

Do as I say, not as I do

The unfair terms for Viet Nam's entry to the WTO

As Viet Nam begins its tenth and possibly final year of accession negotiations, some WTO members are determined to use their power to prise open Viet Nam's markets, even for their dumped agricultural surpluses. This low-income country is being forced to make 'WTO-plus' commitments (that go beyond the demands made of existing WTO members) as the price for WTO membership. This threatens Viet Nam's success in poverty reduction. Rich countries should look beyond their own short-term commercial interests and allow Viet Nam to accede on pro-development terms.

Summary

In 2005, its tenth year of accession negotiations, Viet Nam hopes to achieve full WTO membership. After 15 years of implementing legal, institutional, and economic reforms, together with the gradual liberalisation of international trade, Viet Nam has achieved macroeconomic stability, solid economic growth, and a halving of the incidence of poverty, from 58 per cent in 1993 to 29 per cent in 2002. However, significant numbers of Vietnamese people still live in great hardship. A large part of the population has an income only just above the poverty line, and could easily be pushed back below it by external economic shocks.

A bad accession agreement could make future economic growth less beneficial for poorer sectors, and could involve economic restructuring that leads to a major loss of livelihoods. Member states on the accession Working Party, particularly the industrialised countries, are making 'WTO-plus' demands (that go beyond the demands made of existing WTO members) in even the most sensitive sectors, such as agriculture, where 90 per cent of the country's poor live and work.

The next Working Party meeting, where the Draft Report on the terms of entry will be further discussed and revised, is likely to take place in May or June of this year. Now is the time for the Vietnamese negotiators to focus on what they need to get out of the accession process, and resist external pressure to make further WTO-plus commitments. More importantly, Working Party members must look beyond their own short-term commercial interests and, in the spirit of the Doha Round, allow Viet Nam to accede to the WTO on pro-development terms.

Current threats

The Draft Report on the Accession of Viet Nam was revised at the last Working Party meeting in December 2004. The report contains considerable evidence that WTO members are continuing to push Viet Nam towards a comprehensive WTO-plus accession package that could have damaging consequences for its development.

Viet Nam is not only fighting its corner in the multilateral arena but also in high-pressure negotiations with individual members, in which WTO-plus demands are rife. Bilateral negotiations linked to WTO accession should be more transparent, allowing applicant countries to seek technical advice and support on the demands that are made of them.

Despite the importance of farming for the rural poor, Viet Nam is being denied the ability to regulate agricultural imports and import surges after accession, even if these have the potential to destroy the livelihoods of tens of thousands of poor families. Reportedly, apart from tariff reduction commitments, countries led by the United States, Australia and New Zealand are asking Viet Nam to renounce the use of Tariff Rate Quotas (TRQs) and the existing WTO Special Safeguard (SSG), as well as the new Special Safeguard Mechanism (SSM) and Special Products provisions

currently under negotiation in the Doha Round. Products of particular importance to poor farmers include sugar, maize, and a number of animal products. Farmers growing sugar and maize are especially at risk from cheap imports, since these crops are heavily subsidised in the USA and the EU. US maize farmers receive subsidies of as much as \$10bn a year, while EU sugar farmers gain €833m of hidden support annually, on nominally unsubsidised exports.

The USA, Australia, and New Zealand are asking Viet Nam to phase out export subsidies upon accession to the WTO, while existing WTO members including the EU, the USA, and several developing countries are not under the same obligation and continue to provide export subsidies. Given the fact that developed countries have only just agreed to eliminate their own agricultural export subsidies, within a timeframe yet to be agreed, the three-year phase-out period sought by Viet Nam should be granted without further negotiation. It should also be remembered that the WTO's July 2004 interim Framework agreement states that: 'Developing-country members will benefit from longer implementation periods for the phasing out of all forms of export subsidies'.

Some Working Party members are questioning the compatibility with WTO membership of Viet Nam's export management controls on rice, which include the regulation of foreign companies exporting rice in cases of national emergency. The management of rice exports is vital to the food security of many Vietnamese people. Rice makes up 90 per cent of total staple food production, it is farmed on over 60 per cent of agricultural land, and more than two-thirds of Vietnamese households grow it. Existing measures should not be discontinued after accession.

Whilst negotiations on textiles and clothing remain open, the way has been prepared for a possible 10-year, post-accession phase-out of the quotas allocated to Viet Nam. The EU has agreed to abolish textile quotas for Viet Nam in 2005 but the United States remains intransigent. Given that USA and the EU between them account for 70 per cent of the annual export value of Viet Nam's textile and clothing sector, a continuation of quotas for the US market post-accession would seriously inhibit the growth of one of the country's most competitive export industries, which has the potential to greatly increase the employment opportunities of Vietnamese men and women. Viet Nam should be able to benefit fully from an immediate end to textile and clothing quotas, since they were abolished for all other member states at the end of 2004.

Viet Nam's latest offer to bind industrial tariffs at an average level of 17 per cent should not be lowered any further. As a developing country, Viet Nam should be able to choose which tariff lines it wants to bind and at what level, to ensure that sectors not yet prepared for liberalisation can receive a degree of protection and are gradually liberalised, in accordance with development priorities.

WTO members are also claiming that investment incentives for enterprises operating in disadvantaged areas are export subsidies and should therefore be phased out upon accession. These incentives represent a lifeline to some of the most remote and impoverished areas of Viet Nam, where companies operate in extremely difficult conditions. Such incentives should be allowed

within the accession package, on the basis that they represent non-actionable subsidies for regional development.

Immediate compliance with WTO agreements such as the Agreement on Sanitary and Phyto-Sanitary Measures (SPS), as requested by some members, will place an enormous financial and technical strain on Viet Nam. Viet Nam needs technical assistance to help it to adjust to higher standards and to be able to spread the costs of implementation.

Viet Nam's Non-Market Economy (NME) status looks set to become a focal point of accession negotiations from now on. Viet Nam has already agreed to a 'market disruption' safeguard in its bilateral trade agreement with the USA, similar to the 'transitional product-specific safeguard' that China has agreed to, which blocks increases in Chinese exports that could cause or threaten to cause market disruption to US domestic producers. Members have asked Viet Nam to clarify how provisions in this agreement would be applied in relation to other members of the WTO. If such a safeguard was agreed, the potential of Viet Nam's growing manufacturing industries, such as textiles and clothing, could be considerably restricted, and with it the employment opportunities for thousands of Vietnamese workers. Members of the Working Party should not include 'non-market economy' provisions that restrict Most Favoured Nation (MFN) rights within the terms and conditions of Viet Nam's accession.

There is growing evidence of demands being made of Viet Nam which go beyond the WTO Agreement on Trade-Related Intellectual Property Rights (TRIPs). Requirements such as membership of the 1991 International Convention for the Protection of New Varieties of Plants threaten food security. Furthermore, it is likely that restrictions of clinical test data for approving drugs will delay the introduction of generic equivalents. Members must desist from using accession negotiations to ratchet up patent protection without regard for development concerns.

Finally, given the extensive liberalisation commitments that Viet Nam has already made within the accession negotiations, it should not have to make further concessions once it becomes a member of the WTO. The current provisions that exist within the July 2004 Framework state that the particular concerns of recently acceded members will be effectively addressed through specific flexibility provisions. This text must go further: recently acceded low-income and Least Developed Countries (LDCs) countries should be absolved from making further commitments under the Doha Round of negotiations.

Recommendations

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

- Agricultural tariffs should not be bound at an average rate of less than 25 per cent, which is Viet Nam's latest offer and which is a rate that already threatens the livelihoods of farmers and rural workers.

- Viet Nam should be able to use all the instruments available to other developing country WTO members to further protect vulnerable farm sectors. These measures include Tariff Rate Quotas, the current WTO Special Safeguard (SSG) provision and the new provisions now under negotiation at the WTO (Special Safeguard Mechanism and Special Products).
- Upon accession, Viet Nam should be able to maintain its current WTO-compliant export management controls on rice in order to protect food security.
- Viet Nam should not be asked to make greater commitments on the scale and timing of reductions in domestic support and export subsidies, either for agricultural or industrial products, than those made by other developing countries in the WTO or those agreed in current WTO negotiations. More specifically, investment incentives for enterprises operating in disadvantaged areas should be granted on the basis that they represent non-actionable subsidies for regional development.
- Industrial tariffs should not be bound at an average rate of less than 17 per cent, which is Viet Nam's latest offer and which may already mean the loss of manufacturing jobs.
- The United States should abolish textile and clothing quotas for Viet Nam upon accession, since they were abolished for all other Member States at the end of 2004.
- Viet Nam should not be asked to renounce policy instruments that enable it to increase the development impact of foreign investment, such as requiring the transfer of technology.
- Compliance with the agreements on Sanitary and Phyto-Sanitary Measures, Technical Barriers to Trade and Customs Valuation must be tied to the provision of technical assistance, in order to spread the costs of implementation and build the required technical capacity.
- Members of the Working Party should not include non-market economy provisions that restrict Most-Favoured Nation (MFN) rights.
- WTO-plus provisions on intellectual property and trade safeguards in the US bilateral trade agreement should not become part of the accession package.

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

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

- An independent panel of experts should decide whether an applicant's trade regime complies with existing WTO rules, and when the Non-Market Economy (NME) provisions for acceding countries should be revoked.
- WTO-plus commitments already agreed in bilateral trade agreements, which pose a threat to development, should not be automatically 'multilateralised' in accession packages.
- Recently acceded low-income countries and LDCs should be absolved from making further commitments under the Doha Round of negotiations.
- Bilateral negotiations linked to WTO accession should be more transparent, allowing applicant countries to seek technical advice and support on demands that are made of them.

1. Introduction

Since January 1995, Viet Nam has been negotiating its entry to the World Trade Organisation (WTO) with some of the most powerful nations in the world. Viet Nam hopes to achieve full membership by the time of the WTO Ministerial Conference in Hong Kong in December 2005. The crucial question is whether it can achieve a pro-development accession package.

Acceding to the WTO is a notoriously difficult process, particularly for low-income developing countries such as Viet Nam, which seek to protect the livelihoods of the poorer sectors of their populations. WTO members who form Working Parties for accession negotiations consistently ask aspirant countries to make concessions, which far outstrip those of existing members and go beyond the requirements of the WTO rule book. These terms, described as 'WTO-plus', pay little regard to the legitimate development concerns of these countries. Sadly, Viet Nam is no exception to this process.

The Vietnamese government is committed to poverty reduction and has made huge progress over the past 15 years. Since the early 1990s, Viet Nam has been implementing legal, institutional, and economic reforms, together with the gradual liberalisation of international trade, which have led to macroeconomic stability, an average annual growth rate of output per capita of 6 per cent, and a halving of the incidence of poverty, from 58 per cent in 1993 to 29 per cent in 2002.¹

However, despite this success Viet Nam remains a low-income country, with a GDP per capita of \$435. Significant numbers of Vietnamese people still live in great hardship, and more than a quarter of children under five are under-nourished. A large part of the population has an income only just above the poverty line, and could easily be pushed back below it by external economic shocks.² A bad accession agreement could reinforce the danger that future economic growth will be less beneficial for poorer sectors, and could involve economic restructuring that would cause a major loss of livelihoods.

At the last Working Party meeting in December 2004, the revised Draft Report of the Working Party on the Accession of Viet Nam was considered.³ Reportedly, whilst Viet Nam has so far successfully resisted pressure for further concessions, particularly on new tariff reduction offers for goods and further liberalisation in the services sector, there is evidence that WTO members are continuing to push its negotiators towards a comprehensive WTO-plus accession

package that could have damaging consequences for its development and the lives of poor men and women.

The next Working Party meeting, where the Draft Report will be further discussed and revised, is likely to take place in May or June of this year. Now is the time for the Vietnamese negotiators to remain focused on what they want to get out of the accession process, and resist external pressure to make further WTO-plus commitments. At the same time, Working Party members must look beyond their own short-term commercial interests and, in the spirit of the Doha Round, allow Viet Nam to accede to the WTO on pro-development terms.

2. Current threats

Bilateral pressures

Viet Nam signed six bilateral deals in 2004 – with Argentina, Brazil, Chile, Cuba, the European Union, and Singapore – in parallel with the multilateral accession negotiations. Inevitably, the terms agreed within these bilateral deals will be multilateralised, due to the Most Favoured Nation (MFN) rule within the WTO. The MFN principle means that trade terms offered by one country to another must be offered to all its trading partners. Viet Nam is currently involved in 21 more bilateral talks, with countries including Australia, New Zealand, Norway, Canada, India, Japan, Chinese Taipei, South Korea, Iceland, Switzerland, China, and the United States.⁴

The bilateral negotiating forum is often the toughest for acceding countries, especially for the less economically and politically powerful developing countries like Viet Nam. High-pressure bargaining cannot be diffused by the presence of other members, as in a multilateral setting, and the talks are notoriously secretive, which means there is little opportunity for the prospective member country to discuss content or seek technical support from external organisations such as UNCTAD, or to consult the various stakeholders in the process, especially representatives from communities most likely to be affected by the outcome.

The USA in particular is known for the slate of WTO-plus demands that it puts on the table in bilateral accession talks. The USA is almost always the last country to sign a bilateral deal with an applicant country – as is currently the case with Russia – and therefore it effectively holds the keys to the WTO in its hand. At the end of lengthy, exhausting accession negotiations, at a time when the aspirant country is perhaps at its most desperate to join, the USA is often known to bring its biggest demands to the negotiating table.

In an attempt to destabilise Cambodian negotiators during the final stages of their accession talks, for example, the USA submitted a wide range of requests to the Cambodian team just one day before the final Working Party meeting. These included demands that Cambodia should publish all draft laws and regulations related to trade and the WTO in advance, for comment by any member, and should establish a website showing all laws and regulations. The Cambodians were also asked to exempt agricultural chemicals and pharmaceuticals from the longer transition period granted to Least Developed Countries (LDCs) for TRIPS implementation. Unfortunately, the last

request was accepted by Cambodia as a commitment (although it was subsequently overturned with regards to pharmaceutical products); however, all the others were rejected.

Countries that have already signed bilateral deals with Viet Nam should be offering their support in the multilateral forum against any further WTO-plus demands that are made. In this way, the EU, for example, could do much more to facilitate a pro-development accession package for Viet Nam. The remaining 21 countries that are negotiating bilateral deals with Viet Nam should desist from making harmful WTO-plus demands that could compromise Viet Nam's development objectives. Overall, bilateral negotiations linked to WTO accession should be more transparent, allowing applicant countries to seek technical advice and support on demands that are made of them.

Agriculture

Agriculture employs 69 per cent of Viet Nam's labour force, and 45 per cent of the rural population live below the poverty line. The average farm size is a mere 0.7 hectares per household.⁵ Factors such as crop failure or a fall in commodity prices due to increased import competition are potential threats to the income of millions of vulnerable people. Products of particular importance to poor farmers include sugar, maize, and a number of animal products.

Sugar and maize producers are particularly at risk, given that they will face competition from heavily subsidised imports from the EU and the USA. In a glaring display of double standards, these countries have been pushing Viet Nam to reduce tariffs and eliminate subsidies on all agricultural products upon accession – while US maize farmers receive subsidies of as much as \$10bn⁶ a year, and EU sugar farmers gain €833m⁷ of hidden support annually, on nominally unsubsidised exports. It is essential that Viet Nam is able to protect these products against imports and import surges that may occur after accession, causing prices and therefore incomes to fall.

Within the terms of its accession package, Viet Nam is seeking to protect some of these products by applying Tariff Rate Quotas (TRQs). A TRQ is a quota for a volume of imports at a particular tariff rate. Once the quota is filled, a higher tariff is applied on additional imports. TRQs are essentially an intermediate step in converting quantitative restrictions into tariffs. Paragraph 101 of the Draft Report reveals that some members, reportedly led by the United States, New Zealand and Australia, are opposing Viet Nam's proposal to use TRQs, claiming that they are 'outmoded and [distort] trade'. However, TRQs are a legitimate instrument within the WTO; several

members use them, including Chinese Taipei, which acceded in 2002 and has 22 TRQs on items such as meat products, dairy products, fruit and nuts, sugar, and rice. Under the Agreement on Agriculture (AoA), the USA converted non-tariff measures on 54 of its products into tariff quotas, including quotas on sugar, cotton, and dairy and meat products.⁸

In the past, Viet Nam has applied TRQs to cotton, tobacco materials, salt, dairy products, eggs, and maize, although those on cotton, unprocessed milk, and maize have since been removed. Given that there is already some opposition within the Working Party to Viet Nam applying TRQs, if it is to do so then it must ensure that they are in place now, if it is to have any chance of maintaining them post-accession. Russia, within its accession proceedings, wanted the right to use TRQs and battled for six years, but without success. Finally, in 2002 Russia decided to introduce TRQs unilaterally on beef, pork, and sugar, and it is likely that these will be accepted within Russia's membership package (although negotiations are currently ongoing). It is important for Viet Nam to note that there is no example of a country getting TRQs within its accession deal if it did not already have them in place.

Another means of protecting such products against import surges that is available to some developing countries within the WTO is the Special Safeguard (SSG), which can take the form of both quantitative restrictions and additional tariff measures. The Draft Report shows that some Working Party members have said that access to the SSG 'is not an entitlement of acceding countries'. As there are no rules guiding the accession process, it is not for Working Party members to say definitively what is and what is not an entitlement of aspirant countries. The rights and obligations of new members must be based on development indicators.

Furthermore, a Special Safeguard Mechanism and a provision for Special Products are currently being negotiated within the Doha Round, specially intended for use by all developing country members. Paragraphs 42 and 43 of the WTO July 2004 Framework agreement stipulate that: 'Taking into account the need of developing countries to effectively address their food security, livelihood security, and rural development needs, developing country members will have the flexibility to designate, under conditions to be agreed in the negotiations, a certain number of tariff lines as Special Products (SP). There will be no requirement to expand tariff rate quotas on SP products.' The agreement goes on to say: 'A Special Safeguard Mechanism (SSM) will be established for use by developing members under conditions to be agreed.'⁹ Viet Nam should be able to use all

the instruments available to other developing country WTO members to further protect vulnerable farm sectors.

Finally, Viet Nam's latest offer to bind agricultural tariffs at an average level of 25.3 per cent still stands, and should not be lowered any further, if greater erosion of rural livelihoods is to be avoided. This level is already lower than the current applied rate of 27 per cent and the bound rates of neighbouring WTO and ASEAN members Indonesia, Thailand, and the Philippines. All three of these countries are also members of the Viet Nam accession Working Party and themselves have average bound tariffs in agriculture of 48 per cent, 35 per cent and 34 per cent respectively.¹⁰

Export subsidies

Working Party members, led by Australia, New Zealand, and the USA, have been very clear within the Draft Report that Viet Nam should not have the option to use export subsidies upon accession to the WTO, in connection with agricultural and industrial products.

As regards industrial subsidies, the Draft Report tells us that one member has recognised Viet Nam's low-income status as a qualification for having access to export subsidies under the WTO Subsidies and Countervailing Measures agreement (SCM), as Annex VII of the SCM exempts certain countries with GNP per capita below \$1000 from restrictions on the use of export subsidies. Others, however, have stated that Viet Nam should phase out its export subsidy schemes upon accession. While Viet Nam was not listed in Annex VII because it was not a member of the WTO at that time, there is no reason why it could not be added to that list upon accession. And even though some countries may argue that the Uruguay Round phase-out periods for export subsidies by developing countries have lapsed, Viet Nam should be able to negotiate the same transition period that developing country members availed themselves of following the creation of the WTO.

In the case of agricultural subsidies, Viet Nam's accession talks are a clear case of double standards. While industrialised countries have only recently agreed to eliminate their export subsidies (within a timeframe yet to be agreed), they are pressuring Viet Nam to eliminate all export subsidies, including its export bonus programme, immediately upon accession. Not only should Viet Nam not be asked to make greater commitments than industrialised country members, it should also be granted, at a minimum, the same rights as current developing-country members. Articles 9.1(d) and (e) of the AoA allow developing countries to maintain certain kinds of export subsidies, and additional flexibilities are on the table in Doha

negotiations. For example, the July 2004 Framework says that 'Developing country members will benefit from longer implementation periods for the phasing out of all forms of export subsidies'.¹¹ As a potential WTO developing country member, there is no reason why Viet Nam should not also have access to this kind of flexibility.

Both agricultural export subsidies listed under Article 9.1, and at least a three-year phase out period for all other export subsidies, are very little to ask, and should be granted without further negotiations.

Export controls

There is disagreement within the Working Party regarding the compatibility with WTO membership of Viet Nam's export management controls on rice. In the Draft Report, some members 'did not consider Viet Nam's export controls, in particular those on rice and timber, [to be] in conformity with WTO provisions'. This is inaccurate, given the fact that Viet Nam eliminated rice quotas in 2001 and that the flexible control mechanism it now uses is entirely compatible with Article XI 2(a) of GATT 1994 on the General Elimination of Quantitative Restrictions, which says: 'The provisions of paragraph 1 of this Article shall not extend to the following: (a) Export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting contracting party.'¹²

Viet Nam should have the ability to manage exports of rice, which is vital to the food security of so many Vietnamese people. This should include an element of control over foreign companies exporting rice in the case of an emergency, or if national reserve stocks run low. Rice makes up 90 per cent of total staple food production, it is farmed on more than 60 per cent of total agricultural land, and more than two thirds of Vietnamese households grow it.¹³

Furthermore, Japan, a full WTO member and a developed country, continues to maintain production and export controls on rice, for similar socio-economic reasons. Japan also has a large number of small producers who are dependent on rice for their livelihoods, although the average farm size in Japan, at 1.75 hectares¹⁴, is more than twice that in Viet Nam. Viet Nam should be able to maintain its current WTO-consistent export management controls on rice upon accession.

Textiles and clothing

Paragraph 269 of the Draft Report reveals that quota-free market access for textiles and clothing post-accession is still under negotiation for Viet Nam. The text would allow for Viet Nam to be exempt from textile and clothing quotas upon accession, like all other WTO members, but it also opens the way for a worst-case scenario for Viet Nam's textiles and clothing industry. WTO members could insist that, upon accession, Viet Nam must follow the 10-year phase-out of textiles and clothing quotas. This would mean that Viet Nam would find itself well behind its main export competitors, who are already WTO members and who are benefiting from the January 2005 abolition of quotas.

The USA and the EU between them account for 70 per cent of the annual export value of Viet Nam's textile and clothing sector. The EU has recently agreed that it will remove its quotas on Viet Nam's textiles and garments from 2005, but the USA remains intransigent.¹⁵ Quota restrictions impede further development of an industry that accounts for more than 17 per cent of Viet Nam's total exports.¹⁶ The textile and clothing industry is a vital source of income and employment in Viet Nam, particularly for women, many of whom are from the rural areas – even though poor employment practices and the denial of labour rights mean that these benefits are not consistently realised. Viet Nam should be very wary about agreeing to this text, which is currently contained in square brackets in the Draft Report. Further definition is needed to ensure that one of the potentially greatest benefits of WTO accession for Viet Nam can be fully realised. Moreover, the United States should follow Europe's lead and agree to abolish textile and clothing quotas for Viet Nam in 2005.

Industrial market access

Viet Nam's latest offer on binding industrial tariffs still stands at 17 per cent and should not be lowered further. This offer must be examined in the context of the current Doha Round negotiations, where the commitment to bind industrial tariffs is a concession in itself by developing countries. In another example of double standards, developed countries such as Australia and Iceland have not bound 100 per cent of their tariff lines, and yet Viet Nam is expected to do so as a condition of WTO entry.¹⁷

There is concern within Viet Nam that its mechanised goods sector is not yet sufficiently established to remain competitive within a fully liberalised market. An average bound level of 17 per cent could

threaten its further development and cut off a growing source of employment for Vietnamese workers. As a developing country, Viet Nam should be able to choose which lines it wants to bind and at what level, to ensure that sectors not yet prepared for liberalisation can receive a degree of protection and are gradually liberalised, in accordance with development priorities.

Regional development policy

Members of the Working Party appear to be treating investment incentives for enterprises operating in disadvantaged areas as a form of export subsidy that must be phased out upon accession (Paragraph 188 of the Draft Report). These incentives are effectively non-actionable subsidies for regional development and are therefore permitted within the WTO. Disadvantaged areas in Viet Nam include many of the mountainous regions and are home to some of the most vulnerable communities, notably ethnic minority groups. These areas tend to be isolated and are lacking in infrastructure and basic social services. Poverty among ethnic minority groups, who account for roughly 14 per cent of the national population, is disproportionately high. The percentage of people from ethnic minorities who are living in poverty increased from 20 per cent in 1993 to more than 30 per cent in 2002.¹⁸

Investment incentives for enterprises in disadvantaged areas may be vital to the economic survival of these communities. Viet Nam is asking for a nine-year phase-out period for investment incentives, for socio-economic reasons. At the very least, the Working Party should grant this request. Viet Nam would be well within its rights as a prospective developing country member of the WTO to maintain these incentives indefinitely.

Flexibility in implementing agreements

Viet Nam has been under increasing pressure to comply fully with the costly and complex agreements on Customs Valuation, Technical Barriers to Trade (TBT), and Sanitary and Phyto-Sanitary Measures (SPS) upon accession. According to the Draft Report (paragraph 203), Viet Nam has now agreed to comply with the TBT agreement from the date of accession, without any transition periods. This commitment goes beyond the accession packages of recently acceded China and Cambodia, who both managed to negotiate short transition periods. Vietnamese government officials have also recently revealed that they will comply fully with the agreements on Customs Valuation and SPS upon accession.

These are extremely tough commitments, given that Viet Nam is classified by the UN as a low-income, HIPC country with budgetary priorities linked to poverty reduction, while the World Bank has estimated the costs of implementation at \$100m per agreement.¹⁹ However, Viet Nam is still requesting technical assistance in order to achieve compliance. This assistance will be essential, particularly for the SPS agreement, where compliance will involve harmonising national standards in agricultural and fishery products. This will be an enormous effort for poor producers, especially in the remote rural areas of Viet Nam, and will undoubtedly take some time to achieve. The Vietnamese negotiators should go further and insist that compliance with these agreements must be tied to the provision of technical assistance.

Abuse of NME status and trade defence measures

Viet Nam is classified as a non-market economy (NME) by WTO members. The WTO allows member states to use more flexible calculation methods to determine the existence of dumping in the case of imports from an NME. There is an acceptable reason for this special treatment. However, WTO members should not use NME status as an excuse for protectionism against more competitive economies. Viet Nam has twice been wrongly accused of 'dumping' aquaculture products in the USA. The recent catfish and shrimp cases revealed that Viet Nam was punished by the USA simply for having a more competitive aquaculture industry.²⁰

China was also considered an NME during its accession process and had to agree to a raft of unique 'special safeguards', on top of the special NME formula used for calculating dumping. These measures include:

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

- **Anti-dumping:** the ability to use a special NME methodology for measuring dumping in anti-dumping cases against Chinese companies, which reduces the burden of proof (available for 15 years post-accession).
- **Transitional review mechanism:** this gives WTO members the right to review implementation by China of the commitments made within the accession package and report any misgivings they have to the General Council. The reviews take place annually for eight years post-accession. Thereafter there will be a final review in year ten, or at an earlier date decided by the General Council.

The Draft Report reveals that the threat of similar demands being made of Viet Nam is very real. Viet Nam has already agreed to a market disruption safeguard in its bilateral trade agreement with the USA, similar to the 'transitional product-specific safeguard' described above. In paragraph 377 of the Draft Report, some members requested that Viet Nam provide a copy of its bilateral trade agreement (BTA) with the USA to the Working Party and clarify how provisions in this agreement would be applied in relation to other members of the WTO. Due to the WTO's MFN rule, which states that what is offered to one member must be offered to all, this opens the door to all the WTO-plus provisions that were agreed with the USA within the BTA, including the market disruption safeguard.²¹

China's experience post-accession shows that countries are serious about taking advantage of these special provisions. An article in BRIDGES Weekly Trade News Digest, revealed that the abolition of trade quotas at the end of 2004 has prompted the US government to initiate a process that could potentially lead to the imposition of quantitative import restrictions on certain Chinese products. The EU is also gearing up to protect their markets, using similar methods if necessary – although EU Trade Commissioner, Peter Mandelson, has said that it is too soon to invoke the safeguard mechanism, since there is not yet enough data to determine whether or not market disruption is likely to arise.

BRIDGES reports: 'US Commerce Department statistics released on 1 April show that Chinese textile and clothing imports into the US were 63 percent higher in the first quarter of 2005 compared to the previous year. The findings back up preliminary data for the month of January that had indicated significant increases in Chinese exports in the wake of the 31 December 2004 elimination of textile and clothing quotas. Responding to the new statistics, the US Committee for the Implementation of Textile Agreements (CITA), an interagency US government group chaired by the Department of Commerce,

announced on 4 April that it was initiating 'safeguard proceedings' to determine whether certain Chinese textile and clothing imports are disrupting the US market'.²²

Such safeguards risk countering the benefits of WTO MFN treatment in key exporting industries, simply because they are more competitive. The growth potential of Viet Nam's manufacturing industries, such as textiles and clothing, could be considerably restricted, and with it the employment opportunities for thousands of Vietnamese workers.

Even if Viet Nam were to benefit fully from the ending of textile quotas upon accession, if it was subject to a special safeguard on textiles or a transitional product-specific safeguard, then the rewards of quota-free market access could be lost. Members of the Working Party should not include NME provisions that restrict MFN rights within the terms and conditions of Viet Nam's accession. WTO-plus provisions on trade safeguards contained in the bilateral trade agreement with the USA should not become part of the final package.

Intellectual property

The WTO accession process is repeatedly being used by member countries, in particular the USA, as a means of ratcheting up patent protection beyond the requirements of the Trade-Related Intellectual Property Rights (TRIPs) agreement, regardless of the potential impact on public health and food security. In Oxfam's view, Viet Nam should not be asked to introduce 'TRIPs-plus' measures as part of the accession package.

Paragraph 359 of the Draft Report reveals that Viet Nam will probably have to join the 1991 International Union for the Protection of New Varieties of Plants (UPOV), which restricts the rights of farmers to use farm-saved seeds, including traditional varieties of rice, thus threatening both biodiversity and food security. This convention is not a part of WTO regulations, but it was already a condition of the BTA that Viet Nam concluded with the USA that it should be a signatory. Adherence to non-WTO intellectual property agreements led by the USA, is a common feature of Free Trade Agreements. It should not also become a standard WTO-plus demand for acceding countries.

Within the terms of its BTA with the USA, Viet Nam has also accepted TRIPs-plus provisions on the restriction of clinical trials data for pharmaceutical products, for a period of five years. This means that the Vietnamese government cannot make use of the proprietary company's clinical test data for a drug when approving the generic

equivalent. As a result, lower-cost generic drugs could be blocked from the market unless the manufacturer repeats costly and time-consuming clinical tests, with damaging consequences for access to affordable medicines.

In paragraph 334 of the Draft Report, Viet Nam and working party members cover the 'secrecy of test data' in more detail, but it is not yet clear whether or not test data will be further restricted. Within the terms of accession, as within WTO rules, clinical test data for drugs should be readily available for governments seeking to approve generic equivalents. Viet Nam should not have to multilateralise the kind of WTO-plus commitments made in bilateral trade agreements.

Further obligations under Doha

Without exception, new members of the WTO will have made greater liberalisation commitments in most, if not all, sectors than have existing members. In theory, the extent of liberalisation commitments made during accession is supposed to be recognised within further WTO negotiations. However, in practice this has not happened. Once a country has come through the extremely tough accession negotiations, having conceded a range of WTO-plus commitments, it is then expected to make yet further concessions alongside existing members. In most cases, countries have little more to give.

A group of seven recently acceded countries provide a perfect example of the gap between theory and practice. The Doha Declaration states: 'We also welcome the accession as new members, since our last session, of Albania, Croatia, Georgia, Jordan, Lithuania, Moldova, and Oman, and note the extensive market-access commitments already made by these countries on accession.'²³ Yet despite this recognition, post-accession all seven are currently being asked to concede more under the Doha Round, even though they have very little left to offer. Six of the seven countries have already set more than 50 per cent of their tariff lines at 0 per cent. Moldova has liberalised 154 out of a total of 156 services sub-sectors.

However, there are signs of change. According to the Annex on Agriculture in the July 2004 Framework text: 'The particular concerns of recently acceded members will be effectively addressed through specific flexibility provisions.'²⁴ It is thought that this sentence is largely the work of China in negotiations, that country having made far-reaching commitments within its accession package. The extent and effectiveness of these flexibilities remain to be seen, but they should apply across the board, not only in the Agreement on Agriculture.

Many developing country members of the WTO are already struggling with liberalisation commitments that compromise their development targets. Viet Nam may find itself in a similar position. The current provisions within the July Framework text must go further, and recently acceded low-income countries and LDCs should be absolved from making further commitments under the Doha Round of negotiations.

3. Recommendations

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

- Agricultural tariffs should not be bound at an average rate of less than 25 per cent, which is Viet Nam's latest offer and which is a rate that already threatens the livelihoods of farmers and rural workers.
- Viet Nam should be able to use all the instruments available to other developing country WTO members to further protect vulnerable farm sectors. These measures include Tariff Rate Quotas (TRQs), the current WTO Special Safeguard (SSG) provision, and the new provisions now under negotiation at the WTO (Special Safeguard Mechanism and Special Products).
- Upon accession, Viet Nam should be able to maintain its current WTO-compliant export management controls on rice in order to protect food security.
- Viet Nam should not be asked to make greater commitments on the scale and timing of reductions in domestic support and export subsidies, either for agricultural or industrial products, than those made by other developing countries at the WTO or those agreed in current WTO negotiations. More specifically, investment incentives for enterprises operating in disadvantaged areas should be granted, on the basis that they represent non-actionable subsidies for regional development.
- The United States should abolish textile and clothing quotas for Viet Nam upon accession, since they were abolished for all other Member States at the end of 2004.
- Industrial tariffs should not be bound at an average rate of less than 17 per cent, which is Viet Nam's latest offer and which may already mean the loss of manufacturing jobs.
- Viet Nam should not be asked to renounce policy instruments that enable it to increase the development impact of foreign investment, such as requiring the transfer of technology.
- Compliance with the agreements on Sanitary and Phyto-Sanitary Measures, Technical Barriers to Trade, and Customs Valuation must be tied to the provision of technical assistance, in order to

spread the costs of implementation and build the required technical capacity.

- Members of the Working Party should not include non-market economy provisions that restrict Most Favoured Nation (MFN) rights.
- WTO-plus provisions on intellectual property and trade safeguards in the bilateral trade agreement concluded with the USA should not become part of the accession package.

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

- The WTO should establish clear guidelines regarding the rights and obligations of new members, based on objective development indicators.
- Developing country entrants should enjoy the 'special and differential treatment' in WTO agreements that is granted to existing developing country members.
- An independent panel of experts should decide whether an applicant's trade regime complies with existing WTO rules, and when the Non-Market Economy (NME) provisions for acceding countries should be revoked.
- WTO-plus commitments already agreed in bilateral trade agreements, which pose a threat to development, should not be automatically 'multilateralised' in accession packages.
- Recently acceded low-income countries and LDCs should be absolved from making further commitments under the Doha Round of negotiations.
- Bilateral negotiations linked to WTO accession should be more transparent, allowing applicant countries to seek technical advice and support on demands that are made of them.

Notes

¹ Viet Nam Development Report 2004, Joint donor report to the Viet Nam Consultative Group Meeting, 2003

² *ibid.*

³ WTO, "Draft Report of the Working Party on the Accession of Viet Nam", WT/ACC/SPEC/VNM/5, 22 November 2004

⁴ These countries are all members of the Working Party which include Argentina, Australia, Brazil, Brunei, Bulgaria, Canada, Chile, China, Colombia, Croatia, Cuba, Dominican Republic, Egypt, European Union and member states, Honduras, Hong Kong China, Iceland, India, Indonesia, Japan, Republic of Korea, Kyrgyz Republic, Malaysia, Morocco, Myanmar, New Zealand, Norway, Panama, Paraguay, Philippines, Romania, Singapore, Switzerland, Chinese Taipei, Thailand, Turkey, United States, Uruguay.

⁵ 'Assessing the Poverty Impact of the Doha Development Agenda: a Case Study of Viet Nam', Centre for Rural Progress, Hanoi, February 2003: p. 21.

⁶ Oxfam International, 'Dumping Without Borders: How US Agricultural Policies are Destroying the Lives of Mexican Corn Farmers', August 2003.

⁷ Oxfam International, 'Dumping on the World: How EU Sugar Policies Hurt Poor Countries', April 2004.

⁸ Thailand-US Free Trade Agreement, p.24, Thailand Development Research Institute, January 2004

⁹ WTO (2004), Text of the 'July Package', (http://www.wto.org/english/tratop_e/dda_e/draft_text_gc_dg_31july04_e.htm). This is a package of WTO framework agreements agreed by members on Friday 30th July, following deadlock in the Ministerial Meeting in September 2003.

¹⁰ Oxfam International, 'Extortion at the Gate: will Viet Nam join the WTO on pro-development terms', September 2004, p.19.

¹¹ WTO (2004), Text of the 'July Package' *op. cit.*

¹² WTO, "The General Agreement on Tariffs and Trade", 1994, http://www.wto.org/english/docs_e/legal_e/legal_e.htm#GATT94

¹³ Oxfam GB and Oxfam Hong Kong, 'Rice for the Poor', September 2001

¹⁴ Economic Research Service of the United States Department of Agriculture, 'Japan Basic Information', 27 September 2004, <http://www.ers.usda.gov/Briefing/Japan/basicinformation.htm>

¹⁵ Vietnam News Agency, 'Abolition of EU's textile and garment quotas: new opportunities and challenges', 4 April 2005, www.vnnet.com

¹⁶ UNDP monthly socio-economic statistical bulletin, March 2005

¹⁷ Oxfam International, 'Development under threat: how WTO trade talks could undermine the ability of poor countries to industrialise', April 2005

¹⁸ Viet Nam Development Report, 2004

¹⁹ Finger, J. M. and P. Schuler (1999) 'Implementation of Uruguay Round Commitments: the Development Challenge', World Bank Policy Research Working Paper

²⁰ 'Extortion at the Gate', op. cit., pp.15–16 and p.24

²¹ 'Extortion at the Gate', op. cit. pp. 28-31

²² BRIDGES Weekly Trade Digest, Vol 9 Number 11, 6th April 2005, International Centre for Trade and Sustainable Development

²³ WTO, "Doha Declaration", WT/MIN(01)/DEC/1
20 November 2001

²⁴ WTO (2004), Text of the 'July Package' op. cit.

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