

Legal barriers for foreign investors in vietnam economics essay



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Vietnam in recent years has emerged as Southeast Asia's fastest-growing economy and one of the region's hottest new destinations for foreign investors. Vietnam joined the World Trade Organization (WTO) in January 2007. Its membership requires the country to merge into the global rules-based trading system and increase transparency in government decision making, speed up economic reform, and strengthen the rule of law.

The Vietnamese economy offers many attractions for U. S. companies. About 70% of the population is under the age of 30, and the country has a literacy rate above 95%. Per capita income has more than doubled in the past 10 years, and domestic consumption is growing at more than 20% per year. Vietnam's increasingly affluent urban consumers think highly of U. S. consumer goods.

Vietnam has many natural resources and agricultural products, including oil and gas, marine products, rice, coffee, rubber, and tea. Some of the country's top export industries produce garments and textiles, footwear, furniture, and seafood. Its major imports include machinery and equipment, petroleum products, fertilizer, steel, raw cotton, grain, cement, and motorcycles.

Two decades have past since the country mounted an economic reform program known as doi moi. Vietnam is in the midst of transformation from an inward-looking command economy with little space for personal initiative to a more open society with a vibrant, free market economy that seeks to engage with the wider world. Hanoi in 2006 hosted the Asia-Pacific Economic Cooperation (APEC) summit, which along with a visit by U. S. President

George W. Bush, marked Vietnam's emergence as a key player in the regional and global economy.

The United States and Vietnam have forged strong relations in recent years despite a tragic history, stepping up cooperation in such areas as HIV/AIDS control, avian flu prevention, law enforcement, and a growing military-to-military partnership. The U. S. government is helping Vietnam restructure its education system and reform its legal system. The two governments are cooperating in accounting for servicemen missing since the war, launching a human rights dialogue, and establishing new forms of regional security cooperation.

Although the GATT progressively acquired many of the attributes of an international organisation, it was increasingly felt in the 1980s that it was not keeping up with the rapid changes in the global economy, and required strengthened dispute-settlement and transparency mechanisms. While this was reflected in the agenda of the Uruguay round, the Ministerial Declaration establishing the round's agenda did not call for the creation of a WTO.

Instead, it was agreed that the round would be a 'single undertaking', with all its agreements applying to all GATT contracting parties. In principle, it was not necessary to create an international organisation to implement the results of the round, especially in so far as a common dispute-settlement mechanism was agreed to apply to all of the various agreements reached.

The suggestion to establish a Multilateral Trade Organisation (MTO) by Canada in 1990 -supported by the EU — was therefore something of a surprise. An important motivation to establish an MTO was to have a single

institutional framework encompassing the modified GATT, its sister bodies on <https://assignbuster.com/legal-barriers-for-foreign-investors-in-vietnam-economics-essay/>

services (GATS) and intellectual property (TRIPs), and all other agreements and arrangements concluded under the auspices of the Uruguay round. The United States initially opposed the idea, but, after further negotiations on the substance of the new organisation, agreed to the framework that currently exists, including the name change. Although the US Congress remained suspicious of any limitations to its sovereign powers in trade policy, during the ratification debate it became clear that the establishment of the WTO would not do much to change the status quo as far as the infringement of sovereignty was concerned. The GATT-1947 was a binding international treaty, and most of the institutional aspects of the WTO already existed under the GATT.

None the less, the establishment of the WTO was a significant event. Attempts to put the GATT on a more secure organisational footing had been made periodically since the failure of the US Congress to ratify the ITO. During a 1955 meeting to review the GATT, a number of contracting parties proposed to establish an Organisation for Trade Co-operation (OTC). This proposal was much less elaborate than the ITO but it also failed to win the approval of the US Congress (Jackson, 1990). The issue of providing an institutional framework for international trade reappeared again in the Economic and Social Council (ECOSOC) of the UN in 1963. A group of experts called for the creation of a new UN agency with universal membership and substantial powers in the sphere of international trade. The idea was that this body would implement, inter alia, recommendations of UNCTAD as well as other relevant policy decisions taken by organs of the UN. The proposal envisaged that the GATT would become the agency's Committee on Tariffs.

The proposal did not meet with much interest among the major trading nations. However, the 1964 UN General Assembly resolution establishing UNCTAD provided that it should be concerned with matters relating to the elaboration of a comprehensive trade organisation. Nothing concrete came of this — despite lengthy discussions about the need for a New International Economic Order during the 1970s — in large part because of the widely differing philosophies held by industrialised market economies and much of the developing world regarding the appropriate basis for international trade. With the creation of the WTO, an international trade organisation exists that is firmly based on GATT principles — reciprocity and non-discrimination.

The Scope, Functions, And Structure Of The WTO

As the principal institution with responsibility for the multilateral trading system, the WTO has the same status as institutions such as the World Bank and the IMF. The WTO has legal personality and has been accorded privileges and immunities similar to those accorded to the specialised UN agencies. It is headed by a Ministerial Conference of all Members, meeting at least once every two years. More frequent participation by trade ministers than occurred in the GATT context is intended to strengthen the political guidance of the WTO and enhance the prominence and credibility of its rules in domestic political arenas. It can be noted, however, that past experience of the GATT with Ministerial meetings suggests that these can easily be an inefficient use of the time of many Ministers from smaller trading nations.

This is because in negotiations the controversial issues tend to be solved at the last moment and require agreement between the major players. The

latter may take a significant amount of time to strike a deal between
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themselves, thereby marginalizing the potential for participation by Ministers of smaller countries.

The WTO is charged with providing ' the common institutional framework for the conduct of trade relations among its Members in matters related to the agreements and associated legal instruments included in the Annexes . . . ' to the Agreement. There are four such Annexes, which contain the substantive rights and obligations of Members. Annex 1 has three parts: Annex 1A entitled Multilateral Agreements on Trade in Goods, contains the GATT-1994 (the GATT-1947 as amended by a large number of Understandings and supplementary Agreements negotiated in the Uruguay round); Annex 1B, which contains the GATS; and Annex 1C, the Agreement on TRIPs. Annex 2 consists of an Understanding on Rules and Procedures Governing the Settlement of Disputes — the WTO's common dispute-settlement mechanism.

Annex 3 contains the Trade Policy Review Mechanism (TPRM), an instrument through which surveillance of Members' trade policies occurs. Finally, Annex 4 — entitled Plurilateral Trade Agreements — consists of Tokyo round codes that were not multilateralised in the Uruguay round, and that therefore bind only signatories. Annexes 1-3 together are called the Multilateral Trade Agreements.

The WTO has five functions. It is charged with facilitating the implementation and operation of the Multilateral Trade Agreements; providing a forum for negotiations on already covered or new issues; administering the Understanding on dispute settlement and the TPRM; and, finally, co-

operating with the World Bank and the IMF to achieve 'greater coherence in global economic policy-making' (Article III WTO). Between meetings of the Ministerial Conference — responsible for carrying out the functions of the WTO — the organisation is run by a General Council at the level of officials. The General Council turns itself, as needed, into a body to adjudicate trade disputes (the Dispute Settlement Body) or to review trade policies of the member countries (the Trade Policy Review Body). Three subsidiary councils operate under the general guidance of the WTO's General Council: the Council for Trade in Goods; the Council for Trade in Services; and the Council for Trade Related Aspects of Intellectual Property Rights. Separate Committees exist to deal primarily with the interests of the least developed countries (Trade and Development); surveillance of trade restriction actions taken for balance-of payment purposes; trade-environment linkages; and the WTO's finances and administration (Secretariat). Additional committees or working parties deal with matters covered by the GATT, GATS, or TRIPs Agreement. There are committees functioning under the auspices of the Council on Trade in Goods dealing with subsidies, anti-dumping and countervailing measures, technical barriers to trade (product standards), import licensing, customs valuation, market access, agriculture, sanitary and phytosanitary measures, trade-related investment measures, rules of origin, and safeguards. Similarly, specific committees address matters relating to the GATS or TRIPs. Committees also exist to administer the Plurilateral Agreements. However, these are not under the guidance of the General Council but operate within the general framework of the WTO and inform the Council of their activities. There were more than thirty councils and standing committees in the WTO in 1995 — twice as many as under the old GATT.

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WTO

In a struggle that began in the early 1980s, many countries worked in the Uruguay Round negotiations of 1986-94 to strengthen the multilateral trading system, as well as advance the liberalisation of international trade in goods, services and ideas. Governments are in the process of implementing the resulting agreements that now comprise the World Trade Organisation. They are interested in extending the WTO system to “ outside” economies, but not in exposing it to fresh disputes and divisions, which is why negotiations on the accession of new members are detailed, rigorous and time consuming. This is critical in accommodating the “ economies in transition.”

One of the major political tasks before the World Trade Organisation (WTO), as it gears itself to address the needs of the international trading community for the remainder of this century and beyond, is to extend the benefits of the open multilateral trading system to economies that are still outside.[1]It means ensuring that the integration of “ outsiders” into the world economy leads to concrete benefits for them as well as for their trading partners who are WTO member countries. It also means that the terms and conditions of entry should be such as to preserve and, hopefully, strengthen the credibility of the multilateral trading system, rather than weaken or expose it to disputes and divisions.

Success in meeting these goals will depend, in practical terms, on the way the “ accession” process is managed and controlled. If the right terms are arranged, an additional 1. 5 billion new consumers and workers would

benefit from the multilateral trading system, well before the year 2000. This is an opportunity that cannot be missed. One of the WTO's central objectives is to make the organisation truly global in scope and application.

The WTO has 124 members as of October 1996. The member countries are now engaged in accession negotiations with 28 governments that have formally applied to join. Many others are considering applying. Bulgaria, Mongolia and Panama completed their accession negotiations earlier in the year and will become WTO members when they ratify their protocols.

The most recent applications for accession have been from Kazakhstan, the Kyrgyz Republic and Georgia. Existing requests include major economies like the People's Republic of China, Chinese Taipei (known in the WTO as the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu), the Russian Federation, Saudi Arabia, Ukraine, Belarus and Vietnam. All these are important players on the international economic, trade and trade-related investment scene.

There are also requests for accession from smaller but similarly significant countries. Many of them are "economies in transition" such as Albania, Armenia, Croatia, Estonia, Latvia, Lithuania, Macedonia and Moldova. There are others that are developing economies, among them Algeria, Jordan, Seychelles, Tonga and Vanuatu. Applications have also been received from such least developed economies as Cambodia, Nepal and Sudan.

These countries and territories represent a wide range of economic and political interests. But they represent a critical common factor that motivates them. Big or small, developed or developing, they all look to WTO

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membership to underpin their domestic economic reforms, to help them compete fairly in the international marketplace and to counter discrimination and arbitrary behaviour with the help of enforceable multilateral rules.

Benefits Of WTO Membership

Why do governments want to join the WTO system? What are the benefits of WTO membership? First, membership means access for their economy's exports of goods and services to the markets of the WTO community on unconditional most-favoured-nation (MFN) terms. The substantially reduced tariffs and non-tariff barriers achieved through eight "rounds" of multilateral trade negotiations over the last half century become available to entrepreneurs in the applicant country immediately on its accession.

In the Uruguay Round negotiations, finally concluded at the end of 1994, developed countries further agreed to reduce tariffs on industrial goods by 40 percent. Their average tariff rate will stand, once the tariff agreements have been fully implemented, at around 3.8 percent; and 99 percent of their industrial-product tariffs will be "bound" at their new levels—meaning that, having been reduced as a result of multilateral agreements, they cannot be raised again without further multilateral negotiations. Reforms agreed in agriculture include a 36 percent reduction in export subsidies and an 18 percent reduction in domestic support afforded to agricultural producers. In addition, the level of security for trade in agricultural products has been substantially strengthened, for 100 percent of agricultural product lines are now bound and no non-tariff barriers are permitted for agricultural products, with the exception of measures taken for balance-of-payments purposes.[2]

Rough estimates by the WTO's economists suggest that the reduction of international trade barriers as a result of the Uruguay Round agreements could produce an increase in world income between US\$109 and US\$510 billion per year by the time the market access commitments are fully implemented in 2005 (GATT Secretariat, 1994, p. 36.). These figures do not take into account the beneficial impact of other results concerning, for example, strengthened trade rules, procedures and institutions, or the market-access commitments and rules for trade in services.

Secondly, WTO membership means the effective dismantling of discriminatory barriers that have been specifically directed at certain countries, for instance those erected against China, Russia and the East European countries. The most important benefit in this respect would be the availability to those countries of the same principle of nondiscrimination that WTO member countries normally apply to each other in the conduct of their trade relations, albeit with exceptions permitted under WTO rules.

Thirdly, in the context of the general reduction of tariffs as barriers to trade, traders in the acceding country benefit from rules dealing with the trade-distorting effects of many types of "hidden" non-tariff measures like public subsidies, technical standards, customs-valuation and import-licensing procedures and restrictive policies on foreign direct investment or intellectual property rights—now comprehensively regulated by transparent rules. The new General Agreement on Trade in Services (GATS) brings international disciplines to bear on activities in this vital area of trade as well. The importance of effective multilateral rules and disciplines in

governing international trade relations increases in direct proportion to the intensification of international competition in the marketplace.

For acceding governments, membership also puts at their disposal a strengthened and contractually binding international dispute-settlement mechanism. The importance of this mechanism is self-evident and its link with the need for security and fairness in trade relations is well recognised. Perhaps the most striking aspect of the dispute-settlement mechanism is the fact that the dispute-settlement body's findings and their implementation cannot be blocked by any member; the mechanism is automatic.

Finally, it is increasingly seen that the accession process helps reformist governments resist the pressures of sectional interests opposed to reforms that are being pursued in the long-term interests of economies as a whole. Governments can embark on the reform of expensively protected sectors, like industry and agriculture, and justify their actions as a price required by the WTO in return for the benefits of membership.

Why Does Accession Take So Long?

Each accession is a negotiation and is thus unique. For the same reasons, no deadlines or time limits are laid down in the accession process. Progress essentially depends on the openness of the applicant government's trade regime and the rapidity with which it can be brought into conformity with WTO obligations.

Vietnam and WTO

During the initial years of doi moi, Vietnam enjoyed remarkable levels of economic growth: the end of collectivised agriculture gave a substantial boost to the rural economy, while an influx of foreign investment coupled with liberalisation of private sector economic activity brought considerable benefits. By the second half of the 1990s, however, the economy was slowing, partly influenced by wider regional problems after the 1997 Asian crisis, but primarily because of domestic factors. Ari Kokko picks up the argument where Martin Gainsborough left off, asking how far that slowdown reflected a decline in Vietnam's commitment to the reform process, and also the extent to which the downturn reflected structural problems rather than temporary setbacks. His answers focus on three key areas: trade policy, state-owned enterprise (SOE) reform, and the position of the private sector. (ADB 2000)

On trade policy, Kokko paints a fairly positive picture. Vietnam's 2001 Bilateral Trade Agreement with the United States was a major landmark in the direction of eventual " World Trade Organisation" (WTO) accession, and there is plenty of evidence that Vietnamese exports have been enjoying a sustainable recovery in recent years. This reflects the outward orientation of private sector Vietnamese firms and of multinational corporations with operations in Vietnam. Substantial overseas development aid disbursements and private cash remittances (often transferred by overseas Vietnamese to relatives and business partners in the country) have helped boost Vietnam's balance of payments. State enterprise reform is another matter entirely. Like Gainsborough, Kokko insists that the lack of progress here is undeniable; most SOEs are loss-making and have continued to enjoy preferential access

to credit, while the bulk of 'equitisations' to date have not affected the largest and most troublesome state enterprises. Kokko notes that the private sector remains underdeveloped, faced with various forms of discrimination and limited access to credit. At the same time, he is more positive than Gainsborough in highlighting certain areas where private sector reform has proceeded quite rapidly. He praises the 1999 Enterprise Law, which has led to the registration of numerous new small and medium-sized enterprises (SMEs). Kokko also singles out support from international donors for private sector capacity-building – notably Japan's 'Miyazawa plan', which has provided substantial funding to nurture SME development. Ultimately he suggests that SOE's reform might be tacitly bypassed: 'future strategies should focus on the development of the private sector while accepting more gradual reform of the SOE sector'. He also expresses concern that Vietnam needs a better welfare and 'safety net' infrastructure to protect its citizens from the uncertainties of the market, and to reduce both urban and rural poverty.

After the problematic 1979 invasion and occupation of Cambodia, which blighted Vietnam's relations with much of the world during the 1980s, the emphasis was now on settling all disputes by negotiation. Ideology was now marginalised, whereas previously it had formed the core of Vietnamese foreign policy: pragmatism prevailed. Vietnam was particularly anxious to find ways of countering Chinese economic and strategic dominance in the region, and this helps explain Vietnamese enthusiasm for building stronger ties with other Southeast Asian countries – best seen in the decision to join the Association of Southeast Asian Nations (ASEAN). Another crucial juncture

was the normalisation of relations with the United States. Within ASEAN, Vietnam has acted as an informal leader for the 'new entrants' of the 1990s (the others were Burma, Cambodia and Laos). Yet the ASEAN summits held in Hanoi in 2001 lacked clear focus; Vietnam seemed to prefer ASEAN to adopt a lower profile, and was uneasy with recent moves towards ideas of 'flexible engagement', 'constructive intervention' or 'enhanced interaction', which would permit member states to comment critically on developments inside other states. Vietnam was attached to an older model of ASEAN, the so-called 'ASEAN way', based upon principles of consensus and non-interference - a much more comfortable model for a one-party state. Yet Vietnam also sought to use ASEAN membership as a means of pressing its claim for admission to other multilateral bodies such as the WTO, laying itself open to charges of crude pragmatism. In its relations with the rest of the world, Vietnam (like many other states) often wanted things both ways: the benefits of foreign investment without the constraints of playing by international economic rules, or the benefits of ASEAN membership without the pressure to conform to regional norms of behaviour. In a way, this duality resembles other aspects of Vietnam's post-doi moi order: Vietnam has persistently sought to take advantage of opportunities presented by globalisation and economic liberalisation, whilst avoiding the associated social and political costs.

One consequence of the perceived success of reforms during the early 1990s was that the Vietnamese authorities revised their economic targets for the period from 1991 to 2000. Instead of aiming for a doubling of the country's GDP over this period, as was originally intended before the Seventh Party

Congress in 1991, the target was changed to a doubling of GDP per capita (Socialist Republic of Vietnam [SRV] 1994). Assessing the achievements of the reforms, many foreign observers concurred, concluding, for example, that ' Vietnam appears well-positioned to become a new East Asian " dragon"' (Irvin 1995: 725).

However, these impressive achievements could not completely hide some of the structural and systemic weaknesses of the economy. By 1996, donors and foreign observers had highlighted several problems related to the import-substituting trade regime and the role of the state, in particular the continuing reliance on SOEs as the main vehicle of development (Kokko and Zejan 1996; Ljunggren 1996; Mallon 1996; United Nations Development Programme [UNDP] 1996).

On trade policy, concerns focused on the distorted incentives provided by the complex, non-transparent and highly restrictive trade regime. The combination of tariffs, quotas, import licensing requirements, foreign exchange controls and various other trade barriers created strong incentives in favour of import substitution in consumer goods and selected heavy industries - and a bias against export-oriented production. One paradoxical result was a rapid increase in imports: import-substituting industry in Vietnam, as elsewhere, was heavily dependent upon imported machinery, raw materials and intermediates. Consequently, although exports grew rapidly, import growth was even faster, resulting in growing trade and current account deficits. By 1995, the current account deficit exceeded US \$2. 6 billion, or 13 percent of GDP. Several problems were imminent. Would it be possible to finance large deficits without endangering future growth and <https://assignbuster.com/legal-barriers-for-foreign-investors-in-vietnam-economics-essay/>

macroeconomic stability? How would Vietnam's commitments to liberalize trade from around the year 2000 - mandated, for example, by Vietnam's membership of the ASEAN Free Trade Area (AFTA) and ambition to join the "World Trade Organisation" (WTO) - be realised? Would the promises to reduce tariffs be neutralised by the emergence of strong interest groups benefiting from, and therefore lobbying for, continued protectionism?

The most important result in terms of formal policy may be the agreement about a Bilateral Trade Agreement (BTA) between Vietnam and the US, which was signed in July 2000 and ratified in late 2001. The BTA is an important step towards Vietnamese membership in the WTO, and perhaps also a key step in Vietnam's continuing economic reforms. Unlike the AFTA agreement, which is based on consensus and does not prescribe severe sanctions against member countries that do not fulfil their commitments, both the BTA and eventual WTO membership are likely to come with stricter conditions, enforcement and sanctions. Moreover, the BTA allows Vietnam to reap some of the benefits (in terms of access to US markets) early on, while the perceived costs (resulting from opening the Vietnamese market to US firms) will come later. It is possible that these two features will strengthen the reform process: it will be difficult to default on reform promises once they have generated thousands of jobs that may be lost if promises are not fulfilled. The continuing increase in exports is another sign of progress in this area. In 1999 and 2000, exports grew at an annual rate of over 20 percent, which was more than four times the rate of domestic demand growth. This shows that an increasing share of the Vietnamese economy is integrated with the international economy, and that there is probably a gradual shift in

the balance of power from groups favouring inward-oriented policies to groups relying on contacts with the international economy. In fact, the current Ten-Year Socio-Economic Development Strategy sets up the goal that the export growth rate should be twice as high as the planned 7.5 percent GDP growth rate during the period 2001-10: if the target is achieved, the ratio of exports to GDP will exceed 90 percent by 2010.

Other important reforms have been made on the import side. Import tariffs have been reduced gradually, in line with Vietnam's AFTA commitments, and the road map for future tariff reductions under the agreement was published in early 2002. The tariff reduction scheme constitutes an important step to facilitate the long-term planning of Vietnamese producers: with a clear time-bound plan in place, there is less scope for interest groups to lobby for extended protection. Most quantitative restrictions have also been removed, and all domestic enterprises are now allowed to import any goods that are not subject to quotas. Yet some problems remain. The tariff structure remains complex. There is great dispersion of tariff rates in the range from zero to 100 percent, with higher rates on import-substituting goods and lower ones on imported inputs. This provides high effective rates of protection for local market-oriented industry. Various administrative measures, such as temporary import bans, have also been used to restrict imports of consumer goods. Summarizing a review on trade policy, CIEM (2002: 126) notes that this shows how 'many policy decisions tend to aim at "dealing with the problem on a case by case basis" rather than resolving it based on a consistent and overall approach'. Foreign trade transactions can also be controlled and restricted by the allocation of foreign exchange. The

State Bank of Vietnam controls and approves remittances of foreign currency abroad, and State Bank authorisation is required to borrow foreign currency, to convert dong to dollars, and to open offshore escrow accounts. Exporters are obliged to surrender a large share (at present 40 percent) of their foreign exchange earnings to the State Bank. For a long time, state enterprises and agencies had privileged access to foreign exchange (World Bank 1999b), and it is possible that these preferences still apply.

Vietnam has to deal with almost 100 anti-dumping lawsuits and trade disputes each year, in which domestic businesses often come off worst.

At the recent G20 Summit in Toronto, as ASEAN Chair, Prime Minister Nguyen Tan Dung called for G20 nations to ensure a sustainable economic recovery and fight against trade protectionism in all forms. He emphasised that Vietnam has to face many disguised protection measures in some developed countries, saying that G20 nations should continue to introduce specific measures to remove barriers to trade and foreign direct investment. These barriers have become obstacles for Vietnamese investors and exporters.

To some extent, these barriers, with stricter regulations on food hygiene and safety and anti-dumping, have had a positive impact on Vietnamese businesses who have to increase the quality of their products to compete against foreign rivals.

Tran Manh Canh, Deputy General Director of the Hanoi Trade Corporation (Hapro), says that his company exports many products to the Republic of Korea, which requires a high standard of food hygiene and safety. However, <https://assignbuster.com/legal-barriers-for-foreign-investors-in-vietnam-economics-essay/>

Hapro leaders consider these a good opportunity for local businesses to sharpen their competitive edge to penetrate the global market, adds Mr. Canh.

In addition to this, trade barriers have also posed numerous difficulties and challenges for Vietnamese businesses who do not have a proper understanding of this issue. Many local businesses find it hard to access information about the trade laws of countries that have commitments with Vietnam. Therefore, clarifying trade barriers and technical standards provided by partners and ensuring transparency in the origin of products are still big challenges for Vietnamese businesses when they export their products to foreign markets.

For instance, the European Union (EU) has an anti-dumping tax of 10 percent on Vietnamese leather shoes. The European Bicycle Manufacturers Association (EBMA) has requested a review and extension of the anti-dumping duty on imported Vietnamese bicycles. This affects the Vietnamese bike ind