INTRODUCTION

The commencement of the World Trade Organization (WTO) membership of Vietnam on 11 January 2007 was a significant step in regards to international trade integration policy of the Vietnamese Government. The accession of Vietnam to the WTO took nearly a decade which involved a number of concessions by Vietnam in bilateral as well as multilateral negotiations. Having ratified the WTO Agreement, Vietnam is now bound by all the WTO covered agreements including market access in trade and services according to the predetermined schedules. This has both pros and cons for Vietnam. On the one hand, flows of foreign capital are expected to increase significantly in the form of direct investment and indirect investment. On the other hand, with the incoming competition, domestic small and medium enterprises (SMEs) in sensitive industries become vulnerable. In other words, Vietnam is facing a dilemma whereby the attraction of foreign investment for economic development contrasts with the domestic protection against market gain by foreign investors. Therefore, a critical review of the Vietnamese adoption of the scheduled WTO commitments in regards to the foreign investment needs to be conducted.


2 By way of ratifying the Agreement Establishing the World Trade Organization, it is acknowledged that a full set of its Annexes must be complied, including, inter alia, GATT, GATS. For all the Annexes see, http://www.wto.org/english/docs_e/legal_e/legal_e.htm.

3 Direct investment means a form of investment whereby the investor invests its invested capital and participates in the management of the investment activity. See the Investment Law 2005, Section 3.2. Meanwhile, indirect investment is defined as a form of investment by way of the acquisition of shares, share certificates, bonds, other valuable papers or a securities investment fund and by way of intermediary financial institutions and whereby the investor does not participate directly in the management of the investment activity. See Investment Law 2005, Section, 3.3.

4 Sensitive industries such as logistics, retail services, and financial services in Vietnam are the sectors where market share is dominated by domestic companies whereas these companies do not have strong capacity in terms of capital, technology and/or management skills.
This paper will focus on the investment regulations for the service sectors which are currently subject to the WTO commitments on trade in services. However, the paper's focus is confined to certain service sectors such as distribution services and banking services which are subject to Vietnamese Investment Regulations (ViRs). Currently, these sectors are important both nationally and internationally.

Interestingly, the foreign investment inflow in Vietnam has been rising regardless of the current economic recession in the world. The legal regime in regard to FDI has been less than straightforward despite recent reforms, thus the authors take the view that special attention should be paid to the development and reform of the Vietnamese investment regulations on services in light of WTO law obligations.

AIMS AND OBJECTIVES

This paper has three main aims. Firstly, it will evaluate the compliance of Vietnamese legal instruments with the WTO law. Secondly, existing problems of the substantive and procedural investment legislation of Vietnam will be discussed in order to identify areas for recommendations and reform.

With these two main aims in mind, the paper is expected to achieve a number of objectives. Firstly, the WTO accession and pre-WTO investment regulations will be outlined. Secondly, incorporation of WTO law by national policy initiatives on trade in services will be analysed. Thirdly, effectiveness of the existing laws will be critiqued in light of the relevant statutes and policy in practice. It is worth noting here that Vietnam adopts the civil law system where laws and by-laws are not interpreted and enriched by courts' jurisprudence.

Finally, the study will evaluate a number of reform proposals submitted by Vietnamese authorities and other stakeholders.

---

7 According to Article XVI:4, WTO Agreement, 'Each Member shall ensure the conformity of its laws, regulations and administrative procedures with its obligations in the annexed Agreements'. For this purpose, Annex B – General Agreement on Trade in Services (GATS) shall apply. The definition of service is provided in Article 1(2) of GATS. It is certain that WTO law is not a soft law but requires strict compliance in national laws. Peter Van Den Bossche, The Law and Policy of the World Trade Organization, (Cambridge University Press, 2008) pp. 63-65.

8 For clarification, logistic services may include one or more of the following sectors: (i) maritime cargo handling services, (ii) storage and warehousing services, (iii) freight transport agency services, (iv) other auxiliary services, (v) courier services, (vi) packaging services, (vii) customs clearance services, (viii) maritime transport services, (ix) air freight services, (x) rail freight transport services and (xi) road freight transport services. See also ASEAN Sectorial Integration Protocol for Logistic Services Sector dated 24 August 2007, Appendix 1 – Roadmap for the integration of logistic services.
