SIGNIFICANCE & IMPACT OF THE JAPAN-VIETNAM AGREEMENT FOR THE LIBERALIZATION, PROMOTION & PROTECTION OF INVESTMENT

Introduction

To boost flagging foreign investor confidence in Vietnam and to stem ebbing levels of foreign direct investment ("FDI") into the Socialist Republic, the governments of Vietnam and Japan inked an agreement for The Liberalization, Promotion And Protection Of Investment ("LIPPIA" or "the Agreement") in Tokyo on 14 November 2003.

Signed at the Japanese Ministry of Foreign Affairs by Vietnamese Minister of Planning and Investment Vo Hong Phuc and Japanese Minister of Foreign Affairs Yoriko Kawaguchi, the Agreement was hailed by both countries as a big step forward in the progressive liberalization of Vietnam's tightly-controlled market.

Japan viewed the LIPPIA as an in-principal guarantee of "national treatment and most-favored national treatment to the investors and their investments of both countries (sic) at the stage of pre-investment" and expects it to contribute towards "creating a more transparent and favorable environment for the investors in each country"[i].

Phuc was likewise "very optimistic" about the investment climate that the LIPPIA would foster, and further assured investors that from henceforth, "there will be no sudden change in the rules of the game"[ii].

Against such a backdrop, this article sets out to explore the following issues:

- The scope of application and salient features of LIPPIA;

- Its impact on both potential investors and existing investors in Vietnam;

- How it compares to other bilateral trade agreements signed by Vietnam such as the U.S.-Vietnam Agreement on Trade Relations of July 2000 ("the U.S.-Vietnam BTA"); and

- Whether, if at all and if so how, the Agreement will accelerate Vietnam's goal of joining the World Trade Organization ("WTO") in 2005.

Scope Of Application And Salient Features

Comprising 23 articles, two annexures and a 3-sheet Agreed Minutes providing clarifications on applications and interpretations of the Agreement , all of which are contained in 25 pages, the LIPPIA is only a fifth the thickness of the 125-page U.S.-Vietnam BTA. Its apparent brevity, however, belies its significance to the two signatory countries in that the LIPPIA is viewed as a landmark agreement to both Japan and Vietnam[iii].

<u>*Investor and investment defined*</u>

Drafted broadly, the LIPPIA is intended to apply to investors who are natural persons as well as a wide spectrum of legal persons as defined under both Vietnamese and Japanese law[iv]. The type of investments contemplated is also as wide-ranging, if not more so, covering "every kind of asset owned or controlled, directly or indirectly, by an investor"[v] in both countries, including the following:

- A duly constituted enterprise;

- Shares, stocks or other forms of equity financing and derivative rights therein;

- Bonds, debentures, loans and other forms of debt financing and derivative rights therein;

- Rights under contracts ranging from turnkey and construction contracts to management and revenue-sharing contracts;

- Claims to money and to any performance under contract having a financial value;

- Intellectual property rights including trademarks, industrial designs, copyright and patents;

- Concession rights such as those for the exploration and exploitation of natural resources;

- Property rights, both tangible and intangible, and relating to both movable and immovable property, such as leases, mortgages, liens and pledges; and

- Amounts earned from investments, including profit, interest, capital gains, dividends, royalties and fees[vi].

National treatment and Most Favored Nation status

Under the Agreement, the in-principle guarantee of national treatment and most favored nation status is generally accorded to investors and investments of both countries in the following areas:

- Investment activities[vii];

- Access to all manners of courts and administrative tribunals to pursue or to defend one's rights[viii];

- Compensation for losses due to war or a state of emergency[ix]; and
- Taxation measures[x].

What it means is that an investor from Country A investing in Country B will be treated by the government of Country B as if he were an investor from Country A in these aspects[xi].

Lesser degrees of preferential treatment

The foregoing stands in contrast against the lesser degree of preferential treatment accorded to investors in other circumstances, namely applications for entry, sojourn or residence by a foreigner for the purposes of investment ("investment-linked immigration permits"), and the expropriation or nationalization of investments.

In considering applications for investment-linked immigration permits, the LIPPIA only obliges either country to "give sympathetic consideration"[xii].

In the event of an expropriation or nationalization of investments, the standard of treatment to be applied is a "non-discriminatory" one[xiii]. Non-discrimination is, in fact, one of four pre-requisites that must be satisfied before an expropriation or nationalization exercise can be carried out[xiv].

The other three pre-requisites are:

- the exercise must be carried out for a public purpose;

- it must be in accordance with due process of law; and

- there must be prompt, adequate and effective payment of compensation[xv].

Prohibition against imposition of performance requirements

The most significant aspect of the LIPPIA, however, is the manner in which it prohibits the government of both signatory countries from imposing any performance requirement as a condition for investment activities taking place within their respective territory.

In all, there are 10 circumstances in which quotas or mandatory criteria cannot be imposed[xvi], namely:

- Exporting a specified level or percentage of goods or services;
- Achieving a specified level or percentage of domestic output;
- Purchasing, using or according a preference to goods produced or services provided domestically, or to purchase domestically produced goods or services;
- Pegging the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows of an investor's investments;
- Restricting sales of goods or services produced by an investor's investments by pegging such sales to the volume or value of that investor's exports or foreign exchange earnings;
- Appointing individuals of a particular nationality as executives, managers or members of boards of directors;
- Transferring technology, production processes or other proprietary knowledge to a specified natural or legal person unless this requirement is imposed or enforced by a court, administrative tribunal or competition authority to rectify an alleged violation of competition laws or such transfer is undertaken in accordance with the Agreement on Trade-Related Aspects of Intellectual Property Rights[xvii];
- Locating the global or regional headquarters of an investor within its territory;
- Achieving a specified level or value of research and development within its territory; or
- Supplying goods produced or services provided by an investor to a regional or global market exclusively from its territory.

Notwithstanding this list, both countries are not precluded from prescribing or continuing to prescribe performance requirements in the latter five categories of activities, if the imposition has the effect of benefiting foreign investors and their investments in the country[xviii].

Such prohibition is unprecedented for both Japan and Vietnam, particularly the latter, which, despite opening its doors towards a more capitalistic market-oriented economy, in 1986[xix], is still regarded as a very tightly controlled market.

Other instances of openness

Besides the foregoing, other pro-investment provisions under the Agreement include the following:

- Prompt and hassle-free transfer into and out of each country by foreign investors of investment-related payments such as capital, profits, interests, dividends, royalties, compensation on expatriation, sums in settlement of investment disputes and salaries[xx];
- Greater access to and more prompt publication of laws, regulations, administrative procedures and rulings and judicial decisions of general application and investment-related international agreements[xxi];

- Reciprocal recognition of assignment or subrogation of payments to a foreign investor under an investment-related indemnity, guarantee or contract of insurance by the government of the other country or its designated agency;

- The establishment of a joint committee to achieve the objectives of the Agreement via discussions and reviews of among other things, the implementation and operation of the Agreement and the exceptional measures adopted, maintained, reduced or eliminated hereunder[xxii]; and

- Taking measures to ensure that local and provincial authorities comply with the obligations under the Agreement.

Exceptions

As a matter of principle and practice, promises of national treatment, most favored nation status and even prohibitions against impositions of performance requirements, if at all given, in the context of bilateral trade and investment treaties, are never accorded *carte blanche*. Such "favoritism" goes against the principle of sovereignty of the state, and hence, as a general rule, is always subject to exceptions and restrictions.

In the Agreement, the main exceptions are set out by way of two provisions[xxiii] which cross-refer to two annexures each with a list of sectors or matters in both countries in which either state may take measures inconsistent with its obligation therein to provide national treatment or most favored nation status, or which amount to a performance requirement (collectively, "exceptional measures" under the LIPPIA).

Generally, each country is obliged to duly notify the other country of all existing exceptional measures in respect of the sectors or matters listed in the two annexures on the date the LIPPIA comes into force[xxiv].

In turn, due notification is defined[xxv] as including the following:

- the sector and sub-sector in question;

- the measure taken;

- the legal source of the measure imposed;

- a summary of the measure taken; and

- the purpose for taking the measure.

Apart from the different sectors or matters listed therein, the differences between the two annexures pertain to the obligations of the countries vis-à-vis one another upon imposing exceptional measures after the entry into force of the Agreement.

Annex I

To impose exceptional measures in the sectors or matters listed in Annex I after LIPPIA comes into force, the country doing so must duly notify the other country of the matters listed in the foregoing paragraph as soon as possible[xxvi], and upon request by the other country, hold consultations in good faith so as to achieve mutual satisfaction[xxvii].

The sectors or matters listed under Annex I are as follows[xxviii]:

Japan	Vietnam
1. Fisheries in territorial waters 2. Explosives 3. Aircraft 4. Arms 5. Nuclear energy 6. Aerospace 7. Electricity 8. Gas 9. Broadcasting 10. Freight forwarding 11. Financial services 12. Public monopoly (maintenance, designation, elimination or privatization) 13. State enterprise (maintenance, designation, elimination or privatization) 14. Subsidies 15. Land transactions	1. Broadcasting and television 2. Production and publication of cultural products 3. Oil and gas exploitation, and mining of precious minerals 4. Fishing in territorial waters 5. Timber exploitation of natural forest 6. Arms, ammunition and explosives 7. Gambling 8. Land and house ownership and utilization 9. Operation of river ports, sea ports and airports 10. Purchase of shares in state-owned enterprises 11. Subsidies

Annex II

The sectors or matters listed under Annex II are as follows[xxix]:

Japan	Vietnam
1. Primary production in agriculture, forestry and fisheries not covered under Annex I 2. Mining 3. Petroleum 4. Biological preparations 5. Leather and leather products 6. Heat supply 7. Water supply and waterworks 8. Telecommunications 9. Railway transport 10. Omnibus 11. Water transport 12. Air transport 13. Security 14. Aircraft registration 15. Shipping	1. Horizontal matters (applied to all sectors and sub-sectors of this Annex) 2. Legal services 3. Accounting, auditing and book-keeping services 4. Taxation services 5. Advertising services 6. Value-added telecommunication services 7. Basic telecommunication services 8. Voice telephone services (includes fixed local, long distance and international calls) 9. Telecommunications equipment (construction, installation, operation and maintenance) 10. Audio-visual services 11. Insurance services 12. Banking and other financial services 13. Real estate 14. Travel agencies and tour operators 15. Transportation 16. Processing of paper, vegetable oil, milk, cane sugar and domestically-produced wood 17. NPK fertilizer, beer and cigarettes 18. Automobile manufacturing and assembly 19. Distribution 20. Electricity and domestic air transport

Unlike the sectors or matters listed in Annex I, those in Annex II are more onerous for each respective country to comply with in the sense that both countries shall, in respect of these sectors or matters:

- endeavor to progressively reduce or eliminate any exceptional measures previously imposed and notified as at the date on which the Agreement comes into force ("pre-existing measures"); and

- not adopt any new exceptional measures after the entry into force of the Agreement, unless in exceptional financial, economic or industrial circumstances[xxx].

What constitutes "exceptional financial, economic or industrial circumstances" is not defined, though the obligations of each country in such circumstances are.

In such circumstances, the country imposing exceptional measures shall:

- duly notify the other country of the matters listed in Article 6(2) LIPPIA[xxxi];

- provide, upon request by the other country, particulars of the measures imposed;

- afford the other country reasonable time to make written comments;

- hold, upon request by the other country, consultations in good faith to achieve a mutually agreeable result; and

- take appropriate action based on the three matters immediately preceding this item.

Any modification or amendment of any pre-existing measures imposed by any country is subject to the proviso that such amendment or modification does not decrease the country's conformity towards its obligations to duly notify the other country as discussed previously[xxxii], and those set out in the foregoing paragraph above.

Other exceptions

Apart from the sectors or matters listed in Annex I and II, there are a notable number of other exceptions allowing each country to impose measures inconsistent with its obligations under the Agreement to accord favorable treatment to investors and investments from the other country.

They include the following:

- Measures of necessity for the protection of national security; carrying out of obligations under the United Nations Charter; protection of human, animal or plant life or health; and for the maintenance of public order where the threat is posed against the fundamental interests of society and is genuine and sufficiently serious[xxxiii];

- Measures relating to cross-border capital transactions and transfer of capital in the event of serious difficulties or threats to the financial sector e.g. in the balance of payment deficits, or exceptional movements of capital which cause or threaten to cause serious difficulties in macroeconomic management e.g. in monetary and exchange rate policies[xxxiv];

- Measures with respect to financial services meant for the protection of investors, depositors or policy holders or to ensure the integrity and stability of the country's financial system[xxxv];

- Rights and obligations under multi-lateral treaties in respect of protection of intellectual property rights to which the countries are parties to[xxxvi];

- The right to deny a foreign investor and its investments the benefits of the Agreement if investors of a third country own or control that foreign investor and such foreign investor has no substantial business operations in the country where it is constituted[xxxvii]; and

- No obligation to extend to foreign investors of the other country most favored nation status in respect of any preferential treatment from its own membership of a free trade area, a customs union, an international agreement for economic integration or a similar international agreement[xxxviii].

Impact On Potential And Existing Investors In Vietnam

The mere signing of the Agreement with no follow-up action is cold comfort to existing investors in Vietnam, especially those from Japan, who have been adversely affected by changes in policies in the last two years which were as abrupt as they were debilitating.

In September 2002, four months after Japan and Vietnam began negotiating on what would eventually be the Agreement, the Ministry of Trade in Vietnam slashed import quotas for motorcycle parts, limiting them to the actual volume of imports in 2001[xxxix]. This approximated to what most Japan-invested enterprises in the industry had produced for the year up to August 2002. In turn, it meant that the likes of companies such as Suzuki Motor Corp, Honda Motor Co and Yamaha Motor Co had to stop production immediately as they had already hit the newly imposed annual quota[xl].

This sparked a huge diplomatic outcry because Japan then ranked No. 3 in terms of the number of licensed FDI businesses in Vietnam (after Singapore and Taiwan), but was still at the apex in terms of total disbursed investment capital[xli]. The vocal Japanese lobby prompted the Vietnam government to react in a somewhat knee-jerk and arbitrary fashion two months later in November 2002, when it restored the quotas in some foreign invested enterprises without providing the basis for such restoration. However, the damage from this debacle was already done.

Already, the level of total FDI into Vietnam had been dropping steadily after hitting a peak of US$9.6 billion in 1996[xlii]. In 2002, total FDI dipped even lower, to less than half the level in 2001 to below US$2 billion, while last year (a less than rosy one marred by the outbreak of the severe acute respiratory syndrome or SARS and the U.S.-led war against Iraq) was a continuing downward spiral, with total FDI inflow down to US$1.65 billion[xliii]. Significantly in 2003, Japan's erstwhile top spot for total disbursed investment capital was displaced by Taiwan, whose total FDI inflow of US$326.1 million was trailed closely by South Korea, with US$316.7 million. Japan, with US$83.2 million ranked No. 7, behind Taiwan, South Korea, British Virgin Islands, China, Australia and Hong Kong[xliv].

The licensed investment value of FDI into Vietnam from Japan also dropped by 15% in 2002 to US$95 million, in part due to a saturation of the erstwhile Japanese mainstay in the manufacturing sector and increasing frustration and wariness of businessmen towards the plodding pace at which the Vietnam economy is opening up and the frequently mercuric policy changes implemented by Vietnam ministries such as the saga of September 2002 denoted above.

The Agreement comes with assurances by the Vietnam government that "there will be no sudden changes in the rules of the game"[xlv] and that a level playing field will be created for both domestic and foreign investors[xlvi].

Apart from the regime of preferential national treatment and most favored nation status under the Agreement, what will no doubt be warmly embraced by existing and potential Japanese investors to Vietnam alike are the rather extensive prohibitions against imposition of performance requirements in the Agreement. In practical terms, they function as a ban from demanding that Japanese companies obtain components or parts from local companies or that they export a stipulated percentage of their output.

The assurance that investment-related immigration permits will be more easily obtained in time to come will also be a boon for boosting foreign investments from Japan.

But until the actual mechanics and limits are ironed out by both governments followed by the necessary exchange of diplomatic notes setting down the legal procedures for the entry into force of the Agreement[xlvii], it is moot that promises to accord preferential treatment and protection of Japanese investors and their investments remain aspirations at best.

Meanwhile, the two governments have gone further to issue a lengthy 118-page joint report aimed at improving Vietnam's investment environment on 10 December 2003[xlviii]. This should offer further assurance to Japanese businessmen of Vietnam's commitment to change as the report sets out at great lengths, deficiencies in its legal, financial and investment framework as well as the Socialist Republic's supporting infrastructure, and more importantly, puts forth a 44-point action plan to remedy these shortfalls with a designated taskforce and anticipated timeframe for each point to be carried out in the foreseeable future.

What is noteworthy and comforting to investors is that the report refers affirmatively to the Agreement as a roadmap to be adhered to in the liberalization of business in Vietnam[xlix].

The LIPPIA Versus Other Bilateral Trade/Investment Agreements Signed By Vietnam

Of the 45 bilateral trade and investment agreements signed by the Socialist Republic of Vietnam to date, the lengthy U.S.-Vietnam BTA is often cited as a major historical and economic milestone. This is not just on account of its copious number of pages.

This is because the signing of the U.S.-Vietnam BTA and its subsequent ratification by the American Congress and entry into force in December 2001, ushered in normalization of trade relations for Vietnam with an erstwhile economic and military superpower (notably, one that had financed at first, then waged and lost a decade-long war against Vietnam which understandably ended on a sour note for it in the mid-1970s).

While the LIPPIA, like other bilateral investment protection agreements previously entered into by Vietnam[l], is primarily concerned with establishing an in-principal framework with assurances of preferential treatment and protection of foreign investors and their investments with detailed mechanisms for implementation to be further negotiated and finalized, the U.S.-Vietnam BTA went much further and deeper in each of its five major sections.

These five sections are as follows:

- *Market access for industrial and agricultural goods*[li]

  Vietnam is to allow all Vietnamese firms, and in time to come, U.S. investors (both natural persons and legal entities), the right to freely import and export from within its borders. Significantly, it has also pledged to slash tariff rates on hundreds of categories of U.S. industrial and agricultural exports[lii] and to phase out all non-tariff measures, and to adhere to the WTO standards in applying customs, import licensing, state trading, technical standards as well as sanitary and phytosanitary measures.

- *Intellectual property rights*[liii]

Vietnam is to adopt the WTO standard for intellectual property protections within 18 months of the Agreement coming into force and to implement further protection measures such as the protection of satellite signals.

- *Market access for services*[liv]

  Vietnam is committed to allow U.S. investors to enter its market to provide a full range of services from legal, accounting and financial ones to telecommunications, construction, information technology and tourism, to be phased in within three to five years of the entry into force of the U.S.-Vietnam BTA.

- *Investment protection and promotion provisions*[lv]

  These provisions, similar in nature to those in LIPPIA, seek to protect U.S. investors and their investments from expropriation, eliminate local content and export performance requirements and phase out investment licensing regime in a number of sectors.

- *Transparency provisions*[lvi]

  Vietnam's agreement to adopt a fully transparent regime for the preceding four areas, by promptly publishing and making publicly available its laws, regulations and administrative procedures of general application that are investment-related, is similar in effect to Article 7 LIPPIA.

From the fact that LIPPIA specifically omits the U.S.-Vietnam BTA from its scope of excluded "free trade area, a customs union, an international agreement for economic integration or similar international agreements"[lvii], it can be surmised that both Japan and Vietnam intend to use the U.S.-Vietnam BTA as a blueprint for further liberalization of the Vietnam market.

This conclusion is also borne out by the Vietnam-Japan Joint Initiative to Improve Business Environment with a view to strengthen Vietnam's Competitiveness dated 4 December 2003 signed between the two countries[lviii] ("the Vietnam-Japan Joint Initiative").

If this is indeed the case, it is suggested that a more comprehensive approach to interpret the Agreement would be to regard it as a skeletal framework to be supplemented by the Vietnam-Japan Joint Initiative and, in so far as there is no inconsistency, the U.S.-Vietnam BTA.

Vietnam's Goal Of Acceding To The WTO

Already a member of ASEAN[lix], Vietnam has been aggressively taking steps to liberalize its economy in a bid to accelerate its aim to join the WTO in 2005. Such liberalization moves include the recent scrapping of its double pricing policy on water and Internet and telephone charges.

Many regarded the restoration of normal trade relations pursuant to the U.S.-Vietnam BTA as the first major step towards Vietnam's WTO goal[lx], and the LIPPIA as well as the Vietnam-Japan Joint Initiative are the latest in a line of carefully calibrated measures in this regard. The Vietnam government has further avowed that its action plan for extensive reforms as set out in the Vietnam-Japan Joint-Initiative will be applied, not just for the benefit of Japanese investors but for the general benefit of foreign investors as a whole[lxi].

Repeated promises by the Vietnam government that it will progressively overhaul its domestic legal system[lxii] have borne fruit in, among other things, more new laws and amendments to existing laws being promulgated by Vietnam's National Assembly in the last two years[lxiii]. The trend towards a more certain and pro-foreign investment business climate looks likely to continue in the lead-up to 2005 as the Vietnam government continues to spearhead legislative reform efforts to woo foreign investors, wherever they are from[lxiv]. In fact, plans are afoot to eradicate the dualistic divide between the laws governing domestic and foreign investments with the planned passage in 2005 of a common law for both types of investment in Vietnam[lxv].

Conclusion

In isolation, the LIPPIA may not mean much, especially since it is still not known when it will be in force. Also looming large in uncertainty with possibly consequential ambiguity, too, is the fact that its provisions are of a more general nature as compared to those in the U.S.-Vietnam BTA.

However, viewed in the larger context of recent developments such as the Vietnam-Japan Joint Initiative and Vietnam's successful staging of the SEA Games in December 2003, the LIPPIA is certainly a positive step forward for the Vietnam government in the interests of openness and liberalization.

Hence, it may not be too far off to describe the Agreement as one of the more prominent feathers in Vietnam's cap of late as the Socialist Republic braces itself for more pro-foreign investment changes to which its government has committed to carrying out in the many bilateral trade and investment treaties it has inked.

Samuel Lee
Kelvin Chia Partnership
February 2004

Email: samuel.lee@kcpartnership.com
DID: (65) 6332 9708

[i] Statement of the Japanese Ministry of Foreign Affairs, 14 November 2003, http://www.mofa.go.jp.
[ii] *Japan, Vietnam sign investment pact* Agene France-Presser ("AFP"), 14 November 2003.
[iii] In *Japan-Vietnam ink landmark investment pact* Vietnam Investment Review, 19 November 2003, head of the Economic division of the Japanese embassy in Hanoi Yakuta Fukahori, described the LIPPIA as a "new type" of trade agreement never entered into by Japan previously. In the same report, director of the Foreign Investment Agency in Hanoi Phan Huu Thang, said it was a milestone in the economic relations between the two countries, and would up FDI from Japan into Vietnam.
[iv] Article 1(1) LIPPIA. In Article 1(1)(b), "investor" is defined as "a legal person or any other entity constituted or organized under the applicable laws and regulations of that Contracting Party, whether or not for profit, and whether private or government owned or controlled, and includes a company, corporation, trust, partnership, sole proprietorship, joint venture, association and organization".
[v] Article 1(2) LIPPIA.
[vi] *Ibid.* This sub-clause also provides that a change in the form of investment does not affect its character under the agreement.
[vii] This is defined in Article 2(1) LIPPIA as "the establishment, acquisition, expansion, operation, management, maintenance, use, enjoyment, and sale or other disposal of investments".
[viii] Article 3 LIPPIA.
[ix] Article 10 LIPPIA. In the event that a more favorable treatment (as compared to the national treatment) is accorded to investors of a third country, the more favorable one must be applied.
[x] Article 19 LIPPIA.
[xi] And if there is more than one type of treatment available, Article 1 of the Agreed Minutes obliges each country to accord the better one to the foreign investor or its investment.
[xii] Article 8 LIPPIA. The same wording (i.e. "sympathetic consideration") is also used in Article 13 in the context of either country making representations to the other country regarding any aspect about the application of the Agreement.
[xiii] Article 9(2) LIPPIA.
[xiv] *Ibid.*
[xv] Article 9(2) LIPPIA further provides that the compensation shall be the fair market value of the expropriated investments immediately preceding the expropriation or nationalization, with interest calculated payable up to the time of payment, and shall be freely transferable and convertible at the market exchange rate as on the date of expropriation or nationalization.
[xvi] Article 4 LIPPIA.
[xvii] This agreement is commonly referred to as the TRIPS Agreement and is set out in Annex 1C of the Marrakesh Agreement Establishing the WTO signed on 15 April 1994.

[xviii] Article 4(2) LIPPIA.
[xix] This was the year the Socialist Republic of Vietnam adopted the *Doi Moi* or open door economic policy.
[xx] Article 12 LIPPIA.
[xxi] Article 7 LIPPIA.
[xxii] Article 20 LIPPIA.
[xxiii] Articles 5 and 6 LIPPIA.
[xxiv] Article 23(1) LIPPIA provides that the Agreement shall come into force on "the 13th day after the date of exchange of diplomatic notes informing each other that their respective legal procedures have been completed".
[xxv] Articles 5(2) and 6(2) LIPPIA.
[xxvi] See text to *supra*, note 25.
[xxvii] Article 5(3) LIPPIA.
[xxviii] With the exception of items nos. 1, 10 and 15 for Japan, the sectors or matters listed under Annex I shall be accorded most favored nation treatment by each respective country.
[xxix] With the exception of items no. 12 for Japan, the sectors or matters listed under Annex II shall be accorded most favored nation treatment by each respective country.
[xxx] Articles 6(3), (4) and (7) LIPPIA.
[xxxi] See text to *supra*, note 25.
[xxxii] See text to *supra*, note 25.
[xxxiii] Article 15 LIPPIA, which further allows parties to prescribe special formalities so long as these formalities "do not impair the substance of the rights" of investors under the Agreement.
[xxxiv] Article 16 LIPPIA, which further qualifies that such measures shall be temporary, consistent with the Articles of Agreement of the International Monetary Fund as long as the country is a party to it, and must be duly notified to the other country.
[xxxv] Article 17 LIPPIA.
[xxxvi] Article 18 LIPPIA.
[xxxvii] Article 22(1) and (2) LIPPIA.
[xxxviii] Article 22(3) LIPPIA. Article 5 of the Agreed Minutes exempts the U.S.-Vietnam BTA from the scope of exemption, thus paving the way for Japan to enjoy, among other things, the same wide-ranging tariff cuts as those in the U.S. Vietnam BTA. Conversely, Article 5 of the Agreed Minutes excludes the Agreement Between Japan and the Republic of Singapore For a New Age Economic Partnership of January 2002.
[xxxix] See *supra*, note 2.
[xl] *Promotion of the Motorbike Industry* in *The Report on the Vietnam-Japan Joint Initiative to Improve Business Environment with a view to strengthen Vietnam's Competitiveness* dated 4 December 2003 at page 103.
[xli] From 1988 to June 2003, the total value of Japanese investment in Vietnam was estimated to be US$3.7 billion, see *supra*, note 40 at page 11.
[xlii] *Ibid*. This was primarily on account of weak and partial recovery of the Vietnamese economy after the Asian currency crisis of 1997 and subsequently, due to increased competition from other ASEAN countries as well as aggressive China.
[xliii] See for instance, *FDI into Vietnam decrease due to war in Iraq* Vietnam Economy, 17 April 2003 and *Top Ten FDI in Vietnam by country (Total to 31 December 2003)*, Vietnam Economy, 20 January 2004. The figures in these two reports appear to contradict those cited in *Foreign direct investment into Vietnam is on the rise* Vietnam Economy, 28 January 2004, a report which appears to have side-stepped the total FDI figures posted on 20 January 2004 by referring to "newly registered and additional FDI" and "disbursed FDI".
[xliv] *Top Ten FDI in Vietnam by country (Total to 31 December 2003) supra*, note 43.
[xlv] See comments of Phuc in *supra,* note 2.
[xlvi] Remarks of Le Dang Doanh, senior economic adviser in the Ministry of Planning and Investment in an interview with the *Tuoi Tre* newspaper published on 14 November 2003.
[xlvii] Article 23 LIPPIA.
[xlviii] See generally *supra*, note 40.
[xlix] For instance, see *supra*, note 40 at page 39.
[l] See for instance, the amended Korea-Vietnam Investment Guarantee Agreement of 15 July 2003 ("the IPG") and the Agreement Between the Government of the Republic of Singapore and the Government of the Socialist Republic of Vietnam on the Promotion and Protection of Investments dated 29 October 1992, both of which are largely similar to LIPPIA save for their absence of prohibitions against imposition of performance requirements. Key provisions of the IPG which are notably absent in the LIPPIA are provisions to abolish double pricing of domestic flight fares and hydro bills by 2005, and to eradicate the discrimination against foreigners in the realm of labor recruitment which currently prescribe higher minimum wages for foreign businesses.
[li] See generally, Chapter I of the U.S.-Vietnam BTA on *Trade In Goods*.
[lii] Annex E of the U.S.-Vietnam BTA, on *Tariffs*.
[liii] See generally, Chapter II of the U.S.-Vietnam BTA on *Intellectual Property Rights*.
[liv] See generally, Chapter III of the U.S.-Vietnam BTA on *Trade In Services*.
[lv] See for instance, Chapter IV of the U.S.-Vietnam BTA on *Development Of Investment Relations*.
[lvi] *Ibid*, Article 5.
[lvii] See *supra*, note 38.
[lviii] See *supra*, note 40 at page 39.
[lix] Vietnam joined the Association of Southeast Asian Nations in July 1997.
[lx] Following the entry into force of the U.S.-Vietnam BTA in December 2001, an AFP report on 5 December 2003 cites a U.S. government source as saying that direct trade between the two countries soared to US$3 billion in 2002, up from US$1.2 billion in 2000.
[lxi] See generally, *supra*, note 40.
[lxii] *Ibid.*
[lxiii] Opening speech by President of Vietnam's National Assembly Nguyen Van An during the Vietnam-Singapore Business Forum & Networking Session in Singapore on 19 December 2003.

[lxiv] *Ibid*. Nguyen has been instrumental in augmenting Vietnam's legislative output. In *Deputies asked to focus on new Civil Procedures Codes* Vietnam Economy, 11 February 2004, he directed National Assembly deputies to expedite the progress of seven new laws, including a new Civil Procedures Code.

[lxv] This promise was made by Executive Vice-president of the Vietnam Chamber of Commerce and Industry Pham Chi Lan in *Change comes "step by step," in big strides* InternationalReports.net : Vietnam 2003.