

The Relationship Between the BTA and WTO Accession Requirements

BTA Chapter	BTA Obligations	Relationship to WTO Obligation	Relationship to WTO Accession Negotiations	WTO Terms of Accession for the Four Most Recently Acceded WTO Members (Macedonia, Armenia, Taiwan, China)
CHAPTER I: TRADE IN GOODS	Agriculture Other than agricultural tariffs, the BTA does not contain specific provisions on agriculture.	Agriculture The WTO Agriculture Agreement provides rules on domestic support (e.g., reduce trade-distortive domestic supports above certain threshold) and export subsidies (e.g., reduce old ones/prohibit new ones). These provisions are not in the BTA but must be undertaken to join the WTO.	Agriculture WTO accession requires adherence to the WTO Agriculture Agreement, the provisions of which are not negotiated by individual acceding countries. Applicants negotiate agricultural tariffs as well as commitments on domestic supports and export subsidies.	Agriculture <i>Macedonia, Armenia, Taiwan and China:</i> Commit to apply Agreement upon accession. <i>Macedonia, Armenia, Taiwan, and China:</i> -- Tariff levels (see above) -- Domestic support (NIL ¹) -- Export subsidies (None ²)
CHAPTER I: TRADE IN GOODS	Rules of Origin The BTA does not contain provisions on rules of origin.	Rules of Origin WTO Rules of Origin (ROO) Agreement requires such rules to be transparent, non-distortive, and administered impartially. These rules are not in the BTA but must be undertaken to join the WTO.	Rules of Origin WTO accession requires adherence to the ROO Agreement, the provisions of which are not negotiated by individual acceding countries. Applicants have occasionally sought to negotiate transition period to implement ROO Agreement.	Rules of Origin <i>Macedonia, Armenia, Taiwan, and China:</i> Commit to apply Agreement upon accession. <i>Macedonia, Armenia, Taiwan and China:</i> No transition periods.
CHAPTER I: TRADE IN GOODS	Information Technology The BTA does not cover tariffs on information technology products.	Information Technology Over 60 WTO Members are part of the Information Technology Agreement (ITA) under which they have agreed to reduce ITA tariffs to zero.	Information Technology To date, all recently acceding countries are part of the ITA and have reduced to zero tariffs on information technology products.	Information Technology <i>Macedonia, Armenia, Taiwan and China:</i> All have agreed to reduce ITA tariffs to zero.

¹ “NIL” means that the Member has no domestic support reduction commitments (because their domestic support measures are not trade-distortive or because they are below the relevant “*de minimis*” threshold).

² “None” means that the Member committed to maintain no export subsidies after accession.

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<p>CHAPTER II: INTELLECTUAL PROPERTY RIGHTS</p> <p>(Chapter II is modeled on the WTO TRIPS Agreement)</p>	<p>TRIPS Minus Chapter II includes most, but not all, TRIPS obligations.</p>	<p>TRIPS Minus The TRIPS agreement contains additional provisions. These include: -- MFN (i.e., do not discriminate among trading partners with respect to IPR protection); -- Geographic indications (unlike the BTA, the TRIPS protects geographic indications).</p>	<p>TRIPS Minus WTO accession requires full adherence to the TRIPS Agreement, the provisions of which are not negotiated by individual acceding countries.</p> <p>Accession will require Vietnam to take on those provisions of the TRIPS not included in BTA Chapter II, such as MFN and geographic indications.</p>	<p>TRIPS Minus n/a</p>
<p>CHAPTER II: INTELLECTUAL PROPERTY RIGHTS</p> <p>(Chapter II is modeled on the WTO TRIPS Agreement)</p>	<p>TRIPS Plus In some cases, Chapter II provides additional obligations not contained in TRIPS. These include: -- longer term of copyright protection for works not calculated on life of author [Article 4(4)] -- extension of trademark protection to certification marks; [Article 6(1)] -- obligation to provide a trademark registration system; [Article 6(4)] -- longer terms of trademark protection; [Article 6(8)] and -- obligation to protect encrypted program-carrying signals. [Article 5]</p>	<p>TRIPS Plus None</p>	<p>TRIPS Plus WTO Members could require Vietnam to multilateralize most TRIPS Plus provisions, pursuant to MFN obligation in TRIPS (Article 4).</p> <p>However, TRIPS Article 4 may not cover the BTA obligation to protect encrypted program-carrying satellite signals (Chapter II, Article 5). Although, this form of IP does not fall within the TRIPS definition of intellectual property [TRIPS Article 1(2)] and therefore would not be subject to MFN, recent Appellate Body jurisprudence leaves issue unresolved.</p>	<p>TRIPS Plus <i>Macedonia, Armenia, Taiwan and China:</i> Commit to apply full TRIPS Agreement upon accession.</p> <p><i>Taiwan and China:</i> Taiwan and China’s Working Party reports provided extensive detail on specific steps they would take to comply with TRIPS. Taiwan’s Working Party also includes a separate commitment for “effective enforcement”.</p>

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<p>CHAPTER II: INTELLECTUAL PROPERTY RIGHTS</p> <p>(Chapter II is modeled on the WTO TRIPS Agreement)</p>	<p>TRIPS Transitions Article 18(1) – Vietnam agreed to phase in obligations in Chapter II according to a specific timetable, which ends in June 2004.</p> <p>Article 18(3) – obligates Vietnam to comply fully with TRIPS upon WTO accession, even if accession occurs before expiration of the BTA’s phase in period.</p>	<p>TRIPS Transitions TRIPS Articles 65-66 provides phase-in periods for the agreement. For developing countries, this period expired in 2000. United Nations (UN) classified LDCs have until 2006 to implement the TRIPS Agreement.</p>	<p>TRIPS Transitions According to the BTA timetable, Vietnam will implement Chapter II by June 2004 – ahead of Vietnam’s 2005 accession target.</p> <p>Transition period in the TRIPS expired for developing countries.</p> <p>Applicants have occasionally sought to negotiate a transition period to implement TRIPS Agreement.</p>	<p>TRIPS Transitions <i>Macedonia, Armenia, Taiwan and China:</i> no transition period</p>
<p>CHAPTER III: TRADE IN SERVICES</p> <p>(Chapter III is modeled on the GATS)</p>	<p>GATS Minus The BTA incorporates most, but not all, GATS obligations</p>	<p>GATS Minus The GATS contains a few additional obligations, such as the requirement to establish an enquiry point for trade in services [GATS Article III (4)] as well as provisions concerning recognition, payments and transfers, and balance of payment.</p>	<p>GATS Minus WTO accession requires full adherence to the GATS, the provisions of which are not negotiated by individual acceding countries.</p> <p>Accession will require Vietnam to take on those provisions of the GATS not included in BTA Chapter III.</p>	<p>GATS Minus <i>Macedonia, Armenia, Taiwan and China:</i> Commit to apply full GATS Agreement upon accession.</p>

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CHAPTER III: TRADE IN SERVICES (Chapter III is modeled on the GATS)	Specific Services Commitments³ Annex G lists the specific market access and national treatment commitments that Vietnam made for a wide range of services (including telecom, banking, professional, tourism).	Specific Services Commitments n/a	Specific Services Commitments³ Acceding governments negotiate their services commitments in bilateral negotiations. WTO Members will expect Vietnam to multilateralize Annex G of the BTA pursuant to the GATS MFN obligation (Article II). Acceding countries have typically made commitments for a large number of services sectors. Most acceding countries made commitments for services covered by the BTA (other than transport services for which Vietnam made no commitment).	Specific Services Commitments³ <i>Macedonia:</i> Made commitments for all key sectors, except audiovisual, medical, health, social, and maritime. <i>Armenia:</i> Made commitments for all key sectors, except maritime. <i>Taiwan:</i> Made commitments for all key sectors, except medical and maritime. <i>China:</i> Made commitments for all key sectors, except social and recreational.
CHAPTER III: TRADE IN SERVICES (Chapter III is modeled on the GATS)	GATS Annexes Annex F incorporates most provisions of 3 GATS Annexes: Financial Services, Movement of Natural Persons, and Telecom	GATS Annexes In addition to the 3 Annexes incorporated into the BTA, the GATS also has an Annex on Air Transport Services.	GATS Annexes WTO accession will require Vietnam to assume the GATS Annex on Air Transport Services.	GATS Annexes <i>Macedonia, Armenia, Taiwan and China:</i> Commit to apply all GATS Annexes upon accession.

³ This chart covers only the services sectors for which governments made market access and national treatment commitments. It does not cover the limitations that governments undertook for the various modes of supply, such as telecom, insurance etc. For a sector by sector analysis of commitments made by Vietnam (in the BTA) and WTO acceding governments, see the *Comparative Trade Commitments Chart* prepared by the U.S.-Vietnam Trade Council Education Forum (www.usvtc.org).

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<p>CHAPTER III: TRADE IN SERVICES</p> <p>(Chapter III is modeled on the GATS)</p>	<p>Telecom Reference Paper Annex F incorporates the WTO Telecom Reference Paper into the BTA.</p>	<p>Telecom Reference Paper WTO Members incorporate the Telecom Reference Paper as an “additional commitment” pursuant to GATS Article XVIII.</p>	<p>Telecom Reference Paper Vietnam has undertaken this obligation in the BTA but will need to include it as an “additional commitment” in its GATS Schedule.</p> <p>All acceding countries have undertaken the WTO Telecom Reference Paper as an “additional commitment.”</p>	<p>Telecom Reference Paper <i>Macedonia, Armenia, Taiwan and China:</i> Commit to apply full Telecom Reference Paper upon accession.</p>
<p>CHAPTER IV: DEVELOPMENT OF INVESTMENT RELATIONS</p>	<p>General Investment The BTA contains extensive provisions designed to facilitate cross-border investment, including MFN, NT, guarantee of fair and equitable treatment, prohibitions on certain expropriations, and TRIMs.</p>	<p>General Investment Other than TRIMs, these provisions have no analogue in the WTO. The BTA’s TRIMs obligations are based on the WTO Agreement on Trade-Related Investment Measures (TRIMs).</p>	<p>General Investment There are no WTO provisions that would require Vietnam to multilateralize most of Chapter IV as part of its WTO accession. (other than TRIMs – see below)</p>	<p>General Investment <i>Macedonia, Armenia, Taiwan and China:</i> Other than TRIMs, these accessions did not involve analogous investment provisions.</p>
<p>CHAPTER IV: DEVELOPMENT OF INVESTMENT RELATIONS</p>	<p>TRIMs Article 11 – requires Vietnam to eliminate those trade-related investment measures that are inconsistent with the WTO TRIMs Agreement (contained in Annex I) according to a specific timetable.</p>	<p>TRIMs The substantive provisions of the WTO TRIMs Agreement are incorporated into BTA.</p>	<p>TRIMs WTO accession will require Vietnam to apply the TRIMs Agreement to all WTO Members, the provisions of which are not negotiated by individual acceding countries.</p> <p>WTO accession in 2005 could require Vietnam to apply full TRIMs Agreement upon accession.</p>	<p>TRIMs <i>Macedonia, Armenia, Taiwan and China:</i> Commit to apply Agreement upon accession.</p>

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CHAPTER IV: DEVELOPMENT OF INVESTMENT RELATIONS	TRIMS Transition Vietnam must eliminate trade balancing and foreign exchange TRIMs upon entry into force. Vietnam must eliminate all other TRIMs by the earlier 2006 or WTO accession.	TRIMS Transition TRIMs Article 5 provided phase-in periods for the Agreement. For developing countries, this period expired in 2000. United Nations (UN)-classified LDCs had until 2002 to implement the TRIMs Agreement.	TRIMS Transition The original transition periods in the TRIMs Agreement have expired. Applicants have occasionally sought to negotiate additional transition periods to implement the TRIMs Agreement.	TRIMS Transition <i>Macedonia, Armenia, Taiwan and China:</i> No transition periods.
CHAPTER V: BUSINESS FACILITATION	Business Facilitation Chapter V establishes commitments designed to facilitate business activity.	Business Facilitation No analogous WTO obligation.	Business Facilitation Not applicable because no analogous WTO obligation.	Business Facilitation <i>Macedonia, Armenia, Taiwan and China:</i> Not applicable because no analogous WTO obligation.
CHAPTER VI: TRANSPARENCY RELATED PROVISIONS AND RIGHT TO APPEAL	Publication Article 1 – requires parties to publish laws, etc. pertaining to matters covered by the Agreement.	Publication Key WTO transparency provisions (GATT Article X/GATS Article III/TRIPS Article 63) contain substantively similar obligations (i.e., publication of all laws, etc. affecting trade in goods, services, and IPR).	Publication Implementing of Article 1 will assist Vietnam meet its accession requirements.	Publication <i>Macedonia, Armenia, Taiwan and China:</i> Acceding governments assume these obligations upon accession.
CHAPTER VI: TRANSPARENCY RELATED PROVISIONS AND RIGHT TO APPEAL	Import Licensing Article 8 – requires parties to follow the WTO Import Licensing Agreement.	Import Licensing The WTO Import Licensing Agreement is incorporated into the BTA.	Import Licensing WTO accession will require Vietnam to apply the Import Licensing Agreement to all WTO Members, the provisions of which are not negotiated by individual acceding countries.	Import Licensing <i>Macedonia, Armenia, Taiwan and China:</i> Commit to apply Agreement upon accession. <i>Macedonia:</i> Will maintain certain import licensing restrictions until no later than 31 December 2003. <i>China:</i> China also undertook specific commitments in its protocol regarding implementation of the Import Licensing Agreement.

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CHAPTER VI: TRANSPARENCY RELATED PROVISIONS AND RIGHT TO APPEAL	WTO Transparency Plus Chapter VI also includes several “WTO plus” requirements, including providing opportunity to comment on draft laws (Article 3), and maintaining an official journal (Article 5)	WTO Transparency Plus No analogous general WTO provisions. The SPS and TBT Agreements contain notice and comment provisions for specific circumstances.	WTO Transparency Plus The WTO’s transparency provisions do not include MFN and therefore would not require Vietnam to multilateralize these “WTO plus” provisions.	WTO Transparency Plus <i>Macedonia, Armenia, Taiwan and China:</i> Not applicable because there are no analogous WTO provisions, but acceding governments have specified transparency implementation plans in Working Party Reports.
CHAPTER VII: GENERAL PROVISIONS	Consultations Article 5 – establishes a consultation mechanism to discuss operation of the agreement.	Consultations and Dispute Settlement The WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) sets forth procedures to resolve disputes between Members regarding alleged violations of the WTO agreements.	Consultations and Dispute Settlement WTO accession provides government access to the WTO’s dispute settlement procedures. Upon accession, these procedures will allow Vietnam to challenge allegedly WTO-inconsistent actions of other WTO Members.	Consultations and Dispute Settlement <i>Macedonia, Armenia, Taiwan and China:</i> All acceding countries have access to the WTO dispute settlement procedures upon accession.