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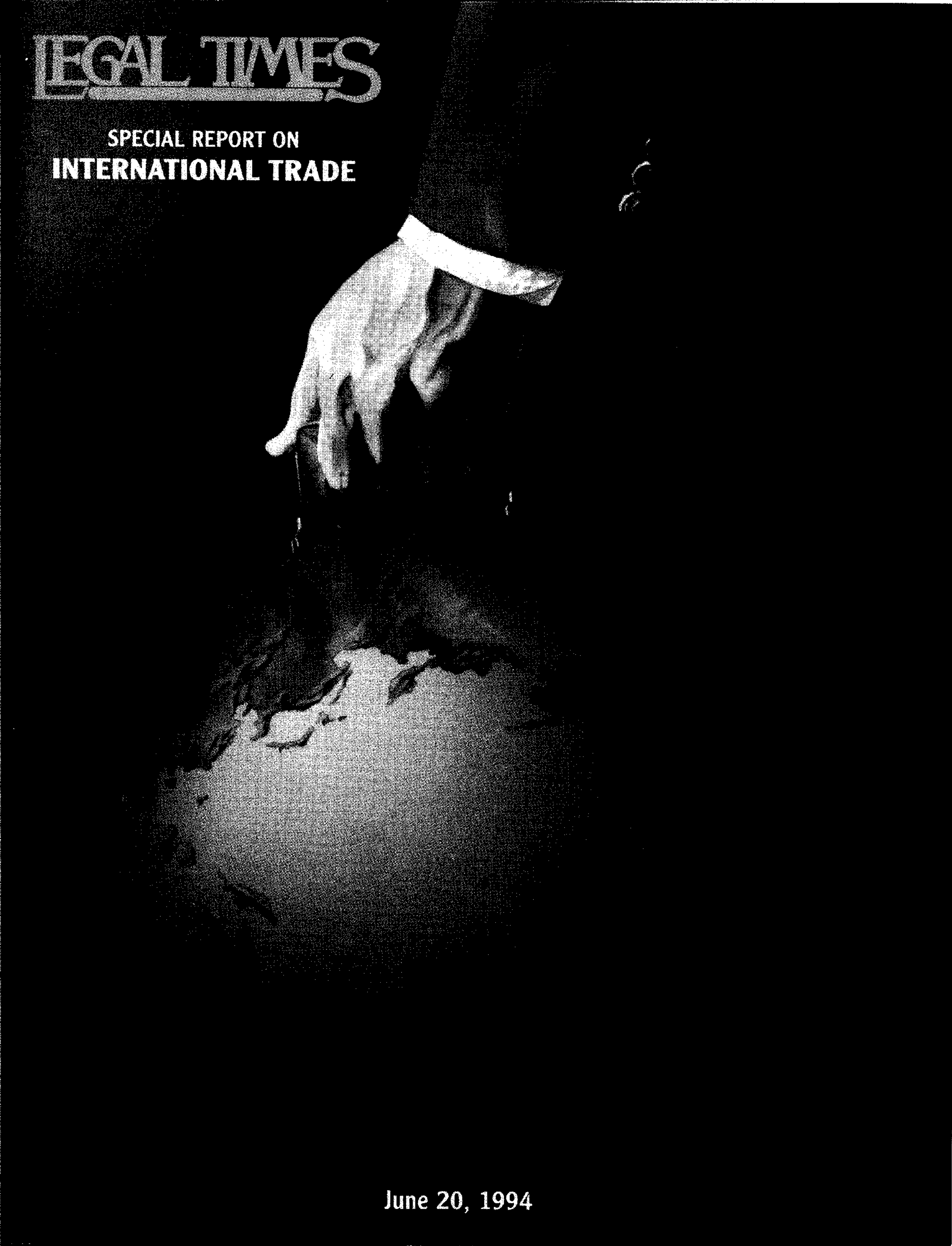

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INVESTING IN VIETNAM: LOOKS FOR MODERN

Now that the U.S. embargo has been lifted, it's time for Americans to learn how to negotiate commercial contracts in this rapidly expanding market.

By John Barkai and Laurence J. Brahm

The only thing most Americans know about negotiating with the Vietnamese concerns the interminable discussions during the late stages of the war about the shape of the table for the Paris Peace Talks. While the debate raged over whether the table should be round or square, thousands more died in the jungles.

It's time to update our knowledge about negotiating

An Ancient Land Money

with the Vietnamese. The Socialist Republic of Vietnam is undergoing a rapid increase in foreign investment. When President Bill Clinton lifted the U.S. trade embargo in February, Americans were allowed to participate in this development. But investors from other developed countries have a head start. While Americans were locked out under the Trading With the Enemy Act, other foreign investors were stalking the streets, hills, and beaches of Vietnam looking for trading and investment opportunities.

Negotiating commercial contracts in Vietnam is difficult. The socialist economy is undergoing a market transition, and the legal system is being developed from scratch to deal with the sudden flood of business people. On the other hand, the opportunities are significant, and the Vietnamese government is actively encouraging foreign participation.

The opportunities for foreign investors go beyond the abundant source of cheap labor to produce light-industry exports. There will be major construction contracts to build up the poor infrastructure. Large oil reserves have many multinationals eager to get a piece of the action. And decent, reliable hotels are needed for the expected flood of business travelers. Good hotels are profitable and produce an immediate flow of foreign exchange—an important factor when investing in a country with a soft currency and exchange controls. Some day, beach resorts along the 2,000-mile coastline—considerably longer than the west coast of the United States—may make Vietnam a premier Asian resort destination.

Vietnam's population of 70 million people also makes it the 12th-most populous country in the world and a natural destination for foreign imports. Although the country's annual per capita income of $200 suggests that it will be some time before high-cost imports will be purchased extensively, low-cost products with international name-brand recognition are likely to find a large market. For example, Pepsico Inc. sounded the first shot in the "cola war" by getting its product on the streets of Ho Chi Minh City (formerly Saigon) less than 24 hours after the embargo was lifted; the Coca-Cola Co. will surely not be far behind.

Indeed, Vietnam is poised to become the latest of the expanding Southeast Asian economies.

NEW THINKING

In the late 1970s and early 1980s, however, while Vietnam's centralized economy stagnated, the economies of its free-wheeling neighbors—Thailand, Singapore, and Malaysia—flourished. Twenty-five years ago, Bangkok and Saigon were economically comparable. Today, Bangkok is one of Asia's boom towns, while Ho Chi Minh City has hardly changed. But the Vietnamese have laid the groundwork for the expansion of their economy.

In 1986, Vietnam adopted a *Doi Moi* ("new thinking") policy, designed to encourage foreign investment. The following year, the government established the State Commission for Cooperation and Investment to act as a one-stop shop for reviewing foreign investment applications and approving contracts. The SCCI is an interministerial organ directly under the Council of Ministers, the executive branch of the government.

Also in 1987, the Vietnamese government enacted the Foreign Investment Law, which introduced three formal structures for investment:

- *Joint ventures*—the closest thing to a limited corporation, with a board of management (directors), and both foreign and Vietnamese equity participation.
- *Cooperative businesses*—similar to partnerships. No legal entity is formed. The partners contractually agree about their respective obligations and profit distributions.
- *Wholly owned foreign ventures*—limited-liability entities, governed by a board of management. Equity is entirely foreign.

Vietnam is, in fact, one of the few countries in Southeast Asia that allows foreign investors to own the entire equity in an investment.

"This liberal attitude explains why the Vietnamese have been successful in attracting foreign investment from Asia," explains one consultant who has been brokering Vietnam deals since the late 1980s. "The thing is, however, the foreign investor should not underestimate the importance of a local partner. There are some things that as a foreigner you cannot do, do not want to do, or don't even want to know about, which a local partner can help you with."

'THE CUSTOMS OF THE VILLAGE'

Despite the fact that all investment approval authority for Vietnam is concentrated in the capital of Hanoi, foreign investors must also seek local approval first in the area where the project will be established. Vietnam still has a state-planned economy, and the local government wants to know what projects are coming to that community. Although local governments do not have the power to approve investments, they do have the power to say no. As the old Vietnamese saying puts it, "The laws of the emperor are often not as influential as the customs of the village."

Doing business in developing countries is different and sometimes on the edge. So while heeding the advice of local contacts is often wise, it's not a bad idea for Americans to toss a copy of the Foreign

Corrupt Practices Act into their briefcases as well.

Doi Moi has had some success in jump-starting the Vietnamese economy. By 1992, the SCCI had licensed more than 500 foreign investment projects with a total investment capital of nearly $4 billion. Ho Chi Minh City, with a population of nearly 5 million people, is the center of this explosion. The city alone has accounted for 35 percent of the total investment in Vietnam. By the end of 1992, there were 70,000 Vietnamese employees working in foreign investment enterprises throughout the country, and these numbers are increasing daily.

Taiwan leads with almost 22 percent of the total foreign investment approved by the Vietnamese government. Hong Kong is second. This pattern may say something about the advantages that Asian investors, with their similar cultural attitudes and negotiating styles, have in this market. It may also be a reflection of the so-called overseas Chinese connection: Ho Chi Minh City has a large ethnic Chinese population concentrated in Cholon, the old Saigon trading community.

Because of the U.S. trade embargo, however, these licenses, investments, and employees have not been for American companies.

OLD BATTLES

During the Vietnam War, U.S. trade sanctions were applied to North Vietnam. After the fall of Saigon in 1975, sanctions were extended to the entire country. These sanctions and the embargo not only eliminated any trade with the United States; they also resulted in a ban on loans from the World Bank and the International Monetary Fund. This meant that Vietnam could rely only on the limited investment support of the communist world.

In the last few years, as that world disintegrated, Vietnam worried about its increasing isolation. With the institution of *Doi Moi*, however, foreign capitalists from the rest of the developed world started coming to Vietnam.

The United States, in contrast, held firm to trade sanctions and the embargo, largely driven by emotional scars from the war and the unresolved MIA issue. Without American political support and capital investment, the Vietnam economy lacked the full-powered engine to drive its recovery.

In December 1992, then President George Bush lessened U.S. trade sanctions and the embargo by allowing Americans to set up offices in Vietnam, hire local staff, and sign contracts that could go into effect when all the trade sanctions were lifted. The handwriting on the wall seemed to indicate that the United States would fully remove the embargo, but no one could predict when the wall would come down.

On Feb. 3, 1994, President Clinton finally lifted the 19-year-long embargo. During the interim, the United States had withdrawn its objections to World Bank and IMF programs for Vietnam, and the Asian Development Bank had announced that it would make up to $1 billion available for the country.

Even today, lingering feelings about the war, particularly the MIA issue, hinder American eagerness to invest in Vietnam. However, it's unlikely that these feelings will be a serious deterrent to U.S. involvement. Americans are coming back to Vietnam, and this time the conflicts must be solved through negotiation.

THE VIETNAMESE WAY

The shape of the table at the Paris Peace Talks was actually an important and legitimate issue because it influenced which parties would be represented at those negotiations. For Americans anticipating doing business in Vietnam, however, a more important lesson can be learned from the Paris talks: While the Americans rented a hotel room for their negotiating team, the Vietnamese purchased a house for theirs. Obviously, the two sides had very different expectations about the length of time the talks might take or the amount of time they were willing to devote to the process.

Americans coming to Vietnam will need to re-examine their expectations about typical negotiations—how long they are likely to last, what it takes to make a deal work, and how the Vietnamese view the contract process. For instance, personal interaction is more important than a formal contract in making a deal work with the Vietnamese. Recently, when one American lawyer wanted to leave his briefcase in a Vietnamese lawyer's office for safekeeping, the Vietnamese lawyer asked, "Is there anything valuable in there?" The American lawyer answered, "Yes, many documents." The Vietnamese lawyer replied, "Then don't worry, it will be safe here. Vietnamese people don't need paper."

As the U.S. State Department and American business people roll up their sleeves and begin to negotiate the terms of normalization and many commercial contracts, they may wish to think about the Paris talks and try to put themselves into a Vietnamese time frame and mind frame. The advice of one official in Hanoi should be carefully noted:

"I do not understand what the American problem is with normalization of relations and all this talk of emotional scars. Look at us Vietnamese. We fought the Chinese for over 1,000 years. We fought the French for over 100 years. We only fought the Americans for 10 years. So what is the problem?" ✦