



**VIETNAMESE BUSINESS ASSOCIATIONS
AS POLICY ADVOCATES**

A Lot More Can Still be Done

Hanoi, 2007



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Hanoi, 2007

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Introduction

In addition to participating in meetings between the Prime Minister and the business community, which are organized annually by the Vietnam Chamber of Commerce and Industry (VCCI) as well as the Vietnam Business Forum (VBF) in collaboration with the Ministry of Planning and Investment (MPI), the International Finance Corporation (IFC) and the World Bank (WB), business associations have also begun to engage in policy advocacy.

Despite an unfavorable regulatory framework, State management agency bias against the role of associations and internal difficulties such as a lack of human and financial resources and limited experience, good practices in the policy advocacy process have emerged.

To further promote the active role of business associations in the socio-economic development in Vietnam, the Government should no longer assume a "hand-holding and instructing" or "governing" role. Instead, the Government should facilitate the formulation of business associations, promote transparency and publicity in policy-making and policy-dialogue, and assist the establishment of public associations, which tend to counterbalance economic interest groups.

This study was conducted by VCCI and the German Technical Cooperation (GTZ) and is part of an ongoing effort by the two agencies to strengthen the policy advocacy capacity of Vietnamese business associations and promote public-private dialogue on the business environment and investment climate.

Abbreviations

- BR-VT:** Ba Ria - Vung Tau (Province)
- CIEM:** Central Institute for Economic Management
- GTZ:** German Technical Cooperation
- MPI:** Ministry of Planning and Investment
- IFC:** International Finance Corporation
- Ltd Co:** Limited Liability (Company)
- PC:** People's Committee
- VAFI:** Vietnam Association of Financial Investors
- VCCI:** Vietnam Chamber of Commerce and Industry
- VNCI:** Vietnam Competitiveness Initiative
- VUSTA:** Vietnam Union of Science and Technology Associations
- WB:** World Bank

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AN OVERVIEW OF BUSINESS ASSOCIATIONS IN VIETNAM

I. ROLE OF BUSINESS ASSOCIATIONS AS POLICY ADVOCATES

"Changes cannot be 'ordered' or forced from the outside... Change has to come from within. Open and extensive discussions... are the most effective way of ensuring that the change in mindset... reaches deep into society." "A government that engages in secrecy, making it impossible for citizens to have informed opinions about policies that are critical to their lives and the well-being of their country, weakens accountability and the quality of decision-making."¹

State policies benefit some groups and disadvantage others. To ensure the selection of sound policies the State must possess enough information to accurately assess the impacts of policy. Citizens, enterprises and society interest groups are best placed to assist the Government in this process.

For example, raising or reducing tariffs on imported steel billets will affect producers of steel billets and end products, importers of steel and steel-scrap, enterprises using steel materials as well as consumers. The Government and relevant ministries need to consult all the concerned stakeholders to assess the potential impact of any tariff so as to set the best rate.

For the business community, an opportunity to participate in the policy-making process not only ensures transparency and predictability but also makes it possible to direct policies in favor of their business operations. Vietnam's business associations and enterprise groups are the organizations that can best perform this function.

- Business associations represent enterprises by addressing the difficulties and obstacles they face, and presenting comments and opinions on State policies and regulations and the behavior of State officials. This is a risky undertaking for single enterprises. However, if many firms, representing a large proportion of a sector can voice issues through an association, then the tendency of Vietnamese enterprises being too hesitant to criticize any State policy or agency may decline.

¹ Stiglitz (2002)

Box 1**Due to being too outspoken!**

Businesses and entrepreneurs are greatly indebted to the Director of Binh Hoa Garment Company who has spoken up for the garment export industry on many occasions. His words have been published widely in the press. However, the Director's efforts may have come at a cost. It is likely that, because of his forthright views, Binh Hoa Garment Company has received an unfair quota allocation. In 2004 many enterprises received T-Shirt and Polo-Shirt quotas (cat 338/339) equivalent to between 20 percent and 30 percent of their manufacturing capacity. Binh Hoa Garment Company received a quota just equal to three percent of its capacity. Furthermore, the company finds it difficult to cooperate with other enterprises, many of which have refused to join any supply chain involving the Binh Hoa Garment Company as they are afraid of getting involved in "misfortune".

Minh Chau Garment Company, another small enterprise in the garment industry, was also being denied quota allocations as it was "too often expressing opinions in newspapers".

Source: Saigon Economic Times, 23 September 2004, p. 13

- Business associations that represent the voice of several enterprises carry greater weight than individual enterprises. Moreover, it is impossible for the Government to "hear" the voice of each enterprise as it is a lengthy and costly process.
- Each business association usually has more information concerning its industry than single firms. Therefore, business associations may be better placed to address the issues of an industry or an economic sector.
- Business associations often enlist a large contingent of experienced experts who maintain a good relationship with Government authorities, facilitating cooperation with Government.

II. OVERVIEW OF EXISTING VIETNAMESE BUSINESS ASSOCIATIONS

Currently, no state management agency knows the precise number of business associations². The Ministry of Internal Affairs - the State agency in charge of managing associations - estimates that there

² This situation is of considerable concern. Although procedures for the establishment of business associations are complicated in practice, no agency takes responsibility for publicly announcing the precise number or a full list of Vietnam's business associations.

are approximately 300 national associations, including 70 associations of economic organizations. The remainder concern art and literature, friendship, sports, charity, social and humanitarian activities. Over 2,150 are municipal and provincial associations³.

However, in late 2004 VCCI estimated that there are around 280 business associations in Vietnam. Most are located in big economic hubs such as Hanoi, Ho Chi Minh City, Ba Ria - Vung Tau, Da Nang and Hai Phong. Hanoi and Ho Chi Minh City account for over 42 percent of the total number of business associations in the country (see Table 1).

The number of associations has increased dramatically since the implementation of Decree 88/2003/ND-CP issued by the Government in 2003, regulating the organization, operation and management of associations. An estimated 50 business associations existed throughout the country before 2003⁴.

Previously, associations were mainly formulated by the Government and their members were primarily State-owned enterprises. Now many private enterprises come together to establish business associations to meet the needs of their business activities.

Business associations in Vietnam are of various kinds. They can be classified into two categories of business activities: (i) Multi-sectoral associations such as VCCI, the Vietnam Cooperative Alliance, the Union of Association of Industry and Commerce and the Vietnam Young Business Council; and (ii) Single-sectoral associations such as the Vietnam Coffee and Cocoa Association, the Vietnam Food Association and the Banking Association.

In terms of the scope of operations, business associations may be grouped into two categories: (i) National business associations such as the Vietnam Automobile Transport Association, the Vietnam Textiles Association and the Vietnam Plastics Association; and (ii) Provincial business associations such as the Hai Phong Road Transport Association, the Ho Chi Minh City Association of Garment, Textile, Embroidery and Knitting and the Ho Chi Minh City Plastic Association.

Business associations can also be categorized according to scale (for example, the Hanoi Small and Medium Enterprise Association, the Vietnam Rural Small and Medium Enterprise Association), gender (the Businesswomen's Council and the Hanoi Businesswomen's Club, age (the Young People's

³ Report of the Ministry of Internal Affairs at the Conference on association activities in 2004 and the implementation of Decree 88/2003/ND-CP, March 2005.

⁴ Dat a mentioned in the presentation of the former VCCI Vice President and former member of the Prime Minister Research Commission, Mdm. Pham Chi Lan at the workshop "The status of regulatory institutions and policies in assisting the development of Vietnamese big companies with internationally competitive capability" conducted by Fulbright Economic Teaching Program on 12 June 2006 in Ho Chi Minh City.

Business Association) and entrepreneurs' characteristics (for example, entrepreneurs who have studied or worked in Germany established the Vietnam-Germany Small and Medium Enterprise Association).

According to a survey by VCCI, nearly 30 percent of Vietnamese enterprises are members of a business association (see Appendix 2). More state-owned and foreign-invested companies are association members than private enterprises and more large companies are members than small enterprises⁵ . An enterprise may join several business associations at once.

The right to establish business associations was first granted in 1957. Since then there have been a variety of decrees, directives and circulars. The latest, the Law on Associations, is expected to be passed by the National Assembly in 2007⁶.

III. STATE REGULATIONS REGARDING THE ROLE OF VIETNAMESE BUSINESS ASSOCIATIONS IN POLICY ADVOCACY

The role of associations in society and the economy has undergone profound change. In the subsidized centralized economy, the State played a significant role in every area of society and associations were effectively an extension of the State, charged with fulfilling state objectives and carrying out State plans. However, due to their small number and bureaucratic organizational structure, associations were unable to participate in the top-down policy-making process.

In the transition to a market economy a wide range of complex socio-economic relations are emerging, making it impossible for the State to retain its former role. The State should therefore allow a variety of social groups and associations to participate in and control the policy-making process. At the same time, interest groups in society also wish to have their rights and interests protected.

2002 marked a milestone in recognizing associations' role in the policy advocacy process when the Prime Minister issued Decision 22/2002/QD-TTG, which permitted the Vietnam Union of Science and Technology Associations (VUSTA) to criticize and examine government policies⁷ . According to the

⁵ A survey of 6,379 private enterprises within the Study of Provincial Competitiveness Index 2006 carried out by VCCI and VNCI indicates that, of enterprises not joining any association, 13.05 percent employ 50 staff or more. Of enterprises who are members of an association, 27.75 percent employ 50 staff or more.

⁶ Decree 102-SL/L-004 (dated 20 May 1957) recognized the freedom of citizens to establish associations; Directive 202 issued by the Council of Ministers in 1990 provided provisions for the establishment of associations; the 1992 Constitution, subsequently amended in 2002, confirmed the freedom to establish associations and Decree 88/2003/ND-CP (dated 30 July 2003) regulated the organization, operation and management of associations.

⁷ Decision 22/2002/QD-TTG of the Government (dated 30 January 2002) on the advisory, criticism and social examination activities of the Vietnam Union of Science and Technology Associations.

Decision, VUSTA is entitled to advise, criticize and examine policies, programs and projects related to socio-economic development, education and training, science, technology and the environment.

The Government has also adopted critical regulations encouraging business associations' participation in the policy-making process, specifically recognizing the role of VCCI, a national organization "assembling and representing the business community, employers and business associations in Vietnam".⁸

The roles of VCCI and other business associations are asserted in important Party documents. The Resolution of the 5th Plenum of the 9th Party Central Committee in 2002 in relation to continually renovating mechanisms and policy, and encouraging and promoting the development of the private economic sector (the 5th Central Resolution, for short) states the need to promote "*the role of the Vietnam Chamber of Commerce and Industry and other business associations*"⁹.

In 1993 the Prime Minister issued Decision 310-TTg (dated 25 June 1993) on the relationship between government agencies and VCCI, which states that the "*Vietnam Chamber of Commerce and Industry shall be responsible for informing government agencies, provincial and city People's Committees under the central government about its opinions in relation to the formulation and implementation of institutions and economic policies that aim to improve the business environment, provide guidelines, support and create favorable conditions for activities carried out by enterprises in all economic sectors*". (Article 2)

"The Vietnam Chamber of Commerce and Industry shall be responsible for gathering opinions from the business community to report to the Prime Minister; holding dialogues between businesses and government agencies to discuss issues related to activities of the business community" (Article 3). *"The President of the Vietnam Chamber of Commerce and Industry is invited to take part in government meetings when relevant matters are to be discussed"* (Article 4).

Another important directive of the Prime Minister in respect to VCCI's participatory role in the policy-making process is Directive 28/2001/CT-TTg (dated 28 November 2001) on creating an enabling business environment for enterprises. It states that "*[i]n the process of making policies related to business activities, agencies in charge shall collect enterprises' opinions through the Vietnam Chamber of Commerce and Industry.*"

⁸ Article 1 of the VCCI Statute was approved by the fourth VCCI General Assembly on 27 April 2003 and ratified by Decision 123/2003/TTg of the Prime Minister (dated 12 June 2003).

⁹ The full texts of this resolution and other resolutions are available at the website: www.dangcongsan.org.vn.

In 2005 this provision was codified in Decree 161/2005/ND-CP of the Government (dated 27 December 2005) that provides details and guidelines on the implementation of the Law on Promulgation of Legal Instruments. Article 27 of this Decree specifically defines the role of VCCI in the process of promulgation of legal instruments: *"With respect to draft project documentation and draft legal instruments in relation to the rights and obligations of businesses, ministers and heads of ministry-equivalent bodies, heads of offices directly under the Government that are in charge of drafting shall forward drafts to the Vietnam Chamber of Commerce and Industry for gathering enterprises' comments thereon. Within the period of twenty (20) working days from the receipt of any draft project documentation or draft legal instruments, the Vietnam Chamber of Commerce and Industry shall solicit enterprises' opinions, then make a report to the Ministry of Justice, the Prime Minister's Office, Ministries, ministry-equivalent bodies and offices directly under the Government which are in charge of drafting."*

In accordance with Decree 161, the role of Vietnamese business associations in the law-making process of the State of Vietnam is officially acknowledged. The obligations of VCCI are also specified by the Government in the existing law-making process. However, very few state agencies see VCCI's role as anything more than a formality.

The present regulations only require state agencies to solicit enterprises' comments prior to the promulgation of legal documents. There is still an absence of provisions with regard to the policy advocacy process performed by associations and businesses (for example, operation regime, fund raising and information disclosure).

BUSINESS ASSOCIATIONS AS POLICY ADVOCATES IN VIETNAM

I. POLICY ADVOCACY TAKES DIFFERENT FORMS

Vietnamese business associations undertake policy advocacy activities in various ways, either formally or informally, publicly or privately. They can be grouped into the following categories:

1. Directly participating in drafting committees of Party Resolutions, National Assembly's Laws and Ordinances, and Government legal documents.

Vietnamese business associations, particularly large associations like VCCI and the Hanoi Union of Associations of Industry and Commerce, take part in the process of drafting important Party documents and resolutions. For instance, a representative of VCCI joined the leading team (of 23 members) to prepare a draft 5th Central Resolution, which was deemed to be vital to the development of the private economic sector in Vietnam. Another VCCI expert was a member of the Secretariat, joining field trips and other activities related to the drafting of the resolution¹⁰.

VCCI also frequently participates in the law-making activities of the State. VCCI representatives were members of the drafting committees of major laws and ordinances that affected businesses and the business environment, including the Law on the Encouragement of Domestic Investment, the Enterprise Law 1999 and the Enterprise Law 2005, the State-owned Enterprise Law, the Competition Law, the Bankruptcy Law, the Commercial Law, the E-Transaction Law, the Import-Export Tax Law and the Ordinance on Commercial Arbitration. For some laws and ordinances VCCI experts took part in editorial teams and even wrote some of the drafts.

Representatives of some large associations also participate in drafting committees of Government decrees and Ministries' circulars dealing with businesses and the business environment. For example, VCCI representatives were members of the Drafting Committees for five out of seven Decrees guiding the implementation of the Enterprise Law 2005 and the Investment Law 2005, and also participated in drafting the Joint Circular on the personal record of enterprise founders and the Joint Circular on the "one-stop shop" regime for business establishment. A representative of the Hanoi Union of Associations of Industry and Commerce was also a member of the Drafting Committee of the Decree on Management of Business Licenses.

Some other Ministries also invited representatives of specific industry associations to participate in the drafting committees of legal documents. For example, the Vietnam Automobile Transport Association was asked by the Ministry of Transport to participate in drafting legal documents and international agreements in respect to automobile transport and auto technology¹¹.

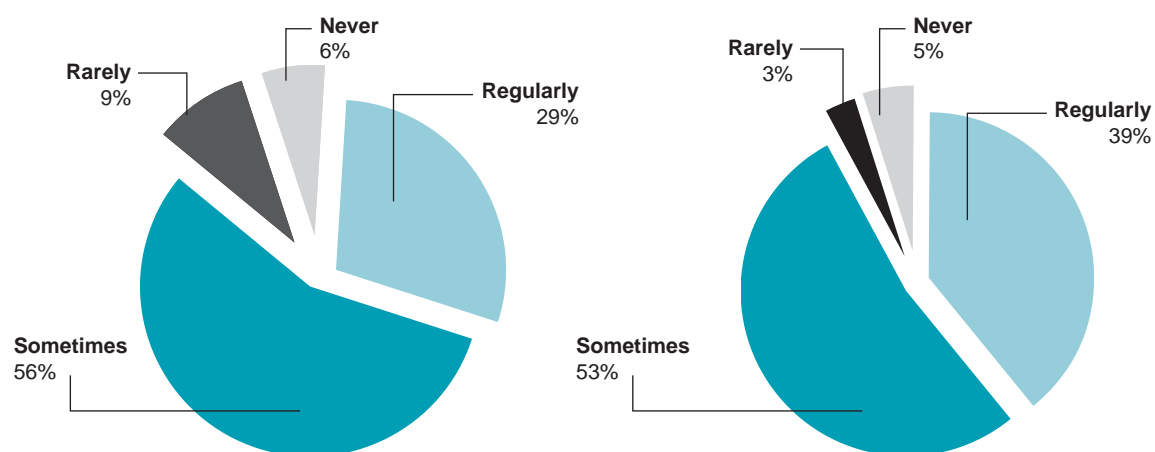
¹⁰ The role of VCCI in preparing the draft 5th Central Resolution was analyzed by the author in Stromseth (2002).

¹¹ Presentation of Mr. Nguyen Vo Lieu, General Secretary of Vietnam Automobile Transport Association at the workshop, "Promoting the role of business associations in the law-making process" held by VCCI and GTZ on 2nd November 2005 in Hanoi.

2. Comment on policies and legal instruments

These forms are frequently used by Vietnam business associations at both national and provincial levels. A survey of 64 business associations throughout the country conducted by VCCI in 2006 revealed that: 39 percent of business associations regularly contribute opinions on draft legal documents, 53 percent sometimes contribute, three percent rarely contribute and five percent never contribute. More associations engage in the law-making process now than before 2001 (see Graph 1).

Graph 1: *Frequency of Vietnam business associations commenting on legal documents before 2001 and since 2001*



Source: Survey of 64 business associations conducted by VCCI in 2006

Business associations often contribute to workshops held by state agencies or seminars and business forums organized by VCCI and other business associations. Fulfilling its officially recognized role, VCCI has recently conducted workshops to solicit enterprises' opinions on legal documents concerning business activities. In 2005 VCCI conducted approximately 50 seminars and business forums nationwide to enable enterprises to comment on draft legal documents. Those attending the seminars included entrepreneurs, business associations, experts, researchers and representatives of drafting committees, examining bodies and media agencies.

Another common form of policy advocacy, adopted by business associations upon receipt of draft documents, is to submit their opinions in writing to drafting committees or VCCI.

Box 2

How does the Vietnam Insurance Association Advocate for Policies?

- Documents which include provisions related to insurance: The Association sends an official letter with the draft legal document enclosed to every member with a deadline for contributions (by fax or email). The Association then makes a report to the relevant drafting committee.
- Documents including numerous provisions related to insurance: The Association sends an official letter with the draft legal document enclosed to every member, and also conducts seminars attended by Association members and experts, representatives of draft committees and the Insurance Department of the Ministry of Finance. The Association has held seminars on the Insurance Business Law, the Maritime Code, the Tourism Law and the Inland Waterway Transport Law.
- Documents specific to the insurance industry: The Association conducts surveys and seminars to gather opinions on, for example, the Decree on Required Insurance for Fire and Explosion and the Decree on Required Insurance for Inland Waterway Transport Businesses' Civil Liabilities in relation to passengers and inflammable and explosive goods. The surveys are comprehensive and well prepared. A final report including concrete opinions is made upon completion of the survey.
- Documents requiring comment by a deadline: The Association has a maximum of five days to make comments and so is unable to hold seminars to collect opinions from its members. The Association's standing office studies the draft and comments.

Source: Vietnam Insurance Association, Report on the Status and Recommendations to strengthen the capacity of the Vietnam Insurance Association, June 2006

3. Acting as Members of Enforcement Taskforces of Laws and Policies

Representatives of certain business associations become members of task forces and executing groups established by, amongst others, the Prime Minister, ministries and People's Committees. For instance, two officers from VCCI joined the Task Force for the Implementation of the Enterprise Law 1993.¹² Though the officers worked on a temporary basis, they were very active collected comments from the business community. The presence of representatives from associations in the Task Force helped to enforce the Enterprise Law 1999, draft guiding documents and propose that the Government abolish approximately 150 "sub-licenses".¹³

Two other VCCI officers are members of the Prime Minister's inter-office Task Force 23 that was established in 2005 to deal with businesses' complaints in relation to administrative procedures. Since participating in the Task Force, VCCI has heard recommendations and complaints from businesses by means of a "hotline", and also reviewed and gathered the opinions of associations to present to the Prime Minister.

As well as government level task forces, some associations are invited to join provincial task forces to address matters related to the business environment. For example, the Ho Chi Minh Business Association is an official member of the inter-office Task Force 23 established by Ho Chi Minh City People's Committee. The Association has convened five meetings between municipal leaders and businesses attracting over 250 people¹⁴ and has managed to communicate enterprises' opinions to municipal leaders. Task Force 23 in other provinces like Hai Phong, Ba Ria and Vung Tau also involves VCCI representatives.

4. Acting Through Association Representatives in Elective Bodies Including the National Assembly and People's Councils

Association leaders elected to the National Assembly - Legislature XI include Mr. Vu Tien Loc (VCCI President), Mr. Vo Quoc Thang (Member of Vietnam Young Entrepreneurs Council, Member of Vietnam National Construction Association, Vice President of Vietnam Construction Ceramics Association, President of Ho Chi Minh City Young Businesspeople Association) and Mr. Phuong Huu Viet (Vice President of Vietnam Young Entrepreneurs Council)¹⁵. Mr. Vu Tien Loc and Mr. Phuong Huu Viet are members of the National Assembly's Committee on the Economy and the Budget.

¹² The Task Force for the Implementation of the Enterprise Law 1993 comprised of two members from VCCI, two from the Ministry of Justice, four from the Prime Minister's Office, two from the Prime Minister's Research Commission, one from the Prime Minister's External Economic Affairs Unit, one from the Institute of State and Judicial Studies and seven from the Ministry of Planning and Investment.

¹³ CIEM and GTZ (2006).

¹⁴ Ho Chi Minh City Business Association, Annual Report 2005, 11 March 2006.

¹⁵ Biography of these deputies is available at the website of Vietnam National Assembly: www.na.gov.vn

As National Assembly deputies, these representatives have played a role discussing and deciding issues within the competence of the National Assembly. Under the law, the deputies have the right to present law projects, vote for the adoption of law projects and resolutions of the National Assembly, and question the President of the Republic, the National Assembly Chairman, the Prime Minister and other members of the Government in respect to socio-economic issues. The deputies also have the right to transfer opinions and complaints of enterprises and business associations to the National Assembly and state agencies.

At the provincial level, several business association leaders have been elected to People's Councils. For example, the present Ho Chi Minh City People's Council enlists Mr. Le Nguyen Minh Quang (Vice President of Ho Chi Minh City Young Businesspeople Association), Mr. Thai Tuan Chi (Member of VCCI Management Board, Member of Executive Committee of Vietnam Textiles Association) and Mr. Dang Van Khoa (Member of Executive Committee of Ho Chi Minh City Business Association).¹⁶

With regard to economic issues, each People's Council (at the district level and upwards) has the right to approve long-term projects and annual plans regarding socio-economic development, land use, specific industry development, construction planning, urban and rural development at the management level, investment areas and scale as defined by the Government; and the right to determine projects, plans and policies for the development of specific industries and economic sectors, restructuring, budgeting and other important economic policies in its locality.

People's Council delegates have the right to question the Chairman of the People's Council, the Chairman and members of the People's Committee, the Chief Judge of the People's Court, the Director of the People's Procuracy and the heads of specified offices under the People's Committee at the same level. Those questioned are required by law to respond to matters posed by delegates of the People's Council.¹⁷

Although National Assembly and provincial People's Council operations have seen significant changes in recent years, like other elective delegates the activities of association representatives in the National Assembly and People's Councils have been limited. Although permitted by law no legislative initiatives have so far been submitted to the National Assembly.

5. Participating in Periodical Dialogues between the Government and the Business Community

The highest level dialogue is between the Prime Minister and the business community held annually

¹⁶ For further information, please see at the website of Ho Chi Minh City National Assembly Delegation and People's Council: www.dbnd.Ho Chi Minhcity.gov.vn.

¹⁷ Functions, duties and competence of People's Councils at different levels and delegates of People's Councils are stipulated in Law 11/2003/QH dated 26 November 2003 on Organization of People's Councils and People's Committee

by VCCI and the Prime Minister's Office. Business associations are given the opportunity to address the Prime Minister on the difficulties and obstacles faced by their members and present recommendations to the Government. VCCI prepares for the dialogues by canvassing the views of the business community and relevant ministries on issues such as land, tax, customs and labor.

VCCI and the Prime Minister's Office can improve the efficiency of this kind of annual dialogue by preventing enterprise and business association representatives from "taking the floor" to express their private affairs, and resolving questions that have remain unanswered for several years.

In recent years the Vietnam Business Forum (VBF), jointly organized by the World Bank, IFC and MPI has proved popular. The VBF was first held in Hue in June 1998 and has been a biannual (in June and December, prior to each Vietnam Donors Conference) opportunity for policy-related dialogue among government, donors and - mostly foreign invested - business. The VBF involves a number of working groups that regularly coordinate with ministries, including a production and distribution group, an infrastructure group, a capital market group and a banking group.¹⁸ Domestic business associations tend to play a minor role, particularly in working group activities between sessions.

In addition to central government level dialogue, many local business associations conduct periodical dialogues between local authorities and businesses. For example, in 2005 Ho Chi Minh City Business Association organized four dialogues involving 800 participants between municipal leaders and enterprises from different sectors, including industry, commerce (services, tourism, agro-forestry and aquaculture), construction and real estate¹⁹.

6. Other Dialogues

Several business associations have recently held successful dialogues between state agencies and enterprises when a specific problem has arisen. Positive outcomes included: following the VCCI hosted dialogue between the General Taxation Department and businesses on invoice purchasing procedures, the General Taxation Department issued documents simplifying invoice purchase procedures; the Ministry of Transport increased motor vehicles' maximum speed following a dialogue with the Vietnam Automobile Transport Association and VCCI; the General Customs Administration granted an extension on the payment of tax arrears to automobile import companies after VCCI organized a dialogue with 36 automobile import companies.

¹⁸ For further information on Vietnam Business Forum, please see the websites: www.vietnambusinessforum.org; www.vbf.org.vn

¹⁹ Ho Chi Minh City Business Association, Annual Report 2005, 11 March 2006, p.3.

Other dialogues were not so successful but were acknowledged by state agencies as grounds for further adjusting concerned policies.

Box 3

"Being nursed" only when "crying loudly "!

"Being nursed" only when "loudly crying" is the motto of the Hai Phong Road Transport Association. To remove obstacles to its business activities the association and VCCI conducted dialogues with representatives of the Ministry of Transport. The following obstacles were quickly removed by state agencies:

- A dialogue on the proposed revocation of special operation licenses imposed on super-weight trucks was organized in April 2003. One month later, the Ministry of Transport accepted the proposal.
- A dialogue on whether 40-foot high containers can be transported as ordinary goods was held on 18 June 2004. Four days later the Ministry of Transport accepted that they could.

The association carried out surveys to support its argument in each dialogue. To prepare for the dialogue on the transportation of 40-foot high containers the association measured the height between the road surface and bridges on Highway 5 and surrounding highways, making a report that included all the technical specifications.

The association provided the information to national and local newspapers and used their support to mobilize public opinion.

The association also held meetings and discussions with "allied" partners who shared related interests, such as goods owners, shipping lines, ports and import and export companies in order to achieve a common voice for the dialogues.

Source: Presentation by representative of Hai Phong Road Transport Association at the workshop "Promoting the role of business associations in the law-making process" held by VCCI and GTZ on 2 November 2005 in Hanoi.

7. Submitting written recommendations to the Government

When facing difficulties business associations often send official letters to the Government, the Prime Minister or relevant ministries to propose policies and solutions. The following are some examples:

- In 2005 the Vietnam Sugarcane and Sugar Association suggested that the Government should not allow sugar to be imported, as existing sugar manufacturing factories would be "bullied"²⁰. In July 2006, the association submitted another written request to the Government to halt licensing the import of 150,000 tones of sugar until the end of 2006, arguing that domestic sugar mills could meet national demand, and there was no need to import sugar.²¹
- The Vietnam Freight Forwarders Association asked the Prime Minister to revoke the Tan Son Nhat Goods and Services Company's exclusive right to the airport.²²
- On behalf of loss making cashew companies the Vietnam Cashew Association requested the Government and the Ministry of Agriculture and Rural Development to invest in new high-yield breeds.²³
- The Vietnam Construction Glass Association recommended the Prime Minister pause until 2010 before granting investment licenses to any construction glass production projects throughout the country.²⁴
- The Vietnam Insurance Association proposed that the Government should permit its members to acquire banking shares and establish commercial banks.²⁵

²⁰ Van Nghia, Sugar-cane and Sugar Association making proposal of no sugar imported, Saigon Liberalization, 13 May 2005 at <http://www.sggp.org.vn/kinhte/nam2005/thang5/49981/>;

²¹ Ngoc Lu, only farmers suffering losses, Saigon Liberalization, 30 July 2006 at <http://www.sggp.org.vn/kinhte/2006/7/55382/>;

²² Proposal to remove exclusive exploitation of the airport, Vnexpress 10 July 2006 at <http://www.vnexpress.net/Vietnam/Kinh-doanh/2006/07/3B9EBC37/>;

²³ Ha Yen, Stop importing rough cashew nuts, Vietnamnet 23 May 2006 at <http://www.vnn.vn/kinhte/2006/05/573441/>

²⁴ Hoang Linh, Recommendations of stopping production of construction glass, Vnexpress 31 March 2006 at <http://www.vnexpress.net/Vietnam/Kinh-doanh/2006/03/3B9E8328/>

²⁵ Song Linh, Insurers wishing to share the banking market, Vnexpress 10 June 2005 at <http://www.vnexpress.net/Vietnam/Kinh-doanh/2005/06/3B9DF0CC/>

Box 4**Pro-active Steel Manufacturers Association**

Established in November 2001, the Vietnam Steel Manufacturers Association currently has 49 members, including state-owned, private and foreign-invested enterprises. Businesses highly appreciate the association's efforts to inform the Government and relevant ministries about impediments to the steel industry. The association's leaders frequently appear in the press to voice their opinions on policies that effect the association and its members, including:

- Recommendations to Steel Business Regulations: With regard to draft Steel Business Regulations prepared by the Ministry of Trade, the Steel Association held a meeting of member company directors and collected their opinions in writing in order to offer suggestions to the drafting body. The association also consulted well-known lawyers and hired law firms to make their recommendations. When the drafting body did not accept its recommendations, the Association used the press and VCCI forums, and worked with the Ministry of Justice to analyze the legality of the recommendations. Unfortunately, the Association's recommendations were not incorporated by the drafting committee and ultimately the compliance level of the new regulations was minimal.
- Participation in designing the tax policies of the Ministry of Finance and the Ministry of Trade: The Steel Association kept track of domestic as well as overseas tax rates in order to inform businesses and provide comments for the Vietnam tax authorities when consulted. Regarding changes in import tariffs on steel billets, cold-rolled coil and stainless steel the Association provided written comments for tax agencies, of which some were accepted. In late 2005, the Association successfully challenged the Ministry of Trade's granting of a tax exemption on imported steel billets to a company as it would create unfair competition.
- Recommendation in relation to permitting trading companies to import steel scraps: Pursuant to the Environment Law, trading companies are not allowed to import steel scraps on behalf of producers after 1 July 2006. To guarantee sufficient materials for producers, the Vietnam Steel Association suggested that the Government should permit steel refinery companies with the technology capabilities to process impurities to entrust trading companies with the import of steel scraps.
- Recommendation to permit the import of old vessels to exploit for steel scraps: The Steel Association conducted a workshop in August 2006 in coordination with VCCI, steel scraps importers, the Ministry of Natural Resources and Environment, the Ministry of Trade and the Ministry of Industry to recommend the legal import of old vessels to exploit for steel scraps.

Source: Presentation by Mr. Pham Chi Cuong, President of Vietnam Steel Association at the workshop, "Promoting the role of business associations in the law-making process" held by VCCI and GTZ on 2nd November 2005; Bulletin broadcasted by the Voice of Vietnam <http://www.vov.org.vn/?page=109&nid=14098>.

A number of business associations have recently submitted their comments on policy and legal issues to the Prime Minister and ministries. The Vietnam Association of Financial Investors (VAFI) is a typical example. Since its establishment in 2004, VAFI has sent over 50 official letters to the Prime Minister and ministries to present policy-related proposals and make comments on draft legal documents²⁶. Though the Association did not receive feedback from every ministry they approached it believes that their proposals have had a positive impact. For example, after VAFI sent the Prime Minister an official letter suggesting ways to attract more foreign investment to the security market, the Prime Minister's Office sent Letter 4554/VPCP-KTTH (dated 21 August 2006) in reply, requesting the Ministry of Planning and Investment study VAFI's suggestions. The association estimates that about 70 percent of its written recommendations have been considered and accepted to some extent.²⁷

Forwarding recommendations to leaders of the State and the Government is also a method employed by foreign business associations in Vietnam. The event that attracted much attention at the 8th session of the 11th National Assembly in late 2005 was a letter jointly sent by the American Chamber of Commerce, the European Chamber of Commerce and the Australian Chamber of Commerce to the National Assembly Chairman, expressing concerns of the business community over the draft Investment Law that was to be voted for by the National Assembly. This letter greatly affected the Government and National Assembly deputies who were forced to scrutinize the draft before approval.

8. Conducting studies and surveys among businesses

In order to properly convey convincing messages on policy issues, some Vietnamese business associations have conducted periodical studies and surveys. To prepare for meetings with the Prime Minister, VCCI annually surveys its members. In 2005 VCCI surveyed 3,000 enterprises in five major cities before a meeting between the business community and the Prime Minister.

2006 was the second time VCCI surveyed more than 31,000 private enterprises throughout the country to evaluate and rank provinces and cities in terms of their business environment's openness and friendliness towards the private sector. The results give authorities an indication of a province's strengths and weaknesses, and its relative competitiveness with other provinces.²⁸ Several provinces used the information to implement programs and action plans to improve local economic governance and the local business environment.²⁹ The Government, donors and business community are also using the survey results to further improve the local business and investment climate.

²⁶ For further information, see at the VAFI website: www.vafi.org.vn.

²⁷ According to Mr. Nguyen Hoang Hai, VAFI General Secretary.

²⁸ For further information, see VCCI and VNCI, Provincial Competitiveness Index, 2005 and 2006.

²⁹ For further information, see the Report of PCI 2005 Impacts presented at the Vietnam Business Forum in December 2005, available at: www.vietnambusinessforum.org.

9. Publicizing comments on the Internet

Publicly uploading business community comments to the internet is a new form of policy advocacy used by several Vietnamese business associations. In this way more businesses are able to participate in policy advocacy activities and it is easier for state agencies to hear different viewpoints.

With the support of the Vietnam STAR Project, VCCI built a website, www.vibonline.com.vn, to publicly post comments on draft legal documents related to business activities. So far the website has nearly 200 draft legal documents and has created 85 forums for discussion about critical draft legal documents relevant to businesses.

10. Research projects of state agencies, research organizations and donors

Vietnamese business associations make use of research projects to address difficulties and obstacles arising in their business operations. In 2001 and 2002, while the 5th Central Resolution on the development of the private economic sector was being drafted, VCCI held 25 business forums and seminars on various matters in relation to private enterprises (for example inspection, business licenses and business associations) and all collected materials were then transferred to the Central Economic Commission that was mandated by the Party Central Committee to draft the 5th Central Resolution.

Representatives of the Hanoi Union of Associations of Industry and Commerce actively took part in studies undertaken by ministries and research institutes such as: "Creating a Consistent Legal Framework for Investment", "Analysis of Needed Changes to Regulations of Business Management", "Analysis of Support Measures to the Investment in the Private Sector", and "Potentials of and Solutions to Private Sector Development"³⁰.

II. INITIAL OBSERVATIONS

Several Vietnamese business associations have been policy advocates, promptly and effectively communicating the opinions of their members to state agencies. This creates a close link between members and associations, and also among businesses which may even be competitors. With support from their members, associations will not encounter financial difficulties. The Vietnam Insurance Association is a typical example. The Association enlists only 21 member companies but the standing office annually spends up to VND 1 billion, as "the member companies unhesitatingly contribute funds".³¹

³⁰ Hanoi Union of Association Industry and Commerce, Report on Performance of the 1st term and Orientation of the 2nd term (2006 - 2010), June 2006.

³¹ According to Mr. Phung Dac Loc's statement in *Vietnam Financial Times*, Business associations - indispensable trends in the integration process, posted in the website of the Ministry of Finance: <http://www.mof.gov.vn/Default.aspx?tabid=612&ItemID=21860>.

Box 5 Vietnam Insurers Association's policy advocacy has yielded important benefits for its members

The Vietnam Insurers Association has been very proactive in its role as policy advocator. In the last few years, the association has advocated for important changes to various laws and regulations including the following:

- The Ministry of Finance allowed an increase in the insurance commission in Circulars 98, 99.
- The Ministry of Finance issued a nationally applied automobile insurance certificate. This helps to prevent insurance companies forcing their clients to purchase voluntary insurance products.
- The Ministry of Finance sent provinces an official letter clarifying that the training certificates granted by insurance companies are legally acceptable and that the certificate should not be considered as a condition to be met by the insurance agent to register their business.
- The Ministry of Finance provided clearer instructions and guidelines on how insurance agents should pay personal income tax and corporate income tax.
- The Ministry of Finance provides that insurance policies sold in export processing zones, insurance and re-insurance policies sold to international freight companies are exempted from VAT.
- The Ministry of Internal Affairs issued an official letter allowing the Vietnam Insurance Association to admit foreign-invested insurance companies to be eligible to become official members of the association.
- The Ministry of Finance issued Circular 111/2005/TT-BTC, providing clearer guidance on value-added tax, corporate income tax applicable to insurance business and insurance brokerage business.

Source: Vietnam Insurance Association, Report on Status and Solutions to enhance the capacity of Vietnam Insurance Association, June 2006.

Participation in the design of national policies, laws, ordinances or other legal documents regarding the business environment is *mainly performed by large business associations*, among which VCCI plays a key role.³² Generally, small business associations and local business associations take a minor role in such activities. Very few associations assess how many of their suggestions are accepted and what impact they have. Annual reports of business associations normally include the number of drafts they have commented on or how many meetings they attended regardless of whether there was any impact.

³² Currently, the VCCI Legal Department has 15 staff, including five experts who permanently take part in law-and policy-making activities.

Business associations are greatly concerned with pressing matters, which directly affect the rights and interests of businesses. Participation in the design of critical and long-term national policies is limited, due both to limited capabilities and difficulties assessing the impact of their participation.

As policy advocates business associations mostly target the Government and ministries, i.e. executive bodies, rather than National Assembly deputies or other elective bodies. The underlying reason is that major legislative initiatives in Vietnam are generated from administrative agencies. Legislation is seldom drafted by National Assembly Committees (for example, the E-Transaction Law) or by socio-political organizations (for example, the Ordinance on Commercial Arbitration) and almost all draft laws related to businesses are prepared by the Government and are then submitted to the National Assembly. Furthermore, enacted legislation can not be enforceable in practice unless the Government issues decrees and documents guiding the implementation.

Contributions by several business associations do not take into account the interests of the majority of members. They often reflect the personal views of the leaders of associations who are unable to consult different member companies. This is due to the dependence of some business associations on state agencies. Because of particular organizational features (for example, the Foreign-invested Enterprise Association), only the opinions of Vietnamese parties in joint ventures are collected while those of the foreign parties in joint ventures or those of foreign owners of wholly foreign-invested companies are not fully reflected³³.

The opinions of domestic business associations are not as influential as those of foreign business associations in Vietnam. A typical example is the development of the Investment Law 2005. Domestic business associations, including VCCI and VAFI, made comments on the law in various forms and at different forums. However, the drafting committee was not responsive and accepted few suggestions without revealing its reasoning. Only once the draft was submitted to the National Assembly and some foreign business associations also made comments did the issues raised by domestic associations such as the draft quality receive proper attention.³⁴

The relationship between state agencies and Vietnamese business associations is *significantly influenced by private relationships and the position and reputation of the association leaders*.³⁵ Private relationships among associations' top leaders (normally retired officials of relevant ministries) can be utilized more effectively and frequently. Several presidents of Vietnamese business associations are former high-ranking government officials (for example, the Rural Enterprises Association and the Vietnam Small and Medium Enterprise Association), former officials of ministries (the Vietnam

³³ Presentation by Foreign-invested Enterprise Association at the workshop "Promoting the role of business associations in the law-making process", held by VCCI and GTZ on 2nd November 2005 in Hanoi.

³⁴ See Vietnamnet, Continually warning about the "set-back" of the Investment Law, 17 November 2005 at <http://www.vnn.vn/chinhtri/2005/11/512447/> and **Youth**, Foreign experts giving warnings, <http://www.tuoiitre.com.vn/Tiayon/Index.aspx?ArticleID=105534&ChannelID=11>, 6th November 2005.

³⁵ This is consistent with a view that "the relationship between the State and non-governmental organizations in Vietnam is generally collaborative, but mainly depends on relations among organization leaders". See "An initial assessment of civil society in Vietnam", Report of CIVICUS CSI-SAT Project, in coordination between UNDP and Vietnam Institute of Development Studies, published in January 2006, p.3

Automobile Transport Association) or even incumbent state officials (the Vietnam Real Estate Association). As a result, their arrangements are rarely publicized.

The press is playing a more important role in the advocacy process. Any issue that is debated in newspapers receives public attention and generates pressure on state agencies. The views of the Automobile Transport Association on the legalization and the circulation of 40-foot high containers was quickly accepted by the Ministry of Transport after a series of national and local news agencies reported on the provision³⁶.

Some associations closely cooperate with state agencies to build programs and provide financial assistance in order to enable state agencies to better perform their functions.

Box 6 Vietnam Tobacco Association finances over USD 2.2 million to combat smuggled tobacco

VND 35 billion was contributed by members of the Vietnam Tobacco Association for the purpose of combating smuggled and counterfeit tobacco, the first time in Vietnam businesses have co-financed such an activity. The event was announced at a conference conducted in Can Tho City on 25 September 2006.

Vietnam Tobacco Association hoped to encourage anti-smuggling forces like the market control authorities, police and border patrolmen to help tackle the illegal trade. Accordingly, a reward of between VND 500 and 1,000 per pack has been offered to members of the forces who seize smuggled and counterfeit tobacco or to citizens helping competent authorities detect and seize the same.

Source: Ho Chi Minh City Legislation Newspaper, 27 September 2006

III. WHAT ARE THE KEY IMPEDIMENTS

1. From the side of the state:

Association establishment procedures are complex. Establishing an association and obtaining a license has proved a complicated process for many associations in Vietnam. Some have had to invite former reputable state officials to join their preparatory boards and leadership. Although the procedures by

³⁶ According to Hai Phong Roadway Transport Association, a wide range of press agencies reported on the issue, including Vietnam Television, the Voice of Vietnam and Hai Phong Television.

which competent State authorities' approve an association's statutes remains a big obstacle the statutes are an expression of its members. The Vietnam Informatics Association spent 1,033 days seeking approval for its charter, the Vietnam Economic Science Association received approval at its third annual general meeting and the Vietnam Bar Code Association has been waiting six years for approval.³⁷

Box 7 A "Tough" Journey to Establishment of the Vietnam Electronics Enterprises Association

There were many meetings before the establishment of the Vietnam Electronics Enterprises Association. Its Preparatory Board was established in 1996 but was not licensed until 2000, having to complete numerous procedures in the intervening four years.

On 12 November 1997, Mr. Vu Duy Phu sent a letter in relation to the Association's establishment to the Minister of Industry, Mr. Dang Vu Chu. Mr. Vu Duy Phu used to hold many positions, including Vice Director and then Director of the Science and Technology Department, and Deputy Secretary of the Ministry of Industry' Party Committee. He was also awarded several medals and attained doctorate at the Hungarian Academy of Science in 1978. On 14 May 1999, acting as Vice President and General Secretary of the Association, Mr. Vu Duy Phu courted the support of ten retired ministerial-level officials and individuals who had held high positions in the electronics- telecommunication- informatics industry to jointly make recommendations to Secretary General Le Kha Phieu, President Tran Duc Luong and National Assembly Chairman Nong Duc Manh regarding strategic matters and the reorganization of the management system to boost the development of the industry and to propose the establishment of the Vietnam Electronics Enterprises Association. As a result, the Ministry of Industry received two official letters requesting the Minister and the Head of the Government's Human Resources and Organization Committee (now the Ministry of Internal Affairs) to allow the establishment of the Vietnam Electronics Enterprises Association.

Source: *Vietnam Electronics Enterprises Association - lessons learnt, Industrial Magazine*, Sunday 25 May 2003, available at the website:

<http://irv.moi.gov.vn/News/PrintView.aspx?ID=13196>

Policy- and law-making is still a "closed" process. There is a "closed circle" within state agencies, from the structure of Drafting Committees to drafting the steps, and the gathering of opinion. A number of policies and legal documents are available for the public to comment on, but only as a formality. Thus, the room for business association policy advocates is limited.

³⁷ Presentation by Mr. Pham Quoc Anh, Chairman of Vietnam Lawyers Association at a discussion session on Association Law Project on 23 August 2006 at the 9th Conference of Permanent National Assembly Deputies, the 11th National Assembly.

Cooperation between state agencies and association remains unilateral. Associations are only consulted on issues that concern associations directly. If associations or their members encounter difficulties it is difficult to make recommendations or seek support from state agencies. The participation of business associations in the policy-making process depends on the goodwill of state agencies and the transparency of the process. Associations should play a more defined and constructive role in the design of policies in areas such as socio-economic development, ministry strategies for industry development and international economic integration.

State agencies' consultation with business associations is only procedural in most cases. Currently, several state agencies consult enterprises and business associations in the process of promulgating and amending legal documents. However, they do so to complete required procedures, not to enhance the quality of documents. The opinions of associations are not carefully considered and are often rejected without a clear explanation.

Some officials are not aware of the need for associations to be independent of state agencies. A worrying trend is the intention to put associations, including business associations, under the direct management of ministries and equivalent bodies. This intention was even reflected in a draft Decision of the Prime Minister that the Ministry of Internal Affairs planned to submit.³⁸ It is the tendency of state management agencies to "enhance State governance over business associations". Allegedly, under the authority of ministries and ministry-equivalent bodies, "associations will be granted favorable conditions to take part in activities in areas administered by relevant ministries and, more frequently, be consulted about association-related management and technical issues. They will also deeply participate in the process of making policies and laws in relation to State management of associations' activities".

A lack of transparency. In the Provincial Competitiveness Index (PCI) carried out by VCCI and VNCI in 2005 and 2006 the transparency index score is the lowest of all the indices. Only 8.84 percent of surveyed private enterprises revealed that provincial authorities consulted them about changes to policy and legal regulations. 62.50 percent of surveyed enterprises say that they must rely on "relations" to obtain provincial planning documents.

2. From the side of Business Associations

A lack of financial resources is a big obstacle to the participation of Vietnamese business associations in policy making and advocacy. According to a nationwide survey of 64 business associations

³⁸ Le Tho Binh, "'Governmentalization' of Associations' Activities?" Available at Vietnamnet <http://www.vietnamnet.vn>, 8 November 2004.

conducted by VCCI in August 2006, 72 percent of business associations regard a shortage of financial sources as a major impediment to their activities.

Business associations depend on four sources of income: (i) Funding from the state budget; (ii) fees for services supplied, (iii) membership fees, and (iv) external funding. The state budget accounts for a small proportion of total income and often has a negative impact on the independence and objectiveness of associations. Fees for services are also limited and membership fees are seldom paid by members. The financial report of the Hanoi Union of Associations of Industry and Commerce shows that between 1996 and 2006 it collected VND 101,590,000 as membership fees, accounting for nearly two percent of the total fund of VND 5,173,035,055. This was the equivalent of half the Association's administration expenses or one eighth of its annual rent.³⁹

Lack of human resources: The same VCCI survey of 64 business associations indicates that 52 percent of associations consider a shortage of qualified staff as a major hindrance. Of the business associations surveyed, five had no full-time staff, nine associations had one staff and eight had two staff. Almost all the associations with no full-time staff are at the provincial level.

Seventy-four percent of the business associations surveyed did not assign a division or individual to be in charge of policy and legal issues. Associations' capability to undertake research on policy-related issues therefore remains weak. Only the Ho Chi Minh City Young Businesspeople Association has set up an Advocacy Department⁴⁰ (in addition to a Membership Department and Public Affairs Department). However, the department's performance and the association's advocacy activities have been limited. A survey on the needs and satisfaction of 161 members of business associations conducted by AC Nielsen in December 2005 revealed that an average of 5.6 percent of members were pleased with the association's advocacy activities and 31 percent had not heard of or taken part in any advocacy activities.

Issues relating to the leadership of business associations: Currently, there are two categories of association leadership in Vietnam. Association leaders are either retired State officials or entrepreneurs. Retired state officials have a good knowledge of their respective industries but hesitate to contribute opinions on policy (they may even have been involved in the formulation of policies that require amendment).

³⁹ Hanoi Industry and Commerce Association, Report on Performance of the 1st term and Orientation of the 2nd term (2006 - 2010), June 2006.

⁴⁰ According to the organization chart of the Ho Chi Minh City Young Businesspeople Association the Advocacy Department has the following duties: 1) Involving and guiding members in the implementation of laws in regard to State organizations, foreign trading organizations, and associations; 2) Creating opportunities for members to carry out trade promotion activities towards international trading organizations and associations; 3) Working closely with the Administrative Department to design procedures of technical assistance to credit and finance projects; 4) Designing accounting and management training programs, subject to the needs of members; 5) Frequently organizing and encouraging state agencies to join activities in respect of labor, salary, technology and environment. For the organization chart, statutes and other details, please see the website of Ho Chi Minh City Young Businesspeople Association: www.ybahcm.com.

The emerging trend of the "governmentalization" of business associations' organization and activities. Several associations are "closely attached" to ministries and state agencies at different levels, i.e. state officials hold leading positions in associations⁴¹. Therefore, the provision of funds and facilities for association activities are dependent on state agencies. At the provincial level, full-time staff of some business associations are often State officials and the association president is often the Chairman or Vice Chairman in charge of economic affairs of the People's Committee⁴². It is, therefore, frequently impossible to determine what the mission of an association actually is, who the association represents and whether the association president is able to speak on behalf of association members.

Some associations do not closely coordinate with members or "speak the same language" as members. Many associations do not know about the business activities of their members or even know how many members they have.

Box 8

Enterprises make losses and the association asks for a medal!

The price of cashew nuts fell sharply in late 2005. Lots of Vietnamese cashew nut export companies have consequently suffered. Exports are forecasted to fall further as foreign clients have stopped purchasing goods for the Christmas and New Year period and, at the same time, banks are requiring that producers pay due loans.

One annoyed director of an export cashew company stated that : "[a]t this critical time, the Cashew Association does not call for any cooperation to tackle difficulties or make a proposal to the Government to relieve the pressure to pay bank loans. In a meeting on 29 October 2005, in addition to a request for membership fees, the Cashew Association requested the Government reward companies and individuals and award a "Doi moi" Heroic Medal to the Association itself. According to the director, the call for State recognition of the cashew industry's achievement is necessary but ill-timed. Members are "extremely worried" about the ongoing difficulties but the Association is "irresponsive".

Source: Dai Duong, G.Hy, Joining associations... for fun, Laborer Newspapers, 1 January 2006.

Associations are poor at using technology and updating information. Currently, many associations have limited facilities and many do not even have an internet connection. As a result, it is impossible for them to search for information themselves or contribute opinions via e-mail or internet.

⁴¹ A typical example is Hoa Binh Province: the Secretary of the provincial Party Committee is President of the Young Business Association, the Chairman of the provincial People's Committee is President of Small and Medium Enterprise Association.

⁴² Regarding a district-level business association in Hanoi, the President is Chairman of district People's Committee and full-time staff are officials of Planning-Economic Division of such District.

III. WORRYING TRENDS

More time is needed to verify the assessment given below, however, based on the experience of some other countries as well as the practices of Vietnam business associations, the research team would like to list the following worrying trends:

The expansion of big powerful business associations or "oligarchs that manipulate policies". Meanwhile, associations and opposing interest groups have not fully developed or have been given few chances to develop. There is the risk, therefore, that powerful business associations have too much influence on policy formation. For example, when state management agencies are confronted by the Vietnam Automobile Makers Associations, a strong coalition of automobile makers in Vietnam, do they hear the voices of passengers and goods transport companies and to what extent are consumer interests protected?

The resistance of vested interest groups and associations which benefit from existing policies. Business associations and sectoral associations that receive some degree of state protection continue to lobby the state to maintain their privileges, thus preventing new from companies entering the market.⁴³

A "vicious circle" faced by domestic business associations: Most Vietnamese business associations have limited financial resources. This leads to difficulties recruiting qualified staff, in turn restricting the assistance they can provide to enterprises as well as policy advocacy activities. As a result few enterprises seek association membership, further reducing available funds. In an era of accelerating levels of international integration, increasing demands for market expansion and increasing business needs, business associations are unable to make the required contribution. Therefore, some enterprises are willing to pay high membership fees to join foreign business associations and refuse to join Vietnamese associations which demand smaller, symbolic, membership fees.

The selfishness of business associations: interest groups that focus on their own interests and objectives and ignore the needs of community and society, thus neglecting their corporate social responsibility.

Underground, informal policy advocacy. Many large companies count on personal relations rather than associations to affect policies.

Illegal and immoral actions are taken for the purpose of policy advocacy in support of private interests. Given the corruption situation in Vietnam, it is impossible to predict the trend of collusion between corporate groups and State officials.

⁴³ As reported in the press: The Vietnam Golf Course Association requested that the Government limit the licensing of new golf-courses ; the Vietnam Steel Association lobbied against the licensing of large-scale steel projects; the Vietnam Construction Glass suggested the Government cease licensing the construction glass until 2010.

RECOMMENDATIONS

I. RECOMMENDATIONS TO VIETNAMESE BUSINESS ASSOCIATIONS

Business associations should professionalize activities in relation to participation in policy development. State agencies and drafting committees may reject the opinions of Vietnamese business associations because of poor and inappropriate means of communication. Too few business associations have sufficient staff qualified to participate effectively in the policy- and law-making process. The members of business associations that lack qualified full-time staff ought to seek the assistance of experienced and skilled experts.

Business associations should make policy-related proposals and recommendations to the State. Associations should propose specific policies to the State. VUSTA's draft Law on Associations to complement the version drafted by the Ministry of Internal Affairs may be deemed as good practice for other business associations⁴⁴.

Policy dialogue should be a continuous process. Business associations have not built a mechanism for effectively supervising and monitoring the opinions and commitments of state agencies. Such a mechanism will enable business associations bring to account state agencies that do not meet their commitments.

Associations should learn from successful experiences. For example, organizational structure, methods of collecting members' opinions and mobilizing potential allies.

Unity and solidarity within a robust business association is vital if enterprises' interests are to be protected in a period of increasing international economic integration. To support the Government's negotiations over complicated and costly anti-dumping cases, relevant enterprises' opinions should be gathered and large-scale and in-depth research on international and domestic policies and markets should be conducted.

⁴⁴ Draft Law on Associations prepared by VUSTA and discussions on draft Law on Associations are available at the website: www.vusta.org.vn.

Box 9**Seven lessons learnt in dialogues with state agencies**

Based on its own dialogues with state agencies, Hai Phong Road Transport Association drew the following lessons:

1. An association should be constituted on the basis of a specific industry, having shared goals and easily reaching a consensus.
2. The leadership of an association must be able to identify issues to be given priority and not set too many objectives.
3. During a dialogue with authorities associations should persist with the viewpoint "know myself, know yourself", finding the best method of cooperation.
4. Associations should prepare well for any dialogue.
5. As many allies as possible should be gathered and they should all speak the same language.
6. Good-hearted, talented, reputable and legally knowledgeable advisors should be asked for assistance.
7. A dialogue should be organized in a proper venue and at a right time.

Source: Presentation by a representative of Hai Phong Road Transport Association at the workshop "Promoting the role of business associations in the law-making process" held by VCCI and GTZ on 2 November 2005 in Hanoi.

II. RECOMMENDATIONS TO THE STATE

The policy-making process must be transparent: Once a policy is enacted, there will always be winners and losers. However, most important is that the policy process is transparent and all the arguments, for and against, are laid out and every association should be granted the opportunity to present its opinions. Such an open debate enables society to know whether a policy has been carefully scrutinized by the State

and whether it is the best choice. The "balance of information flow" between the State and associations and among the associations themselves must be guaranteed, and the State must set *out policies/regulations in relation to the right of organizations and individuals to access information.*

The State must be open and transparent in the policy advocacy process and must publicly receive and accept opinions from various interest groups. It needs to develop a mechanism to enable small-scale business associations to address policy-related issues to relevant state agencies.

To assure transparency in the policy-making process, the State must be fair when selecting policies and should separate the activities of business associations from those of state management agencies, particularly between associations of specific industries and related ministries. The knot that binds business associations and state agencies needs to be untied.

The experience of many countries indicates that there is a need to build *a formal mechanism such that all interested and concerned parties have the opportunity to voice an opinion on all critical policy-related issues*, particularly issues involving negotiation with foreign countries. This mechanism should be also used to supervise the fulfillment of commitments by foreign partners upon completion of negotiations.

To hear more voices and reduce pressure on the policy-making process, *the State should facilitate, not hinder the establishment of business associations.* The procedures to establish business associations should be simplified and made more convenient.

To some extent, *the State should assist and favor the establishment and development of public associations* (for example, the Environment Protection Association and the Consumers' Protection Association) in order to generate a counterbalance to business associations. During debates over permission of the import of used cars and extremely high price of automobile in Vietnam, it was unfortunate that consumers associations and environmental protection associations played a minor role.

CONCLUSION

The emerging influence of interest groups, including business associations, is an irrevocable trend in the Vietnamese society. On the path towards a civil society with a "small State - big society" structure, non-state civil institutions will play an important role in social activities. This will not affect the role of the State, but helps the State achieve its objective of building a society in which the vibrancy of citizens and associations is enhanced.

This corresponds with increasing the transparency of the policy making and policy implementation process, bringing both into compliance with international standards and possibly reducing the number of conflicts and discrepancies arising from the opening of the Vietnamese market.

As part of such a process the State needs to build institutions (promulgating legal documents, guiding their implementation, acting as sponsor for the development of associations); create a democratic atmosphere and equality between state management agencies and associations; encourage criticism, strengthen accountability, and tackle the phenomenon of ministers assuming control of enterprises and business associations.

Business associations will then be better able to perform policy advocacy, uniting the State and society in the policy process.

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ANNEX

Annex 1: Number of business associations in provinces and cities

No.	Province	Number of business associations	No.	Province	Number of business associations
1	An Giang	6	33	Khanh Hoa	8
2	Bac Giang	1	34	Kien Giang	2
3	Bac Kan	1	35	Kon Tum	0
4	Bac Lieu	0	36	Lai Chau	1
5	Bac Ninh	1	37	Lam Dong	1
6	BR-VT	13	38	Lang Son	1
7	Ben Tre	5	39	Lao Cai	1
8	Binh Dinh	1	40	Long An	5
9	Binh Duong	1	41	Nam Dinh	2
10	Binh Phuoc	1	42	Nghe An	6
11	Binh Thuan	6	43	Ninh Binh	3
12	Ca Mau	1	44	Ninh Thuan	8
13	Can Tho	4	45	Phu Tho	0
14	Cao Bang	1	46	Phu Yen	6
15	Da Nang	12	47	Quang Binh	0

16	Dac Lac	1	48	Quang Nam	2
17	Dac Nong	0	49	Quang Ngai	1
18	Dien Bien	0	50	Quang Ninh	2
19	Dong Nai	5	51	Quang Tri	1
20	Dong Thap	2	52	Soc Trang	0
21	Gia Lai	1	53	Son La	0
22	Ha Giang	1	54	Tay Ninh	4
23	Ha Nam	2	55	Thai Binh	3
24	Hanoi	78	56	Thai Nguyen	2
25	Ha Tay	2	57	Thanh Hoa	6
26	Ha Tinh	0	58	TT - Hue	4
27	Hai Duong	2	59	Tien Giang	3
28	Hai Phong	9	60	Tra Vinh	0
29	Hau Giang	0	61	Tuyen Quang	1
30	Hoa Binh	2	62	Vinh Long	2
31	HCM City	42	63	Vinh Phuc	2
32	Hung Yen	3	64	Yen Bai	2
Total:					283

Source: Statistics of VCCI up to 31 December 2004

Annex 2: Proportion of private enterprises joining associations

No.	Province	Proportion of private enterprises joining associations (%)	No.	Province	Proportion of private enterprises joining associations (%)
1	An Giang	19.15	33	Hung Yen	32.22
2	Bac Kan	38.96	34	Khanh Hoa	26.73
3	Bac Giang	39.86	35	Kien Giang	28.57
4	Bac Lieu	10.81	36	Kon Tum	17.11
5	Bac Ninh	8.24	37	Lai Chau	59.46
6	Ben Tre	10.20	38	Lam Dong	18.52
7	Binh Dinh	11.02	39	Lang Son	40.98
8	Binh Duong	25.00	40	Lao Cai	30.97
9	Binh Phuoc	19.78	41	Long An	20.93
10	Binh Thuan	18.97	42	Nam Dinh	28.00
11	BR - VT	24.72	43	Nghe An	49.53
12	Ca Mau	12.50	44	Ninh Binh	38.68
13	Can Tho	28.57	45	Ninh Thuan	4.67
14	Cao Bang	31.46	46	Phu Tho	21.88

15	Da Nang	17.81	47	Phu Yen	20.16
16	Dac Lac	20.43	48	Quang Binh	13.86
17	Dac Nong	5.36	49	Quang Nam	17.39
18	Dien Bien	26.42	50	Quang Ngai	16.19
19	Dong Nai	23.16	51	Quang Ninh	34.19
20	Dong Thap	14.05	52	Quang Tri	23.58
21	Gia Lai	9.64	53	Soc Trang	12.50
22	Ha Giang	23.61	54	Son La	29.81
23	Ha Nam	24.55	55	Tay Ninh	7.27
24	Hanoi	20.00	56	Thai Binh	38.14
25	Ha Tay	28.13	57	Thai Nguyen	29.07
26	Ha Tinh	32.81	58	Thanh Hoa	42.22
27	Hai Duong	26.12	59	Tien Giang	7.41
28	Hai Phong	9.92	60	Tra Vinh	8.15
29	Hau Giang	5.41	61	Tuyen Quang	23.85
30	HCM City	43.16	62	Vinh Long	15.00
31	Hoa Binh	66.67	63	Vinh Phuc	30.77
32	Hue	19.74	64	Yen Bai	30.43
Average Rate:		25.89			

Source: Survey of 6,319 enterprises within the Study of Provincial Competitiveness Index (PCI) 2006 conducted by VCCI and VNCI.

Annex 3: Legal documents and issuing agencies

Issuing Agencies	Legal Documents
National Assembly	Constitution, Law, Resolution
Standing Committee of National Assembly	Ordinance, Resolution
State President	Order, Decision
Government	Resolution, Decree
Prime Minister	Decision, Directive
Ministers, Heads of ministry-equivalent bodies	Decision, Directive, Circular
Judges' Council of People's Supreme Court	Resolution
Chief Judge of People's Supreme Court and Director of People's Supreme Procuracy	Decision, Directive, Circular
Competent state agencies State agencies having jurisdiction over Socio-political organizations	Resolution, Joint Circular
People's Councils	Resolution
People's Committees	Decision, Directive

Annex 4: The Right to Participate

- The right of citizens to participate in discussing general matters of the State and localities is a constitutionally defined right (Article 53, Constitution 1992);
- The right of citizens and businesses to participate in the law-making process is provided for in the Law on Promulgation of Legal Instruments, guiding Decrees and directives of the Prime Minister as well as many other legal documents.
- The right of relevant businesses to participate in making business-related laws is committed by Vietnam in many international trade treaties and agreements (for example, Bilateral Trade Agreement between Vietnam - US).

Annex 5: Stages of participation and possibly agencies ⁴⁵

Stage	Possibly affected agencies	Advantages	Disadvantages
Generation of legislative initiatives	<ul style="list-style-type: none"> ▪ Standing Committee of National Assembly; ▪ Committees of National Assembly; ▪ Government; ▪ Ministry of Justice; 	<p>This stage is appropriate for associations to make any proposal codifying critical policies into law or revising laws in force.</p>	<p>The participation of associations in this stage only exists in theory. The research team observed that no business association has successfully proposed any legislative initiatives.</p> <p>It is impossible for associations to propose any initiatives directly to the National Assembly and the Standing Committee of the National Assembly, unless they do so through the Fatherland Front or National Assembly deputies that will receive, process and then forward the proposals to competent authorities.</p> <p>Currently, there is still an absence of a regime of receipt and rejection of legislative initiative. Therefore, it is not certain that such initiatives will be</p>

⁴⁵ Annex 5 only deals with common legal documents including Laws, Ordinances issued by the National Assembly and the Standing Committee of the National Assembly, Decrees and Decisions by the Government and the Prime Minister. Other legal documents issued by the State President, the People's Supreme Court, the People's Supreme Procuracy and provincial People's Committees are not mentioned here.

<p>Draft legal documents prepared by ministries and other drafting bodies</p>	<ul style="list-style-type: none"> ▪ Ministries and other bodies in charge of drafting; ▪ Members of Drafting Committees from different agencies. 		<p>transparently reviewed and then inserted into law- and ordinance-making programs.</p> <p>The possibility of affecting contents of draft legal instruments depends much on the expertise, reputation and enthusiasm of each member of Drafting Committees⁴⁶ and the inquisitiveness and openness of bodies in charge of drafting.</p> <p>Actually, very few representatives of associations join Drafting Committees (the selection of Drafting Committee members is subject to the determination of relevant state agencies⁴⁷).</p> <p>Normally, Drafting Committees' accountability is not high. Few views and discussions between bodies in charge of drafting and opinion contributors are exchanged.</p>
		<p>Can have an early influence on policies.</p> <p>Associations might discuss with state agencies fundamental matters such as the approach, orientation and theoretical and academic issues.</p>	

⁴⁶ A Drafting Committee normally exists on paper, and the unit mainly in charge of drafting is an Edition Team or a smaller group (often including officials of the body in charge of drafting).

⁴⁷ The Law on Promulgation of Legal Instruments only stipulates that members of Drafting Committees shall be representatives of the agencies and organizations concerned, and experts and scientists (Articles 25 and 60). Competent agencies in charge of establishing such committees determine which organization is "concerned" and who qualifies as a "scientist or expert".

<p>Examination of legal documents by the Government</p>	<ul style="list-style-type: none"> ▪ Ministries and other bodies in charge of drafting; ▪ Prime Minister's Office; ▪ Ministry of Justice; ▪ VCCI and other socio-political organizations. 	<p>This stage involves various agencies. Therefore, a wide range of agencies can hear opinions of associations.</p> <p>The role of VCCI, a national association, in this stage constitutes a mandatory step as defined in Decree 161/2005/ND-CP guiding the implementation of the Law on Promulgation of Legal Instruments.</p>	<p>This is a late stage for legal documents at government level such as Decrees and Decisions of the Prime Minister. Particularly those documents requiring the consensus of various ministries.</p>
<p>Examination of legal documents by Committees of the National Assembly</p>	<ul style="list-style-type: none"> ▪ Standing Committees of the National Assembly; ▪ Committees of the National Assembly; ▪ Ministries and bodies in charge of drafting; ▪ National Assembly Deputies (full-time). 	<p>In principle, Committees of the National Assembly. Unlike some ministries Committees of the National Assembly represent common interests.</p> <p>The advice of these committees has great weight with Drafting Committees.</p>	<p>It is almost impossible to make significant changes at this stage as committees do not have sufficient information in relation to the drafting process and related opinions.</p> <p>Drafting Committees are often involved with Departments of the National Assembly's Office (an organ providing assistance to the Committees), which may affect the committee's independent voice.</p>

<p>Discussion and vote for approval of legal documents by the National Assembly</p>	<ul style="list-style-type: none"> ▪ Standing Committee of the National Assembly; ▪ National Assembly Deputies and delegations; ▪ Committees of the National Assembly; ▪ Government; ▪ Ministries and bodies in charge of drafting. 	<p>It is possible to attract the attention of the mass media. The independent role and other features of the forum, allows National Assembly deputies to raise "thorny" issues.</p>	<p>The time for discussion at the National Assembly is limited. The agenda for passing draft laws is often fixed, hence it is difficult to make any significant changes to critical issues at this stage. There is an unequal flow of information between National Assembly deputies and the drafting bodies.</p>
<p>Guiding documents drafted by ministries</p>	<ul style="list-style-type: none"> ▪ Relevant ministries; ▪ Ministry of Justice; ▪ VCCI and other socio-political associations. 	<p>At this stage specific and practical issues may be addressed.</p>	<p>The separation among ministries is remarkable. Because of the nature of a guiding document, lots of subject-matters therein are restricted by higher-level documents. The process of making guiding documents by ministries is not publicized and less transparent than that of law- and ordinance- making.</p>
<p>Effective legal documents</p>	<ul style="list-style-type: none"> ▪ Government, relevant ministries; ▪ National Assembly Deputies; ▪ Large associations like VCCI. 	<p>An advantage at this stage is highly convincing recommendations because what business associations address is already proved in practice.</p>	<p>It takes time to begin the process of making and revising new legal documents as the law-making procedures are fixed.</p> <p>Ministries may also be uncooperative.</p>

Annex 6: Policy advocacy carried out by business associations

Forms of policy advocacy	Advantages	Disadvantages	Features
Conducting workshops, dialogues	It is possible to directly meet with state agencies and discuss issues more thoroughly.	Costs and expenses are high. It requires cooperation and goodwill from relevant state agencies. The participation of researchers and press agencies is required. Soliciting opinions is a must.	Appropriate for legal documents and policies.
Carrying out field studies and surveys among enterprises	Contributed opinions are of greater persuasiveness and weight.	Funds, time and human resources are needed to undertake professional surveys.	Appropriate for issues which require proof and data for arguments.
Directly submitting recommendations to relevant state agencies	Does not require much time and funds.	It requires the participation of experienced experts and enterprises. Difficult if state agencies refuse to cooperate and there is a poor relationship between associations and state agencies	Appropriate for a limited time for contributions and minor issues.
Association representatives' making presentation at workshops and forums held by state agencies or other organizations	Does not require much funds and manpower.	It depends much on topics of a workshop. Associations face difficulties in determining contents and agencies to be affected.	Appropriate to general issues or used in combination with other forms of policy advocacy by associations.
Expressing opinions via mass media	The potential audience is large and expenses are low. Effective.	Relations are complex, particularly controlling the message.	Appropriate for fresh and topical issues.



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