VIETNAM

TRADE SUMMARY

The U.S. goods trade deficit with Vietnam was $15.6 billion in 2012, up $2.5 billion from 2011. U.S. goods exports in 2012 were $4.6 billion, up 7.3 percent from the previous year. Corresponding U.S. imports from Vietnam were $20.3 billion, up 15.9 percent. Vietnam is currently the 46th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Vietnam was $747 million in 2011 (latest data available), up from $623 million in 2010.

Trade Agreements

The United States and Vietnam have held a number of discussions under the Trade and Investment Framework Agreement (TIFA), including at the Ministerial level. The TIFA provides a forum to help monitor and implement Vietnam's WTO commitments, address bilateral trade issues, and promote increased trade and investment.

Vietnam is a participant in the Trans-Pacific Partnership (TPP) negotiations, through which the United States and 10 other Asia-Pacific partners are seeking to establish a comprehensive, next-generation regional agreement to liberalize trade and investment. This agreement will advance U.S. economic interests with some of the fastest-growing economies in the world; expand U.S. exports, which are critical to the creation and retention of jobs in the United States; and serve as a potential platform for economic integration across the Asia-Pacific region. The TPP agreement will include ambitious commitments on goods, services, and other traditional trade and investment matters. It will also include a range of new and emerging issues to address trade concerns our businesses and workers face in the 21st century. In addition to the United States and Vietnam, the TPP negotiating partners currently include Australia, Brunei, Canada, Chile, Malaysia, Mexico, New Zealand, Peru, and Singapore.

IMPORT POLICIES

Tariffs

Vietnam significantly reduced its tariff rates on many products of interest to the United States when it joined the WTO in January 2007. As a result, the majority of U.S. exports now face tariffs of 15 percent or less. However, in recent years, Vietnam has increased applied tariff rates on a number of products, and although the rates remain below its WTO bound levels, foreign businesses have been affected by the increases. Products affected by such tariff adjustments include shelled walnuts, ketchup and other tomato sauces, inkjet printers, and stainless steel bars and rods.

U.S. industry has also identified high tariffs imposed on certain agricultural and manufactured products including fresh food, fresh and frozen meats, and materials and machinery, on which tariff elimination would create significant new opportunities. The United States and Vietnam are currently negotiating preferential tariff concessions in the context of the TPP negotiations.

Nontariff Barriers

Vietnam eliminated many nontariff barriers under the 2001 United States-Vietnam Bilateral Trade Agreement (BTA) and through its accession to the WTO, including quantitative restrictions on imports, quotas, bans, permit requirements, prior authorization requirements, licensing requirements, and other restrictions having the same effect, that appeared to be inconsistent with its WTO commitments. Nonetheless, many other nontariff barriers remain.

Import prohibitions: Vietnam currently prohibits the commercial importation of some products, including cultural products deemed “depraved and reactionary,” certain children’s toys, second-hand consumer goods, used spare parts for vehicles, used internal combustion engines of less than 30 horsepower, and encryption devices and encryption software.

Quantitative restrictions and import licenses: Vietnam has tariff-rate quota regimes for salt, tobacco, eggs, and sugar.

On September 26, 2012, Vietnam’s Ministry of Industry and Trade (MOIT) issued Circular 27, suspending the import licensing requirement for a range of covered by Circular 24 (issued in 2010). Imports of iron and steel, however, are still subject to a licensing requirement pursuant to Circular 23, issued on August 7, 2012.

On September 7, 2012, the Prime Minister issued Directive 23, increasing restrictions on certain Imports for Re-Export and the Trans-shipment Trade. The Directive, effective September 30, 2012, banned imports for re-export and trans-shipment of a variety of hazardous waste items, and temporarily banned imports for re-export and transshipment of a variety of products including used consumer goods, frozen animal by-products, and offal. The directive made a third category of items, including yet-to-be specified meat and seafood products subject to MOIT permit requirements. Directive 23 also imposed new conditions on the import for re-export of wine, beer, and tobacco products.

In August 2012, Vietnam notified Draft Decree 40 on “Liquor Production and Trading” to the WTO. The decree would impose a three-tiered system of import licenses and quotas for the distribution, wholesale, and retail sale of liquor.

The United States continues to raise concerns regarding Vietnam’s import licensing regime in the WTO Import Licensing Committee.

Price Registration and Stabilization: Circular 122 on price management and registration entered into force in 2010. Circular 122 states that the Ministry of Finance may apply price controls when prices increase or decrease without a “legitimate excuse,” and subjects an extensive list of goods to pricing registration, including steel, liquefied petroleum gas, chemical fertilizers, plant protection products, animal drugs and vaccines, salt, milk and nutritional powders for children under six years old, sugar, rice, animal feed, coal, paper, and textbooks. On June 20, 2012, the National Assembly promulgated the Price Law, which became effective on January 1, 2013. While this law supersedes Circular 122, Vietnamese government policy with regard to price stabilization of certain items will not change. The U.S. Government and other foreign governments have repeatedly raised concerns about Circular 122 and the Price Law, and their impact, with the Vietnamese government and will continue to press this issue.

Customs: Vietnam implemented the WTO Customs Valuation Agreement through the 2006 Customs Law and related regulations, significantly improving its customs valuation process. Despite this positive step, U.S. exporters continue to have concerns about other aspects of the customs clearance process, citing inefficiency, red tape, and corruption as issues. The United States will continue to work with Vietnam to monitor implementation of the WTO Customs Valuation Agreement.

Trading rights: Import rights are granted for all goods except for a limited number of products reserved for importation through state trading enterprises, as well as certain products subject to a phase-in period for trading rights under Vietnam’s WTO accession agreement. Vietnam has reserved the right of importation to state trading entities in the following product categories: cigars and cigarettes, crude oil, newspapers, journals and periodicals, and recorded media for sound or pictures (with certain exclusions).

Other Nontariff Barriers: U.S. stakeholders have expressed concern about the impact on foreign firms of product registration requirements for imported pharmaceuticals. The United States will continue to work with the Ministry of Health and other relevant agencies to seek improvements in the transparency of the pharmaceutical regulatory process.

In the area of cloud computing services, stakeholders have raised concerns over a draft decree issued by the Ministry of Information and Communication that would impose licensing and registration requirements on providers of information technology services, including restrictions on the cross-border supply of cloud computing and data center services.

U.S. stakeholders also have identified Vietnam's restrictions on advertising of distilled spirits in print, electronic, and broadcast media as an impediment to increased exports of distilled spirits.

In March 2011, MOIT promulgated Decision 1380, which revises an April 2010 list of "discouraged imports," and now covers 3,724 tariff lines of consumer goods. The State Bank of Vietnam, under its Official Dispatch 3215 of April 2010, requires additional procedures and monitoring of foreign currency loans and lines of credit to businesses that purchase imports on the MOIT list. In addition, since Decision 1380 was issued, several new measures have been implemented explicitly referring to Decision 1380, including MOIT's Circular 7 list of consumer goods subject to an import duty payment timeframe, and Ministry of Finance's Circular 91, which increases import tariffs on certain products (see tariff section). The U.S. Government will continue to raise concerns on this issue with Vietnam.

GOVERNMENT PROCUREMENT

Vietnam's 2006 Law on Procurement provides for enhanced transparency in procurement procedures; decentralization of procurement decision making to the ministries, agencies, and local authorities; appeals processes; and enforcement provisions.

Vietnam is not a signatory to the WTO Agreement on Government Procurement. However, Vietnam became an observer to the WTO Committee on Government Procurement on December 5, 2012.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Vietnam remained on the Watch List in the 2012 Special 301 report. While recognizing the strides Vietnam has made in improving its intellectual property rights (IPR) regulatory framework and enforcement efforts over the past few years, the United States noted that widespread counterfeiting and piracy, including over the Internet, remain serious concerns. In addition, while Vietnam took action to address signal theft by its state-owned television provider, stakeholders note that unauthorized reception and distribution of satellite channels via illegal decoders and domestic pay TV platforms continue.

In the area of enforcement, administrative actions and penalties - which are the most common method of addressing IPR infringement in Vietnam - have not had a significant deterrent effect. In recent years, Vietnamese agencies have taken some initial steps to enforce IPR protections on the Internet, including by issuing warning letters and by meeting with Internet service providers in response to rights holders' requests to address infringing content. The United States continues to urge Vietnam to undertake more aggressive actions to combat the rising problem of intellectual property infringement, including digital piracy. The United States will continue to work with Vietnamese authorities to address these IPR issues.

Vietnam has stated it will clarify IPR-related provisions in the Criminal Code through an implementing decree. These guidelines will be an important step towards improving law enforcement related to IPR in Vietnam.

SERVICES BARRIERS

Audiovisual Services

Foreigners may invest in cinema construction and operation only through joint ventures with local Vietnamese partners, subject to government approval. Films are subject to censorship before public viewing, a process that is nontransparent and for which the right to appeal a censor's decision is not well established.

Broadcasting

In March 2011, the Prime Minister issued Decision 20 (Regulation on Pay TV Operation Management). Decision 20 requires that foreign pay television providers use a local agent to translate in advance all movies and programming on science, education, sports, entertainment and music, and that all foreign news programs provide a summary of the content in Vietnamese in advance of airing. The measure also requires foreign content providers to secure the services of a local editing company for post-production work (including translation, content review, and payment of a placement fee) in order for advertisements to be approved for placement in a Vietnamese broadcast. U.S. content providers have expressed concern about the effect of these requirements on their business models in Vietnam. The decision allowed for a one-year grace period for compliance, followed by a six-month extension. The Ministry of Information and Communication (MOIC) announced an additional six-month extension on November 20, 2012. The United States continues to discuss Decision 20 with the MOIC and will continue to monitor the implementation of these regulations.

Express Delivery Services

As of January 2012, Vietnam has permitted 100-percent foreign ownership in this sector, opening up greater opportunities for U.S. providers. Foreign firms can convert an existing joint-venture to a wholly foreign-owned enterprise; however, to do so, the foreign firm first must show proof that it has bought out its joint-venture partner before the government gives final approval for a new 100-percent foreign-owned investment license.

Legal Services

Vietnam permits foreign firms to operate in the legal sector, subject to specific guidelines and restrictions outlined in its "Law on Lawyers." In 2012, Vietnam passed an amendment to this law which could potentially restrict the ability of foreign firms to operate in Vietnam. Article 70 of the amendment states that foreign law firms practicing law in Vietnam may not provide notarization and legal document services relating to Vietnamese law. The government has not yet clarified whether this will be interpreted to include commercial contracts.

Telecommunications

Vietnam permits foreign participation in the telecommunications sector, with varying equity limitations depending on the sub-sector (Vietnam has identified five basic and eight value-added sub-sectors). For instance, foreign ownership in services supplying closed-user networks (*e.g.*, corporate data networks) is permitted up to 70 percent, while foreign ownership in facility-based basic services (*e.g.*, public voice service where the supplier owns its transmission facilities) is generally capped at 49 percent. Vietnam also allows foreign equity of up to 65 percent for non-facilities-based public telecommunications services (*i.e.*, services provided by a supplier that does not own its own transmission capacity, but contracts for such capacity, including submarine cable capacity, from a facilities-based supplier).

Opportunities for foreign firms to form joint-ventures in the facilities-based sector are further restricted by a policy requiring facilities-based operators to be majority state-owned firms, limiting the pool of such partners, and reinforcing government control over market entry. The share of the market accounted for by the top three telecommunications companies has grown to nearly 95 percent. The Vietnam Post and Telecommunications Group, which is owned by MOIC, has a majority stake in both Vinaphone and Mobiphone, the second and third largest mobile networks in Vietnam. In addition, the three largest telecommunications firms, which Vietnam had pledged to equitize, remain non-incorporated governmental assets, and subject to nontransparent governmental influence.

In the last several years, users frequently reported incidents of having no access to certain websites, including foreign-based social networking sites. Nevertheless, the inability to access legitimate websites appears, for most Internet service providers, to be occurring less frequently. The United States has raised concerns about these Internet restrictions with the Vietnamese government and will continue to monitor this issue closely.

Distribution Services

Vietnam maintains an ill-defined economic needs test for retailers who wish to open more than one outlet. The United States continues to seek greater clarity and transparency with respect to the distribution licensing regime.

Banking and Securities Services

Vietnamese banking regulations make a distinction between domestic "joint stock" banks (commercial banks with any amount of private share ownership) and “joint venture” banks (new banks set up expressly based on a joint venture agreement). Total cumulative foreign ownership in any domestic “joint stock” bank is limited to 30 percent of equity. In contrast, foreign equity is permitted up to 49 percent for “joint venture” banks.

New regulations aimed at improving the capital position of the banking industry have also introduced new requirements and restrictions, such as those for calculation of capital adequacy ratios, which can cause compliance-related difficulties. Foreign bank branches face restrictions, such as being limited to one office per province. Wholly-owned foreign subsidiary banks face fewer restrictions, but a three-year moratorium on new subsidiary licenses was announced in 2010, and only about 10 licenses are scheduled to be awarded when the moratorium is lifted.

As of September 15, 2012, foreign investors who have been operating profitably for at least two years in the banking, securities, or insurance sectors are now permitted to operate 100 percent foreign-owned securities firms in Vietnam (prior to that date, foreign ownership of securities firms operating in Vietnam was limited to 49 percent). Foreign investors may now own up to 50 percent or 100 percent (ownership shares of 50 percent to 99 percent are prohibited).

INVESTMENT BARRIERS

Vietnam’s Investment Law sets criteria designating certain sectors in which foreign investment is prohibited and others in which foreign investment is subject to conditions (“conditional sectors”).

Vietnam also has specific laws that apply to investment in conditional sectors, including banking, securities, insurance, mining, telecommunications, real estate, ports, and aviation. Investments in conditional sectors and other projects deemed sensitive are subject to extensive and additional review, sometimes requiring the Prime Minister's approval, which can often delay the approval of investment licenses.

All land in Vietnam is owned and managed by the government and, as such, neither foreigners nor Vietnamese nationals can own land. The 2006 Investment Law permits foreign invested enterprises to lease land for a period of 50 years and up to 70 years in special cases. Investors can obtain land use rights and mortgage both the structures erected on that land and the value of land use rights.

ELECTRONIC COMMERCE

Electronic commerce is growing rapidly in Vietnam. The 2006 Law on Electronic Transactions gave legal standing to electronic contracts and electronic signatures and allocated the responsibilities of parties with respect to the transmission and receipt of electronic data. Vietnam is currently drafting new regulations covering electronic commerce.

OTHER BARRIERS

The lack of transparency and accountability, along with widespread official corruption and inefficient bureaucracy continue to be problems. Competition among government agencies for control over business and investment has created confusing and overlapping jurisdictions and overly bureaucratic procedures that, in turn, create opportunities for corruption. Inadequate accountability systems contribute to these problems. With the assistance of the United States and other donors, Vietnam is in the process of implementing a public administration reform program and continuing to enhance overall transparency. The United States will continue to work with Vietnam to support these reform efforts and to promote greater transparency.