

WTO Accession and SOEs in Viet Nam

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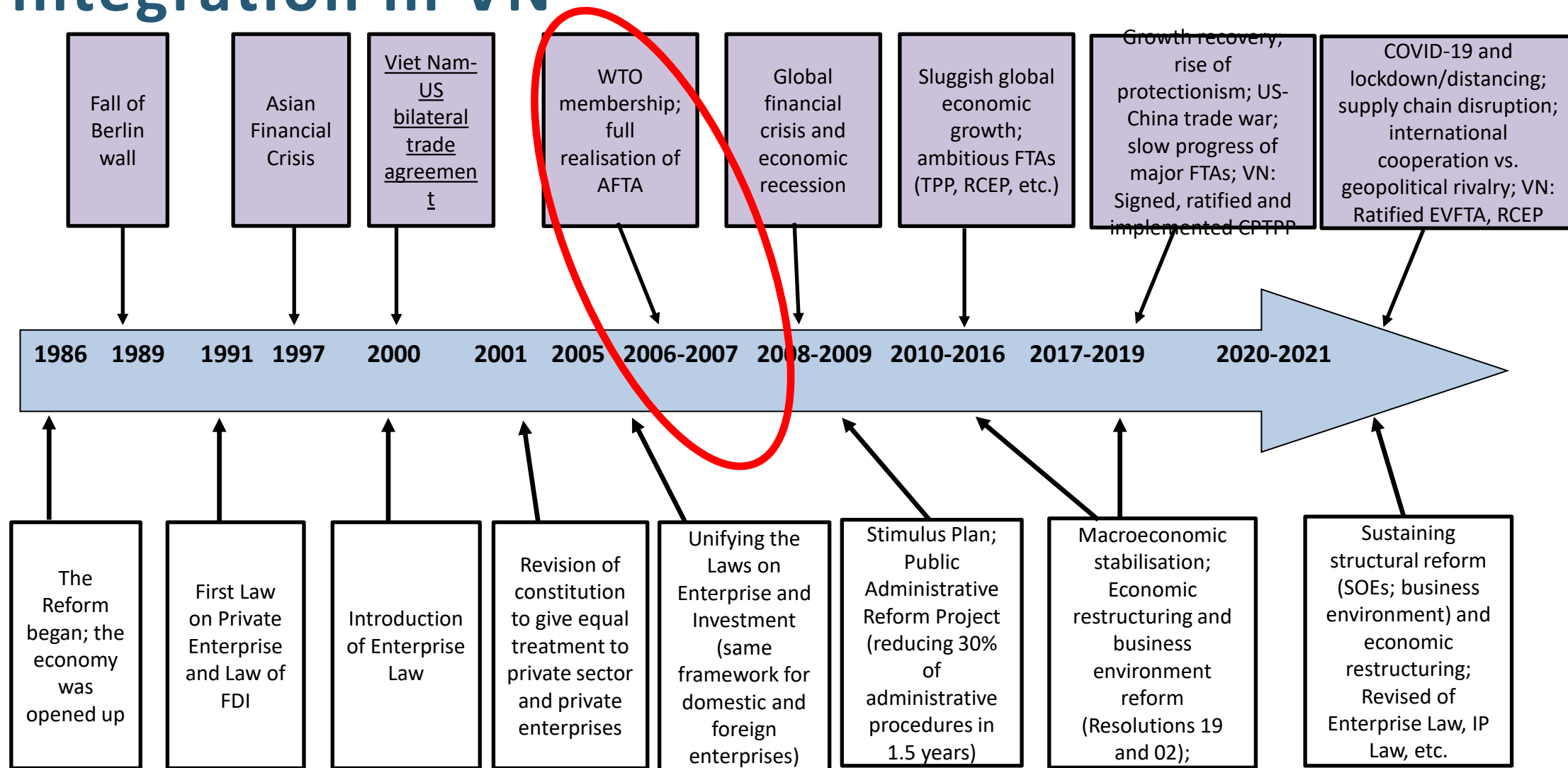
WTO Accession and SOEs in Viet Nam

1. Introduction
2. Key integration milestones of Viet Nam
3. Viet Nam's WTO Accession
4. SOE Reforms in Viet Nam
5. Viet Nam's WTO accession negotiation on SOEs
6. Progress of SOE reforms
7. Key Lessons

Introduction

- Since Doi Moi (Renovation) in 1986, Viet Nam's economic reforms focused on three pillars:
 - Market-oriented institutional reforms (including SOE reforms);
 - Macroeconomic stabilization;
 - Open-door policy / economic integration.
- Economic integration highly interactive with other pillars of reforms.
- 1989-1996, 2000-2007 and 2014-2019: comprehensive progress in economic integration and also impressive economic achievements.

Key milestones of economic reforms and integration in VN



Source: Update from Vo (2016)

Key integration milestones of Viet Nam

- Joined ASEAN in July 1995 and AFTA since 1996;
 - *First framework for trade liberalization: learning and adaptation;*
 - VN-US bilateral trade agreement: signed in 2000, implemented in 2001
 - *First comprehensive agreement arguably close to WTO standards;*
 - WTO accession in 2007;
 - Concluding negotiation of TPP and EVFTA in 2015;
 - Implemented CPTPP in January 2019 and EVFTA in August 2020.
- ➔ **WTO is neither the beginning nor the end of economic integration in Viet Nam**

Viet Nam's WTO accession

- Observer of GATT in 1994;
- Application in 1995;
- Formal negotiation started in 1998;
- Negotiations intensified during 2002-2006;
 - *Bilateral negotiations with 28 members;*
 - *14 multilateral negotiations.*
- Protocol of Accession on 15 November 2006;
- WTO membership on 11 January 2007.

SOE reforms in Viet Nam

➤ 1986-1988:

- *The 6th National CPV Congress in 1986 acknowledged the existence and role of the multi-sector economy (SOEs not the only sector);*
- *1987: enterprises were permitted: to have autonomy in production and business activities and independent accounting; to use revenues to finance expenditures, with no loss compensation by the State.*
- *1988: two-tier banking system (State Bank of Viet Nam and commercial banks, including State-owned commercial banks).*

SOE reforms in Viet Nam (2)

- 1989-1996:
 - *SOE reforms via a number of direct measures, namely assignment, sale, contract, equitization, and transformation of some SOEs to other forms of ownership; mergers to form general corporations; abolished direct subsidies to SOEs in fundamental to further improve business efficiency of SOEs;*
 - *Other indirect reforms toward price liberalization, encouragement of FDI, diversification of bank ownership, etc.*
- 1997-1999: reforms slowed down because of focusing on mitigating impacts of Asian financial-monetary crisis.

SOE reforms in Viet Nam (3)

- 2000-2007:
 - *SOE reforms continued via a number of direct measures as before, such as assignment, sale, contract, equitization, and transformation of some SOEs to other forms of ownership; some big general corporations were transformed into State business groups;*
 - *Other indirect reforms: Enterprise Law and Investment Law for more levelled playing field; price liberalization;*
- 2008-2012: Slowed down because of global financial crisis, domestic inflation and focus on aggregate demand adjustment policies.
 - *Cases with violations of Competition Law.*

SOE reforms in Viet Nam (4)

➤ Since 2013:

- *Restructuring SOEs became a major pillar of national economic restructuring plan;*
- *Definition of SOEs changed in 2014 with the Enterprise Law (during TPP negotiation);*
- *Equitization became a priority;*
- *Other reforms related to separation of State ownership and State policy-making authorities; competition policy; etc.*
- *Still: foreign ownership limits at domestic banks, including State-owned commercial banks?*

SOE reforms in Viet Nam (5)

- Key implications for new WTO members:
 - *SOE reforms in parallel/consistency with WTO accession negotiations;*
 - *Scenarios for SOE commitments under WTO: accession-bound only or roadmap for phasing in commitments after the accession?*
 - *State-owned commercial banks: commitments in services, SOEs, competition and other?*

Viet Nam's WTO accession negotiation on SOEs

➤ May 2003:

- *Viet Nam presented new developments in restructuring state enterprises and converting them to equity ownership, with the creation of a fund for this purpose.*
- *General concerns/request for information about trading rights, broader economic regime, among others.*

➤ December 2003:

- *Viet Nam insisted that its list of state trading enterprises is a comprehensive list based on WTO provisions. Several members called for more information on these and a number of other state-owned companies to see whether they comply.*

Viet Nam's WTO accession negotiation on SOEs (2)

- December 2004:
 - *Several members requested more information on Viet Nam's SOEs, including their products and activities and their role in international trade. Viet Nam responded that it had remarkably narrowed its list of SOEs since the last meeting and that their activities included national defence and security, and poverty elimination.*
- September 2005 (before the National Assembly meeting in Viet Nam with a plan to issue a number of laws)
 - *One comment still called for clarification for SOEs and other "central issues"*

Viet Nam's WTO accession negotiation on SOEs (3)

- Notification on State trading enterprises: first submitted in 2000, with three subsequent revisions (two last revisions in 2006, just before conclusion of accession negotiation).
 - *Final revision: shorter list (6 products and 15 enterprises in 2006, compared to 13 products and 106 enterprises in 2000).*

Viet Nam's WTO accession negotiation on SOEs (4)

➤ Key commitments and related aspects:

- *Viet Nam has no definition on State trading enterprises; only for SOEs as “enterprises, including equitized enterprises, in which the State owned more than 50 per cent of the shares.”*
- *In general: compliance with WTO principles on non-discrimination; Commercial considerations only are to guide export-import decisions; however, these commitments only for State trading enterprises, not necessarily for SOEs (VCCI WTO Center 2011).*
- *But Viet Nam made specific commitment for SOEs and State trading enterprises to rely only on commercial considerations in their export-import decisions; no discrimination; no direct or indirect intervention by the State.*

Viet Nam's WTO accession negotiation on SOEs (5)

- 1st Trade policy review by Viet Nam (2013)
 - *“Regarding the reorganization of the SOEs sector, the Master Plan follows the project on “Restructuring of SOEs, focusing on State economic groups, general corporations in the period 2011–2015” approved by the Prime Minister in 2012, and which instructed the ministries to classify SOEs according to the nature of their activities, their role in the economy, and the desired level of State ownership.”*
 - *“The Master Plan reiterates the classification and re-organization of SOEs, now with the objective that SOEs are concentrated in the defense industries, natural monopolies, high-tech sectors, and in industries supplying primary goods and services.”*

Viet Nam's WTO accession negotiation on SOEs (6)

- 1st WTO Trade policy review by Viet Nam (2013)
 - *“The State would equitize nearly half of the 1,309 SOEs. The remaining 692 SOEs would later be reorganized into 44 economic groups and general corporations with 150 subsidiary companies.”*
 - *“The Master Plan instructs SOEs to restructure their investment portfolio and business lines so as to reduce the scope of their activities on their core business functions, and to divest in their non-core businesses and in joint-stock companies in which the State does not need to be the dominant shareholder.”*

Viet Nam's WTO accession negotiation on SOEs (7)

- 1st WTO Trade policy review by the Secretariat
 - *“Distortions to competition can be the consequence of government intervention policies and of weak policies to address anti-competitive practices of large business groups, including those of SOEs.”*
 - *“The authorities remain concerned about potential job losses and corporate insolvencies after free rein is given to market forces in sensitive activities dominated by SOEs.”*
 - *“They [FDI] seem more efficient and therefore more competitive than SOEs”*
 - *Data and information may be quoted from all possible sources, including the media (i.e. not just official reports)*

Viet Nam's WTO accession negotiation on SOEs (8)

- 2nd WTO Trade Policy Review by Viet Nam
 - *“During the reporting period, the Government of Viet Nam had drafted a new Enterprise Law to replace the Law of Enterprise No. 68/2014/QH13. This Law has been passed by the National Assembly and it will come into force from 1 January 2021.”*
 - *“In this new Law, SOEs are defined as enterprises where the State holds more than 50% of the charter capital, the total number of voting shares according to regulations. This provision is in accordance with commitments in several international treaties to which Viet Nam is a party such as the Comprehensive and Progressive for Trans-Pacific Partnership (CPTPP), the Free Trade Agreement between Viet Nam and the European (EVFTA).”*

Viet Nam's WTO accession negotiation on SOEs (9)

Prime Minister issued Decision No. 58/2016/QD-TTg dated 28 December 2016, which decided on criteria to classify 240 SOEs to prepare for equitization of SOEs in 2016-2020

Decree No. 126/2017/ND-CP dated 16 November 2017, prescribing on the transformation of an SOE (under old definition with 100% state capital contribution) into a joint stock company.

Resolution No. 09/NQ-CP dated 3 February 2018 on the establishment of the Commission for the Management of State Capital at Enterprises. This Commission is assigned by the Government to exercise the rights and responsibilities of the representative of SOEs

Prime Minister issued Decision No. 26/2019/QD-TTg dated 15 August 2019, requiring a number of state-owned enterprises to complete the equitization process in 2020.

2nd WTO Trade Policy Review by Viet Nam

Viet Nam's WTO accession negotiation on SOEs

(10)

- 2nd WTO Trade Policy Review by Viet Nam
 - *During 2016-2020: 174 equitization plans approved by competent authorities.*
- 2nd WTO Trade Policy Review by the Secretariat
 - *“There is concern over the National Competition Council's independence and impartiality, particularly when SOEs are involved in an anti-competition case.”*
 - *“State-owned enterprises (SOEs) play a critical, though declining, role in the production, processing, and trade of agricultural products.”*
 - *“During the review period, the authorities focused on the restructuring of SOEs to promote equitization and divestment of investment capital to achieve efficiency of state capital.”*

Progress of SOE reforms

- CIEM (2019): Equitization of 518 SOEs and subsidiaries in 2011-2015;
- Ministry of Finance (2021): Equitization plan approved for 178 enterprises, but 91 fall short of the target.
- Ministry of Finance (2022): divestment from 18 SOEs with value of 1.665 trillion dong, proceedings of 4.402 trillion dong.
- Assessment by Ministry of Planning and Investment by 2021: equitized SOEs had improved efficiency, but the SOE sector as a whole remained inefficient.

Key lessons

- Envisage a sufficiently long-term plan/strategy for SOE reforms that consistently emphasizes the direction towards economic integration centering on WTO membership.
 - *Incremental steps may be necessary.*
- If considering WTO accession as the end point → hard to convince about post-WTO reforms of SOEs.
- Building consensus:
 - *What should be expected, trade-offs during negotiation*
 - *Complementary reforms: why and how?*

Key lessons (2)

- Intensive trainings for negotiators
 - *Negotiation skills;*
 - *Inter-agency coordination and cooperation in WTO negotiations and those in charge of/related to SOEs reforms.*
 - *Build capacity for analysts*
- Build capacity for lawmaking
 - *Legal experts;*
 - *Good regulatory practices (regulatory impact assessment, public consultation, international regulatory cooperation, etc.).*

Key lessons (3)

- Shared experiences from existing members (negotiation, promise to fulfill after accession, etc.).
- Non-market economy vs. market economy (lessons of China and Viet Nam).

Knowing which member is most demanding.

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Thank you!