accession in November 2001. As a result, Vietnam enacted changes in hundreds of laws, decrees, and regulations beginning in 2004 and further expedited in 2005 and 2006, primarily through the efforts of the Ministries of Justice and Trade and the National Assembly. These included key statutes such as the Law on Enterprise, the Law on Investment, the Law on Conclusion of International Treaties, and various tax laws.⁸⁸

In addition to the requirements of the U.S. bilateral agreement, which were incorporated in the WTO accession agreement [. . .], the eventual accession package included, *inter alia*: elimination of all but a handful of tariff quotas; signature by Vietnam of the WTO Information Technology Agreement (ITA), allowing the importation of products covered by the ITA duty-free no later than 2014; and elimination of agricultural export subsidies and limiting trade-distorting domestic subsidies to about US\$246 million annually. Major commitments in services, particularly telecommunications and financial services, were also made along with extension of trading (export/import) rights to all duly registered persons, including foreign firms and individuals.⁸⁹ Vietnam also agreed immediately to comply with WTO disciplines under the agreements on customs valuation, rules of origin, pre-shipment inspection, anti-dumping safeguards, subsidies and trade-related investment measures, technical barriers to trade, sanitary and phytosanitary measures, and trade-related intellectual property.⁹⁰

It is apparent that not only in the negotiations, but perhaps even more in the legislative drafting and enactment process, that the role of the government attorneys, led by the Ministry of Justice (MOJ) (which is principally responsible for VBTA and WTO implementation), has been most significant. Mostly the same relatively small group of twenty-five to thirty-five was, in fact, quite well prepared for the WTO process. The author recalls a March 2005 project for the World Bank in which he was asked to draft a report on the implementation of Vietnam's WTO Obligation for attorneys in the MOJ and members and staff of the National Assembly. In the process, the author was provided a copy of a very long and detailed report that had been prepared on the same subject by a group of MOJ and several other government lawyers a month earlier, essential for a thorough review and critique. There was, in fact, very little for the author to add to the MOJ's comprehensive analysis, except for a few recommendations. But what was perhaps most telling, in terms of demonstrating the level of expertise that the Vietnamese legal establishment had attained, was a four-hour meeting in Hanoi where the author and the Vietnamese contingent discussed all of the various WTO implementation issues, including intellectual property, services, trade in goods, investment, etc., in detail and in English, with no interpretation for anyone!

88. CATALOG, *supra* note 45, at 13-25.

89. WTO Press Release, *supra* note 11. The commitments are contained in the accession agreement and in the Working Party report.

90. *Id.*

However, the growing level of international trade expertise was not limited to the government. By 2006, the two leading law faculties in Vietnam, the Ho Chi Minh City Law University and the Hanoi Law University, were both in the process of incorporating required international trade law courses in their first undergraduate law degree curriculum, and many others were expected to follow.⁹¹ The seriousness of this massive educational effort is illustrated by the fact that key sections of Professor Raj Bhala's international trade textbook, about 700 pages worth, was recently published in Vietnamese as the result of a USVTC sponsored project. This author, and perhaps many of his international trade law colleagues at other U.S. law schools, has often dreamed of a situation in which all J.D. candidates would be required to take international trade law!

V. Legal and Judicial Reform

The Government of Vietnam has continued its efforts to regularize the practice of law and improve the functioning of the judiciary and legal system, a process that is key to WTO compliance, to maintaining Vietnam's international competitiveness for foreign investment, and to permitting Vietnamese citizens to benefit more fully from Vietnam's embrace of globalization. In June 2006, a "Law on Lawyers" was enacted, which governs, *inter alia*, the practice of law by both Vietnamese citizens as well as foreign law firms and lawyers operating in Vietnam.⁹² The latter are given substantial flexibility, probably going beyond the requirements of the VBTA as discussed earlier, including a right to consult on Vietnamese law if the individual has obtained a Vietnamese law degree.⁹³ A foreign lawyer may not, however, "participate in legal proceedings as a defense counsel . . . or as the representative of a client before the bodies conducting legal proceedings in Vietnam."⁹⁴ Under the circumstances, it is not surprising that the number of new lawyers in Vietnam is skyrocketing. By 2005, lawyers were emerging from the major Vietnamese law faculties and from the "legal institution training course" at a rate of 4,000 to 4,500 persons per year,⁹⁵ a far cry from the early 1970s.

More significantly, a long-term judicial reform strategy has been developed and is now in the process of implementation. A 2005 resolution of the Politburo recognizes that:

duties still have many weaknesses. Criminal policy, as well as civil legislation and laws on judicial procedure have outdated elements and have been slowly revised and amended. The organization, mandates, tasks, and operational mechanism of judicial organs seem unreasonable in many aspects. There is still a shortage of judicial and judicial support staff. The professional qualifications and political ability of some officials are low. Some of them even have very low personal qualifications, morals and professional accountability. There have been a number of wrongful decisions in

91. Based on author's discussions with law professors in Hanoi in August 2004 and at various times with Virginia Foote of the USVTC.

92. Law on Lawyers, Jun. 29, 2006, No. 65/2006/QH11, 11th Legis., 9th sess., arts. 1, 70, *passim*, available at <http://www.usvtc.org>. (last visited Sept. 18, 2006) (translation).

93. *Id.*

94. *Id.*

95. Email correspondence with Nghiem Thanh Tung of the USVTC, (Aug. 10, 2006) (copies on file with author).

investigations, arrests and detentions, prosecutions and trials. The infrastructure of the working facilities of judicial organs are [sic] insufficient and outdated.⁹⁶

The stated objective is to build:

an ethical, healthy, strong, democratic, strict, fair and justice-protecting judiciary, as well as [to ensure] that the judicial will be modernized on a step-by-step basis to serve the Socialist Fatherland of Vietnam and its people and that judicial activities, among which adjudication plays the key role, will be highly efficient and effective.⁹⁷

In parallel developments, the Politburo recognizes, despite some years of reforms, that broader problems in the legal system remain:

[I]n general, our legal system still has many shortcomings. The system is still not comprehensive and consistent; its viability is still low; and its implementation in practice remains slow. The mechanism for making and amending laws has many deficiencies and is still not properly observed. The speed of law-making activities is slow. The quality of the laws is not high. There is lack of attention paid to the research and implementation of international treaties to which Vietnam is a party. The effectiveness of legal dissemination and education is limited. Institutions for law implementation are still inadequate and weak.⁹⁸

These detailed, long-term plans, if successfully implemented, could greatly improve the functioning of the legal and judicial systems and increase the confidence that Vietnamese and foreigners have in both.

VI. Conclusion

The completion of a two decade long process, from Doi Moi to the VBTA to WTO membership for Vietnam, reflects a long and difficult movement of the nation toward a market-oriented economy and major elements of the rule of law while still leaving its communist system largely intact. Despite the fits and starts, the nation has, in the view of World Bank officials, effectively climbed from being poor to middle income in about fifteen years, with per capita incomes expected to exceed \$1,000 by 2010, compared to \$180 in 1993.⁹⁹ The process has benefited from and helped generate a thriving domestic legal community, perhaps setting the stage for a situation in three to five years where the awareness by the general legal/professional population of the requirements of the international trading system will be broader and deeper than in most other countries.

However, WTO accession is perhaps best viewed as an analogy to a university graduation: a commencement of a long-term process toward a truly open economy and the widespread rule of law. The implementation of VBTA and WTO obligations is, of course,

96. Communist Party Central Committee, Resolution of the Politburo on the Judicial Reform Strategy to 2020, No. 49-NQ/TW at 1 (June 2, 2005) (translation).

97. *Id.* at 2.

98. Communist Party Central Committee, Resolution of the Politburo on the Strategy for the Development and Improvement of Vietnam's Legal System to the Year 2010 and Direction for the Period up to 2020, No. 48-NQ/TW at 1, (May 24, 2005) (translation).

99. See Perlez, *supra* note 58, at 3 (quoting Klaus Rohland, the World Bank country director in Vietnam).

nowhere near finished, and conversion to a fully functioning rule of law society is some distance from completion, as Section V clearly indicates. The amendment and, hopefully, improvement of key laws is likely to continue *sua sponte* and in some instances under pressure from other WTO Members or even the Dispute Settlement Body, and new and revised regulations will continue to be issued. Government lawyers and judges will continue for some years to struggle, *inter alia*, with the requirements of prosecuting those accused of intellectual property violations and offering business persons, foreign or domestic, redress against government actions that have violated laws, regulations, or individual commercial rights.