Vietnam

1Bilateral trade and investment

According to customs statistics in China, the bilateral trade volume between China and Vietnam in 2006 climbed by 21.4% over the previous year to total US＄ 9.95 billion, among which China s exports to Vietnam accounted for US＄ 7.46 billion, up 32.3%, while China s imports from Vietnam dropped by 2.6% to reach US＄ 2.49 billion. China enjoyed a surplus of US＄ 4.97 billion in its trade with Vietnam. China mainly exported to Vietnam fossil fuels, mineral oils and their products, machinery and equipment, steel and related products, chemical fertilizers, cotton, textile products, garments and accessories, and motor vehicles. China s imports from Vietnam included, among others, minerals, mineral oils and their products, rubber and related products, electrical machinery, electrical apparatuses, audio video appliances and their spare and component parts, timber and timber work, fruits, furnaces, mechanical devices and their spare parts.

According to the Ministry of Commerce(hereinafter referred to as MOFCOM), by the end of 2006, the accumulated turnover of engineering contracts completed by Chinese companies in Vietnam had reached US＄ 1.92 billion, and the volume of completed labor service contracts had reached US＄ 260 million.

According to MOFCOM, China s total non financial foreign direct investment(FDI), approved by or filed with MOFCOM, reached US＄ 48.79 million in 2006.Vietnam investors invested in 13 projects in China in 2006, with a total contractual investment of US＄ 22.88 million and an actual utilization of US＄ 13.66 million.

2Vietnam s trade and investment regime

On 11 January 2007, Vietnam became a member of the World Trade Organization(WTO). At present, the major laws pertaining to trade and investment in Vietnam include, inter alia, the Law on Customs, the Law on Trade, the Law on Import and Export Taxation, the Law on Investment, the Law on Enterprises, and the Law on Competition.

2.1Trade administration regime and its recent changes

2.1.1Tariff administration

On the basis of Customs Modernization, Development and Reform Program for 2004—2006, the Vietnamese government has set forth objectives, tasks and measures of customs reform for the period 2006—2010. According to the 2006—2010 program, Vietnam is working to build a stable and transparent regulatory regime for customs administration, with a total investment of US＄ 77.06 million during the five years to build a modern customs administration structure in lines with international standards, to promote electronic customs system, and to improve customs clearance and risk control.

In an effort to comply with relevant rules of the WTO, Vietnam has, beginning in 2002, based its customs valuation on real trading prices of imports, and abolished in 2004 the requirement of minimum import prices for all products. Currently, Vietnam administers three different categories of tariff rates: common tariff rate, most favored nation(MFN) tariff rate, and preferential tariff rate. The preferential tariff rate mainly applies to imports from countries and regions with which Vietnam has signed bilateral or regional trade agreements, including ASEAN specific preferential tariff rate, US Vietnam Trade Agreement preferential tariff rate, and China ASEAN Free Trade Area preferential tariff rate. Common tariff rate, which is 50% higher than the MFN rate of duty, applies to countries that have not established normal trade relations with Vietnam. On the other hand, the MFN tariff rate is chiefly applicable to imports from countries which have entered into normal trade relations with Vietnam.

The simple average MFN tariff rate currently stands at approximately 18.2% in Vietnam, with agricultural products averaging 24.5% and non agricultural products averaging 15.7% respectively. Pursuant to the Protocol on the Accession of Vietnam to the WTO, Vietnam will lower the MFN tariff rates for 10,600 products within the five years after it joined the WTO, cutting the general tariff level by 22%. Imports whose tariff rates will be significantly cut include textile products, fish and fish products, wood products, paper, power machinery and equipment. In addition, Vietnam levies a specific tariff rate on a small number of products.

On 8 February 2006, Vietnam s Ministry of Finance further reduced the MFN tariff rates for component parts of certain electrical appliances. For example, the MFN tariff rate for television flat screens has been cut from 15% to 5%, television voltage transformers from 5% to 3%, loudspeakers from 20% to 10%, and capacitors to 0%.

According to the Early Harvest Program(EHP) under China ASEAN Free Trade Agreement, Vietnam has applied special preferential import tariff rates to certain products of Chinese origin since 2004. On 12 June 2006, the Vietnamese Ministry of Finance released the special preferential tariff rates applicable to products originating in Chinese in 2006, which range from 0% to 90%, with reductions in tariff rates for most imports.

According to the Law on Value Added Tax and the Law on Special Sales Tax that went into force on 1 January 2006, Vietnam subjects imported products to value added taxes, and certain imports such as tobacco, alcohol and vehicles to an additional special consumption taxes. The value added tax collected at the customs valuation of imports plus tariff rate is in most cases 10%, with 5% for agricultural products. In addition, the Vietnamese customs house levies a certain sum of customs clearance charges, depending on the categories of imports.

2.1.2Import administration

The Vietnamese government adopts different approaches to different categories of imports, including banned imports, imports subject to quotas, licensed imports and free imports.

In January 2006, Vietnam promulgated the Implementation Rules for the Law on Trade(No.12/2006/ND CP), and annulled the Decision on Management of Import and Export of Goods in 2001—2005 that was released in 2001. In addition to abolishing tariff quotas for such products as cotton, tobacco and milk, the Implementation Rules eliminated the ban on the import of motor bicycles and motor tricycles with engines with capacities over 175cc and subject them to import licensing.

According to the Implementation Rules for the Law on Trade(2006), goods prohibited from import into Vietnam in 2006 mainly include weapons, ammunitions, explosive materials, firecrackers, second hand consumables, right hand drive motor vehicles, second hand automobiles, cultural products banned from diffusion, garbage, waste materials, toxic chemical substances, and refrigerating machinery using chloro fluoron carbon(CFC). Imports subject to licensing from the Vietnamese Ministry of Trade include, among others, products under supervisory control of international conventions of which Vietnam is a signatory, motorcycles(motor bicycles and motor tricycles) with engines with capacities greater than 175cc, and sporting guns. In addition, a certificate of inspection must be obtained from the Vietnamese Ministry of Agriculture before importing such products as veterinary drugs, plant seeds and animal semen, insects, plant and animal genes. Imports such as table salt, eggs, crude sugar and refined sugar are subject to tariff quotas.

According to Decree No.69/2006/QD TTG issued by the Vietnamese Prime Minister, Vietnam revised its regulation, effective as from 1 May 2006, on the import of formerly banned second hand automobiles: If they can still run for 6 months to 5 years with a mileage of no less than 10,000 kilometers, second hand automobiles are allowed into the country(only pre owned automobiles produced after 2001 can be imported in 2006), subject to a specific tax ranging from US＄ 3,000 to US＄ 25,000. On 15 January 2007, the Vietnamese Ministry of Finance issued Decision No.05/2007/QD BTC, increasing the specific tax to the range of US＄ 6,300 to US＄ 26,250.

2.1.3Export administration

Vietnam encourages the export of most categories of products, its export encouragement measures including subsidization of agricultural exports, export incentives to major exporting companies, provision of export credit and simplification of export procedures. According to the Implementation Rules for the Law on Trade(2006), Vietnam bans the export of products such as weapons, ammunitions, explosive materials, historical relics, cultural items prohibited from dissemination, round timber logged from domestic natural forests, wild and rare fauna and flora, rare and precious aquatic products, encryption machines and software used for the protection of State secrets, and toxic chemicals. In addition, the export of products under supervisory control of international conventions which Vietnam has signed or joined, mineral products, textile products and garments, seeds of rare plants and the young of rare animals are subject to export licensing from the Ministry of Trade, the Ministry of Industry or other relevant government ministries and agencies.

In September 2006, Vietnam s Ministry of Fisheries released its regulation on the import and export of fisheries products. According to the regulation, the export of 23 categories of aquaculture products such as reeves shad, pipefish(syngnathinae), black eel, whale, hard corals, blue corals and black corals is placed under a ban.

In September, the Vietnamese Ministry of Industry raised the resource export tax on coal to 5%—10%.

2.1.4Trade remedies

Vietnam is gradually setting up its trade remedy mechanism to embrace relevant WTO rules. In April and August 2006, Vietnam promulgated the Anti Dumping Law and the Countervailing Duty Law respectively, providing for the submission of complaints, procedures for investigation, and measures against dumping and subsidies, and designating the Ministry of Trade as the competent authorities investigating alleged cases of the dumping and subsiding of imported goods. So far, Vietnam has not initiated a single antidumping or countervailing measure on any imports.

2.2Investment administration regime and its recent changes

The Law on Investment that went into effect on 1 July 2006 provides a uniform legal framework of investment administration for both domestic and foreign investors. According to relevant provisions in the Law on Investment, foreign investors may, of their own accord, invest in any industries and sectors not prohibited by law, are entitled to the same preferential treatment and protection as domestic investors, are not required to give priority to purchase and use domestic goods and services, and are not subject to the rate of local contents in production.

The Law on Investment also provides special stipulations on banned, restricted and encouraged investment sectors. According to the law, the banned investment sectors remain unchanged, but the restricted investment sectors have been relaxed, for example, investment in air freight, railroad transport, ocean carriage, construction of seaports and airports, and forestation is no longer restricted. The Vietnamese government will provide preferential terms in taxation, loss transfer, depreciation of fixed assets, land use and other investment supports for specially encouraged investment projects as defined in the Law on Investment such as new materials, new energy, high tech products, biological technology, information technology, machinery production, crop and plant cultivation, aquaculture, processing of agricultural, forest and aquatic products, salt manufacturing, breeding of new plant and animal varieties, applied high technology, modern techniques, environmental protection, research and development, invention of high technology, labor intensive sectors, infrastructure, construction and development of major projects, education, training, medical services, physical culture, ethnic cultural projects, traditional handicraft, and projects in socio economically backward areas, industrial zones, export processing zones, high tech parks and special economic zones.

In addition, Vietnam has shifted from investment licensing towards an investment registration regime. Foreign investors can register in a province level investment administration agency and obtain a certificate of investment for projects under Vietnamese Dong 300 billion(around US＄ 18 million) in sectors not restricted by law.

According to Decree No. 78 regarding the procedures of foreign investment issued in August 2006, foreign investment in banking, insurance, finance, credit, newspapers and magazines, radio, television, telecommunications with a capital of over Vietnamese Dong 150 billion(about US＄ 38 million) is subject to the approval of the Vietnamese Prime Minister. Foreign invested enterprises in Vietnam must register in the Ministry of Planning and Investment and obtain a certificate of foreign investment before investing overseas in a sum under Vietnamese Dong 15 billion(around US＄ 0.9 million). Investment outside Vietnam with a sum exceeding Vietnamese Dong 15 billion is subject to a certificate of foreign investment issued by the Ministry of Planning and Investment after its examination and ratification.

2.3Administration regime related to trade and investment and its recent changes

As a member of the World Intellectual Property Organization(WIPO) and a signatory of the Paris Convention for the Protection of Industrial Property, the Berne Convention on Copyright Protection of Literary and Artistic Works, the Geneva Convention, the Brussels Convention, the Madrid Agreement on International Registration of Marks, Vietnam is working to improve its domestic legal framework for the protection of intellectual property rights(IPR). At present, Vietnam has enacted the Law on Intellectual Property, the Law on Copyright, the Document of Border Control on Intellectual Property Protection of Imported and Exported Products, and the Decree to Establish the Association for Combating Counterfeiting and Piracy and for Intellectual Property Protection of Enterprises with Foreign Investment.

In addition, Vietnam promulgated in 2006 the Law on Franchising, the Law on Real Estate and the Law on Securities, all of which took effect in January 2007.

In January 2006, the Law on Amendment of and Addition to A Number of Articles of the Law on Value Added Tax and the Law on Special Sales Tax went into force.

According to the relevant stipulations, liquors, beer, tobacco, automobiles, gasoline, and poker cards are subject to an excise duty ranging from 10% to 75%. Consumers who have suffered losses because of natural calamities, war and other force majeure can apply for excise tax exemption or reduction. In addition to extending the range of products exemptible from value added tax, the Law reduces the value added tax for preliminarily processed cotton to 5%, sets the excise tax for spirits over 40° v/v and cigarettes at 65% and for bottled and canned beer at 75%.

3.Barriers to trade

3.1Tariff and tariff administration

3.1.1Tariff peaks

Although Vietnam has cut its customs tariff rates for certain products originating from China in accordance with China ASEAN Free Trade Agreement, Vietnam, in general, still maintains a high import tariff level, with tariff rates for some sensitive products far exceeding the average rate, for example, 50% to 90% for automobiles, 90% for motorbikes, 70% for bicycles, 50% for poultry meat, 50% for beef, 50% for domestic animal offals, 40% for refined cane sugar, 40% for spices, 35% for vegetables, 35% for cereals and cereal products, 50% for beer, 50% for wine, 50% for alcoholic beverages, 55% for refractory bricks, 45% for hosiery, 45% for home electric appliances. The high tariff policy adopted by Vietnam poses a serious barrier to the import of some of China s competitively priced products, over which China expresses great concern.

3.1.2Tariff escalations

Tariff escalation in Vietnam is most prominent in foodstuffs, tobacco, textiles, leather, home electric appliances and motor bicycles. For example, the import tariff for component and spare parts of dish washers is merely 5%, but for dish washers 45%; parts and components of sewing machines 0%, sewing machines 45%; preliminarily processed rapeseed oil 5%, refined rapeseed oil 35%; raw tobacco leaves 30%, cigars and cigarettes 100%; fur materials 0%, fur products 35%; cotton and cotton yarn 0%—20%, cotton fabrics 40%; fiber flax and synthetic silk 0%, linen and synthetic silk textiles 40%.

3.1.3Tariff quotas

As of 2006, customs quotas in Vietnam applied to imports such as chicken eggs, tobacco, sugar and table salt. Under Decision No. 02/2006/QD BTM of the Vietnamese Ministry of Trade, import quotas for raw tobacco, table salt and sugar stood at 38,204, 200,000 and 40,000 tonnes respectively in 2006, with the import quota for chicken eggs subject to demand.

3.2Import restrictions

Vietnam has eliminated quantitative restrictions for imported products. However, certain products such as motor bicycles and motor tricycles with engines with capacities over 175cc, second hand automobiles, anesthetics, toys, gasoline, glass, iron products, plant oil, sugar, motorbikes and nine seat motorized vehicles still remain on the mandatory import license list in 2006.

Currently, Vietnam not only subjects second hand automobiles to import licensing, but also allows their import via only 4 points of entry: All the imported second hand automobiles must clear customs at Qu?ng Ninh Province, Haiphong City, Da Nang City and Ho Chi Minh City.

In 2006, the Vietnamese Ministry of Post and Telecommunications issued a decree, banning the import of seven categories of second hand electronic and communications products, including computers, CD duplicators and copiers, data processors, calculators, ticket issuing equipment, automatic data processing devices and other intelligence devices, transmitting devices for wireless telephones, telegrams and audiovisuals, cameras and voice recorders. The decree also prohibits the import of spare and component parts for the aforesaid products.

Although Vietnam allows, beginning in 2006, the import of two and three wheel motor vehicles with engines with capacities over 175cc into the country, it is required that the importers register in the Ministry of Public Security and that the imported vehicles be used in the armed forces, public security and motor racing. The above import restrictions hamper the export of relevant Chinese products, over which China is very concerned.

3.3Barriers to customs clearance

To align itself with the relevant provisions of the WTO Customs Valuation Agreement, Vietnam started to base its customs valuation upon transaction pricing in 2002. However, at present, the efficiency of customs clearance still leaves much room for further improvement. It takes an average of eight hours for a shipment to clear customs after the submission of declaration. According to the new regulations, Vietnam adopts different customs clearance procedures for different categories of goods based on the assessment of their risks. Green Passage mainly applies to goods exempt from inspection and ensures prompt customs clearance. Yellow Passage chiefly applies to goods with medium level risks and subjects goods to document verification before allowed entry. High risk goods must pass through Red Passage and are permitted to enter the country only after customs officials have checked the documents and the goods.

3.4Technical barriers to trade

Vietnam is in the process of establishing national technical standards system. Currently, there are three different quality standards in the country: national standards,

standards published by governmental ministries and agencies, and corporate standards. The Vietnamese Ministry of Science and Technology publishes regularly a list of imports and exports requiring mandatory quality control. The listed items are subject to inspection when passing through customs. Exporters and importers must have permits from the functional agencies or a receipt showing that an inspection is in process for the controlled items at the time they go through customs. The Vietnamese technical standards system is complicated and not always transparent, which makes it difficult for exporters to gain access to the relevant information and poses a barrier to export to Vietnam.

The Vietnamese Ministry of Public Health requires that imported pharmaceuticals can be put on the domestic market only after registration. The registration is valid for five years, and when expired, must be renewed. Vaccines manufactured by foreign countries can be registered in Vietnam only after they have completed clinical tests. In addition, medicinal raw materials with a validity period of less than three years are prohibited from being imported into Vietnam unless they are imported within six months after their production. China is very concerned about such restrictions.

3.5Government procurement

Vietnam has not joined the WTO Government Procurement Agreement. According to the new regulations released by the Vietnamese government in 2006, government agencies and entities that use government budgets to purchase information technology products can hold international biddings only when domestic supplies fail or when the cost of domestic supplies exceeds the intended purchase prices of the bidding. A foreign contractor participating in an international tender must have a partnership with a Vietnamese contractor and enter into an engineering contract offering at least 30% of the contract value to the Vietnamese contractor. Vietnam will provide incentive policies to foreign contractors investing in projects that give a high ratio of contract value to the Vietnamese contractors. In addition, Vietnam requires that the bid winning foreign company should give priority to employing local technicians and workers, send only a small team of managerial and technical staff from abroad to operate the project, and commit to train local personnel. Priority should also be given to the Vietnamese market regarding the purchase of raw materials, equipment and machinery necessary for the construction project. The relevant regulations on government procurement in Vietnam are obviously discriminatory.

3.6Export subsidies

To bring itself in line with the relevant WTO rules, the Vietnamese government has gradually reduced and limited its direct financial support and export incentives, and replaced the old policy with long term credit for suppliers of raw materials and with export credit to importers of Vietnamese goods. However, the Vietnamese government still provided in 2006 financial subsidies and export incentives through the Export Promotion Fund administered by the Ministry of Finance to exporters of aquatic products, rice, tea, coffee, black pepper, pork, processed fruits and vegetables, processed cashew nuts, timber(excluding timber work), handicraft and so on. In addition, Vietnam provides financial support such as short term credit guarantee and medium and long term investment credit to domestic enterprises. The Chinese side expresses concern over the consistency between the export subsidy policy of Vietnam and the WTO Agreement on Subsidies and Countervailing Measures.

3.7Barriers to trade in services

3.7.1Professional services

Foreign firms participating in the auditing sector in Vietnam must take any of the three forms: private enterprises, partnership enterprises, and foreign invested enterprises. Foreign auditing firms are permitted to set up branch offices in Vietnam. Firms participating in accounting activities must take the forms of limited liabilities companies, partnership companies and private companies; permission is not yet granted for foreign accounting firms to establish branch offices in Vietnam. In order to establish an accounting or auditing firm in Vietnam, there must be at least five individuals with the accountant or auditor qualifications certified by Vietnam and with at least one year s practicing experience in Vietnam.

Vietnam allows offshore foreign law firms to operate in Vietnam in any of the three forms: foreign law firms, branch offices, and foreign Vietnamese law partnership. Foreign law practices are now permitted to provide legal consultancy services and other legal services. However, participation by foreign law firms in Vietnamese court proceedings are still prohibited. To provide consultancy on Vietnamese laws, a foreign law practice must employ a Vietnamese lawyer or employ a foreign lawyer who has been issued with a certificate to practice in Vietnam, possesses a Vietnamese university law degree, and has been issued with a certificate of satisfaction of conditions for providing consultancy on Vietnamese laws.

3.7.2Advertising

Vietnam allows foreign advertising service firms to establish joint venture advertising agencies with Vietnamese partners, or to cooperate with domestic advertising service providers to engage in advertising activities in Vietnam. However, foreign investment in the joint venture advertising companies is not allowed to exceed 51%.

3.7.3Construction

Vietnam has not agreed to provide market access for the cross border supply of construction and related engineering services, and branches of foreign construction companies are not permitted in Vietnam. Solely foreign owned construction enterprises are only allowed to provide services to foreign invested enterprises or to engage in construction projects invested by foreign countries.

According to the relevant Vietnamese regulations, foreign bidders can participate in the tender for a construction project in Vietnam only if they submit a joint bid with a Vietnamese partner or commit to sub contract the project to local firms. The bid winning foreign company must give priority to employing local technicians and workers, and can only send a small team of managerial and technical staff from abroad to operate the project. In addition, priority should be given to the Vietnamese market regarding the purchase of raw materials, equipment and machinery necessary for the construction project. All these regulations constitute a major obstacle to the operations of foreign invested construction enterprises, limiting and restricting foreign access to the Vietnamese construction market.

3.7.4Telecommunications

Foreign telecommunications companies are not allowed to provide network infrastructure services in Vietnam. Cross border supply and foreign invested commercial presence for provision of basic telecom services is currently restricted to Business Cooperation Contracts(BCCs) with Vietnam s gateway operators. Likewise, foreign investment in the provision of value added telecom services is currently restricted to BCCs with Vietnamese partners. In the Protocol on the Accession of Vietnam to the WTO, Vietnam has agreed to allow the establishment of joint venture telecommunications enterprises with foreign investment not exceeding 51%.

3.7.5Distribution

Vietnam allows joint venture enterprises in its distribution sector; however, foreign investment in the joint venture should not exceed 49%. Furthermore, Vietnam does not allow foreign invested distribution service providers to engage in the purchase and sale of products such as cement, tires, motorcycles, automobiles, liquors and chemical fertilizers.

3.7.6Banking

Foreign banks may open representative offices, branch offices and joint venture commercial banks with up to 50% foreign ownership in Vietnam. Foreign invested banks are not allowed to conduct credit business in Vietnamese Dong.

3.7.7Securities

Vietnam does not allow 100% foreign invested securities companies. Foreign investment in the stock market is restricted to representative offices or joint ventures with Vietnamese partners, in which foreign capital may not exceed 49%.

3.7.8Shipping

Vietnam has eliminated the licensing requirements for foreign shipping lines to operate to and from Vietnam, but it still requires foreign shipping lines to enter Vietnam using Vietnamese agents. In addition, discrimination between domestic and foreign commercial ships in fees and charges relating to docking, warehousing, piloting and cargo handling has not been put to an end. All this increases freight expenses and import costs.

4Barriers to investment

At present, the process of investment registration is still very exacting and time consuming in Vietnam. For example, although there is a clearly defined time limit, which ranges from 5 to 30 working days, for Vietnamese governments at various levels to process foreign investment applications, foreign investors still often complain that the application procedures for investment projects are too cumbersome and lengthy. In some cases, it takes up to several months, half a year or even longer to be granted a permit.

The Implementing Regulations for the Law on Foreign Investment provides that the Vietnamese government encourages foreign investment in prospecting, exploiting and finely processing mineral resources, but restricts foreign investment in mining and processing petroleum and rare and precious minerals. During the negotiations between China and Vietnam on the exploitation projects of aluminum ore in Dak Nong and iron ore in Quy Xa, Vietnam only agrees to cooperate in joint ventures in which the Vietnamese partner shall have a controlling share. The Vietnamese government also decides that joint ventures with foreign partners would be permitted for mining projects with an annual output of over 1 million tonnes of aluminum oxide and for aluminum metallurgical plant project to be established after 2010, on condition that the Vietnamese side shall have a controlling share. In addition, Vietnam restricts foreign investment in iron and steel, cement and coal sectors to joint ventures or business cooperation contracts(BBC).

Vietnam imposes restrictive measures on the employment of foreign nationals in Vietnam. According to the relevant regulations, no more than 3% of the total number of employees in Vietnamese enterprises may be foreigners up to a maximum of 50 foreign employees. Foreign representative and branch offices in Vietnam are not subject to this maximum limit, but the approval of the chairman of the relevant people's committee is required for the employment of foreign labor.