VIETNAM

TRADE SUMMARY

The U.S. goods trade deficit with Vietnam was $8.7 billion in 2007, an increase of $1.3 billion from 2006. U.S. goods exports in 2007 were $1.9 billion, up 72.9 percent from the previous year. Corresponding U.S. imports from Vietnam were $10.6 billion, up 24.1 percent. Vietnam is currently the 60th largest export market for U.S. goods.

The stock of U.S. foreign direct investment in Vietnam was $339 million in 2006 (latest data available), up from $294 million in 2005.

The United States and Vietnam concluded a Trade and Investment Framework Agreement (TIFA) in June 2007. Dialogue under the TIFA is intended to promote increased trade and investment between the two countries and help monitor and support Vietnam's efforts to implement its WTO commitments. The TIFA also serves as a forum to address bilateral trade issues.

IMPORT POLICIES

Tariffs

Vietnam committed to reduce tariff rates for many important U.S. exports when it became a WTO Member in January 2007. As a result, the vast majority of U.S. exports now face tariffs of 15 percent or less. In 2007, Vietnam made further tariff reductions on major U.S. exports, such as dairy products, corn, animal feed and motor vehicles. Vietnam has eliminated tariffs on information technology products and reduced tariffs on 80 percent of the products covered by the WTO Chemical Harmonization Agreement.

Vietnam currently has four categories of tariff rates: (1) normal trade relations (NTR)/Most Favored Nation (MFN) rates that apply to all WTO Member countries, including the United States; (2) Common Effective Preferential Tariff rates that apply to imports from ASEAN countries; (3) preferential tariff rates applied under Vietnam's FTAs; and (4) general tariff rates (50 percent higher than NTR/MFN) that apply to all other countries.

Nontariff barriers (NTBs)

Vietnam has made significant progress in eliminating NTBs under the terms of the 2001 United States-Vietnam Bilateral Trade Agreement (BTA). With Membership in the WTO, Vietnam has eliminated and committed not to reintroduce any quantitative restrictions on imports or other nontariff measures, such as quotas, bans, permits, prior authorization requirements, licensing requirements, or other restrictions having the same effect, which would not be consistent with the WTO Agreement.

Import prohibitions: Vietnam currently prohibits the commercial importation of the following products: arms and ammunition; explosive materials (not including industrial explosives), military technical equipment and facilities, narcotics, certain toxic chemicals, "depraved and reactionary" cultural products, firecrackers, certain children's toys, second-hand consumer goods, right-hand drive motor vehicles, used spare parts for vehicles, used internal combustion engines of less than 30 horsepower, asbestos materials under the amphibole group; specialized encryption devices and software not destined for mass market consumption, polluting waste and scrap, and refrigerating equipment using chlorofluorocarbons.

In 2007, Vietnam eliminated the ban on motorcycles with an engine capacity of 175 cc or greater, which had served as a market access barrier for exports of U.S. motorcycles. Vietnam's government issued two regulations in 2007 putting in place a nondiscriminatory and transparent system for the importation, distribution, and use of large motorcycles.

Quantitative restrictions and nonautomatic licensing: Vietnam's government issued a decree in January 2006 governing the implementation of the Commercial Law regarding export-import management, which contains a list of goods that require import permits from the Ministry of Industry and Trade. The Decree also places salt, tobacco, eggs, and sugar under a tariff-rate quota regime. Separate regulations apply to exports of rice, imports of petroleum and fuel, imports of cigarettes and cigars, and exports and imports of goods related to security and defense.

Special authority regulation: Certain categories of goods are limited to importation by state trading enterprises, and others are subject to automatic or nonautomatic import licensing. The U.S. entertainment industry has raised concerns that state control of the importation of video products serves as a market access barrier.

Foreign Exchange system: The Law on Foreign Direct Investment allows foreign investors to purchase foreign currency at authorized banks to finance current and capital transactions, and other permitted transactions. Residents and nonresidents can open and maintain foreign exchange accounts with authorized banks in Vietnam. Foreign investors can transfer abroad profits and other legal income upon presentation of relevant documents to authorized banks.

Vietnam also revised its foreign exchange system in 2006, eliminating the requirement to document the discharge of tax obligations when purchasing, remitting or carrying foreign currency overseas for the fulfillment of currency transactions. Regulations require foreign investors to use the Vietnamese dong in all activities relating to portfolio investments in Vietnam.

Customs: Vietnam has implemented the WTO Customs Valuation Agreement through the 2006 Customs Law, and related implementing regulations. The Customs Law makes the use of transaction value applicable to all imports and provides for a full application of the computed value and deductive methods. Subsequent regulations have been issued relating to customs procedures and inspection, post-clearance audits, and valuation of imported goods. These changes have significantly improved customs valuation in Vietnam.

The application of the WTO Customs Valuation Agreement principles has not been uniform, and importers complain about the low level of automation of Vietnam's customs system. The United States will continue to work with Vietnam to monitor implementation of the WTO Customs Valuation Agreement as part of the ongoing TIFA dialogue.

Trading rights: Import rights are granted for all products, except for a limited number reserved for state trading enterprises and those subject to a phase-in period for importation by foreign firms. Vietnam has reserved the right of importation for state trading entities for the following categories: cigars and cigarettes; crude oil; newspapers, journals, and periodicals; and recorded media for sound or pictures (with certain exclusions). Under the phase-in, foreign firms and individuals are restricted, until January 1, 2009, from importing the following categories of products: pharmaceuticals; motion picture films; unused postage, printed cards and calendars; certain printed matter; machinery for typesetting and print machinery (excluding ink-jet printers); and certain transmission apparatus for radio-telephony (excluding mobile phones and consumer cameras). Foreign individuals and enterprises will be given the right to export rice no later than January 1, 2011. The United States will closely monitor implementation of these commitments.

Taxes: Vietnam applies a value added tax on goods and services in a number of categories listed in the Law on Value Added Tax of January 1, 2004, and related implementing regulations. Certain goods in Vietnam are also subject to an excise tax, levied in accordance with the Law on Excise Tax. In several product categories, particularly beer, wine, distilled spirits, and automobiles, the United States raised concerns with Vietnam regarding discrimination between imported and domestically-produced like products. As a result of Vietnam's membership in the WTO, Vietnam has taken steps or committed to take steps to eliminate the discriminatory application of excise taxes. In particular, in 2006, Vietnam equalized the excise tax on imported and domestic wines and distilled spirits under 20 per cent alcohol by volume, and eliminated the excise tax reductions provided to domestic automobiles. WTO Members granted Vietnam a 3 year transition period to ensure that its excise taxes on imported and domestic beer and distilled spirits over 20 percent alcohol by volume conform to WTO rules. The United States will continue to work with Vietnam to monitor implementation of this commitment.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Sanitary and Phytosanitary Measures (SPS)

Vietnam is working on strengthening its SPS regime. Vietnam is working to base its SPS system on international standards like those of the Codex Alimentarius, the World Organization for Animal Health (OIE), and the International Plant Protection Convention. However, a number of reforms still need to be undertaken to bring measures in line with international standards. The United States has discussed with Vietnam concerns raised by U.S. raw poultry meat exporters regarding Vietnam's zero tolerance for salmonella on the surface of uncooked poultry meat. The United States will continue to urge Vietnam to adopt SPS measures in this area consistent with international standards.

Vietnam has an inter-ministerial working group that coordinates SPS activities. The Ministry of Agriculture and Rural Development currently serves as the enquiry point and notification authority under the WTO Agreement on SPS. Vietnam established its SPS National Authority in October 2007 and made its first notifications to the WTO in January 2008. The United States will continue to work with Vietnam to fully implement its WTO commitments in the area.

In May 2006, the United States and Vietnam concluded an agreement in which Vietnam agreed to recognize the U.S. food safety inspection systems for beef, pork, and poultry as equivalent to its own inspection system. At that same time Vietnam immediately opened its domestic market to U.S. imports of U.S. beef and beef products from cattle under 30 months of age. The United States is working with Vietnam to secure full market opening for all U.S. beef and beef products from cattle of all ages in accordance with the OIE guidelines for a controlled BSE risk country.

Standards and Technical Barriers to Trade

The Law on Standards and Technical Regulations (Standards Law) passed by the National Assembly in January 2007 has comprehensively reformed Vietnam's system of standards and technical regulations. The Standards Law designates the Ministry of Science and Technology as the responsible agency for issuing and managing national standards, while line ministries are responsible for national technical regulations. Vietnam's Directorate for Standards and Quality is the inquiry and notification point under the WTO Agreement on Technical Barriers to Trade. To date, Vietnam has made no notifications to the WTO.

Pharmaceutical companies have raised concerns about alleged discriminatory treatment against foreign firms across a range of product registration requirements for imported pharmaceuticals. The United States will work closely with the Ministry of Health and other relevant agencies to seek improvements in the transparency of the regulatory process.

GOVERNMENT PROCUREMENT

Vietnam is not a signatory to the WTO Agreement on Government Procurement. Vietnam's 2006 Law on Procurement provides for greater transparency in procurement procedures, in particular by establishing a Procurement Gazette to provide information on tendering activities, invitations for tender, lists of bidders participating in limited tendering, and criteria for selection of the bidders to be awarded contracts. In addition, the Procurement Law aims at decentralizing procurement decision-making to the ministries, agencies, and local authorities. It also provides for the right of appeal by bidders and settlement of disputes relating to procurement decisions. The Law also includes enforcement provisions, including a definition of fraudulent behavior and penalties for such behavior.

Since 2004, Vietnam's government has promoted the use of open source software by government agencies. In 2006, the Prime Minister issued guidelines that provided for a specific preference for open source software in government procurement. The U.S. software industry has expressed concerns about this preference policy and continues to urge Vietnam's government to use a merit-based approach to software procurement decisions consistent with the APEC Technology Choice Pathfinder Agreement that Vietnam signed in 2006.

EXPORT SUBSIDIES

All export subsidies have been removed. On May 30, 2006, Vietnam implemented a decision that ended subsidies and institutional supports to the textiles and apparel sector.

INTELLECTUAL PROPERTY RIGHTS (IPR)

Vietnam made commitments under the WTO TRIPS Agreement and the BTA to provide expeditious legal remedies to prevent and deter IPR infringement, including civil, administrative and criminal procedures, such as criminal penalties for willful trademark counterfeiting and copyright and related rights piracy on a commercial scale.

Vietnam is a member of World Intellectual Property Organization and several multilateral IPR agreements. Those agreements include: the Berne Convention on Protection for Literary and Artistic Works; the Brussels Convention Relating to the Distribution of Program-Carrying Signals Transmitted by Satellite; the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms; the International Convention on Protection of New Plant Varieties (1991); the Madrid Agreement Concerning the International Registration of Marks; the Paris Convention for the Protection of Industrial Property; the Patent Cooperation Treaty; the Protocol Relating to the Madrid Agreement concerning the International Registration of Marks; the Rome Convention For The Protection Of Performers, Producers, And Broadcasting Organizations; and the Stockholm Convention on Establishment of the World Intellectual Property Organization.

As a result of its efforts to implement its obligations under the BTA the WTO and other international agreements, Vietnam has made considerable progress over the past few years in modernizing its legal framework for IPR protection. The 2006 Intellectual Property Law (IPR Law) established the legal framework for the civil litigation of IPR cases and authorized the courts to provide injunctive relief. Vietnam also revised its Civil Code in 2005 to increase the scope of protected IPR, including satellite signal carrying encrypted programs, layout-designs of semiconductor integrated circuits, business secrets, trade names, plant varieties, and geographical indications.

The IPR Law also gives Vietnam Customs Office jurisdiction over IPR enforcement at the border. The IPR Law and the Law on Customs allow IPR holders to register their intellectual property (including trademarks) with the Customs Office and to request the seizure of goods entering or leaving the country that are suspected of infringing IPR. Under the IPR Law, Customs authorities may also issue administrative penalties including monetary fines where a violation has occurred.

Administrative remedies remain the most commonly used means of enforcing IPR in Vietnam. Substantial compensation for IPR violations, however, is only available under the civil remedies section of the IPR Law. Vietnam courts are untested in this regard, and concerns remain as to whether right holders have adequate access to effective civil remedies under the IPR Law. Criminal offences are prosecuted under the Criminal Code, and criminal proceedings are regulated under the Criminal Procedure Code. In practice, criminal prosecutions typically require large scale IPR violations involving large quantities or high valued goods. Vietnam has not yet provided for criminal remedies in cases of willful trademark counterfeiting and copyright and related rights piracy on a commercial scale. The United States continues to urge Vietnam to provide for these remedies. Vietnam is developing a circular as an interim measure to meet its TRIPS obligation on criminal remedies while at the same time preparing to update its Criminal Code.

Patent and Trademarks

The National Office of Intellectual Property (NOIP), under the Ministry of Science and Technology, administers Vietnam patent and trademark registration systems. Despite recent positive developments in enforcement, infringement is widespread and victims of infringement have encountered difficulties implementing NOIP enforcement decisions. Obtaining expeditious adjudication and administrative enforcement of patent and trademark violations remains difficult, and enforcement of administrative and court findings of IPR infringement remain problematic.

Copyrights

Literary, artistic, architectural, and scientific works receive copyright protection, and performances, sound recordings, visual recordings, broadcasts, and satellite signals carrying encoded programs receive related rights protection, under Part VI of the 2005 Civil Code and the IPR Law. The Vietnam Office of Literary and Artistic Copyright, under the Ministry of Culture, Sports, and Tourism, administers copyright and related rights protection throughout the country.

After Vietnam joined the Berne and Geneva Conventions, the Ministry of Culture, Sports, and Tourism made an effort to tighten copyright regulations on foreign musical and theatrical works and sound recordings. All event organizers must now obtain permission in writing from copyright holders before performing their works. In February 2007, Vietnam issued a directive to strengthen computer program copyright protections.

Despite the progress in putting in place a legal framework to protect local and foreign-held copyrights, enforcement remains uneven. This is particularly true for certain categories of products, such as software, music and video CDs, VCDs, and DVDs. Industry estimates of piracy rates for software, music, and videos run as high as 92 percent. Vietnam's police have investigated, and in some cases raided and fined, businesses suspected of using pirated software. Vietnam's ministries and regional governments are also implementing a WTO commitment to use only legitimately licensed software. Vietnam has taken initial steps to implement an agreement reached with Microsoft in May 2007, relating to the use of business applications software in use on government computers. Cable and broadcast television signal piracy decreased in 2007, but remains a concern. Local police authorities are often slow to enforce administrative and court orders against copyright infringers. Vietnam has, however, made progress in this area, including through a state-owned digital terrestrial broadcasters action in October 2007, to end all nonauthorized distribution of U.S.-owned broadcast content.

SERVICES BARRIERS

Under the terms of the BTA, Vietnam agreed for the first time to liberalize a broad array of service sectors, including telecommunications, accounting, banking, and distribution services, and to apply MFN treatment to U.S. services suppliers in all covered sectors and for all modes of supply (with itemized exceptions).

Vietnam's WTO commitments include significant improvements in market access, which will benefit U.S. service providers. Vietnam's Commercial Law requires a license for foreign participation in certain conditional sectors, such as financial services, telecommunications, and distribution.

Limits on foreign ownership and other market access limitations and exceptions to national treatment are described in Vietnam's schedule of specific commitments, and they include the following service sectors: legal, taxation, architectural, engineering and integrated engineering, computer, advertising and marketing, audiovisual, express delivery, banking and securities, insurance, distribution, and telecommunications.

Legal Services

The 2006 Law on Lawyers became effective on January 1, 2007, replacing the Ordinance on Lawyers of July 25, 2001. Foreign lawyers cannot appear as counsels of record in civil or criminal proceedings.

A law degree from a Vietnamese university is required for anyone wishing to provide legal advice in Vietnam. U.S. invested law firms, whether joint ventures or branches, may advise on Vietnam's law only if they hire persons with Vietnamese law degrees who satisfy the same requirements applied to other Vietnamese practitioners. Licensing of branches is for 5 year periods and is renewable.

Advertising and Marketing Research Services

Foreign participation in joint ventures with service providers is limited at 51 percent equity. In January 2009, these restrictions will be lifted.

Vietnam restricts advertising in printed, electronic, and broadcast media of spirits and most wines.

Audiovisual Services

Foreign investors may invest in cinema construction and operation only through joint ventures with local Vietnamese partners, subject to government approval. Certain quantitative restrictions also create barriers for foreign cinema operators. The total number of foreign films imported into Vietnam each year may not exceed two-thirds of the number of films domestically produced. Imported films are subject to censorship before public viewing. The censorship process is not transparent or predictable and the right of appeal of censor's decisions is not well established.

Express Delivery Services

Foreign participation in joint ventures with express delivery service providers is limited to 51 percent of a firm's equity. In January 2012, 100 percent foreign ownership will be permitted in this sector. A regulation issued in August 2007 sets out the existing restrictions and timetables.

Telecommunications

Permitted foreign participation in joint ventures with service providers ranges from 49 percent to 70 percent, depending on the sub-sector (there are five basic and eight value added sub sectors). For instance, foreign ownership in private networks is permitted up to 70 percent, while facility-based basic services (*e.g*., public voice service) is generally capped at 49 percent. In January 2010, foreign equity of up to 65 percent will be allowed for nonfacilities based service suppliers, *i.e*., suppliers that do not own transmission capacity but contract for such capacity including submarine cable capacity from a facilities-based supplier. A nonfacilities based supplier is not otherwise excluded from owning telecommunications equipment within its premises and is permitted public service provision "points of presence."

Vietnam's telecommunications services regulated by the government include regulation of telecommunications networks, prices and services; operations of service providers and users; licensing procedures; establishment of service provider networks; and public telecommunication services. Vietnam provides guidelines on the design, installation, and subscription of terminals; fixed telephone service; mobile phones; sale or lease of mobile phone terminals; and other telecom services. The regulations have not been updated following Vietnam's membership in the WTO, but work is currently underway to draft a new, comprehensive telecommunications law. The United States has encouraged Vietnam to ensure that these revisions are consistent with Vietnam's WTO commitments.

While Vietnam has opened up the telecommunications sector to competition, the facilities-based market is generally still restricted to state-owned or state-controlled enterprises, though joint-ventures with foreign firms are possible.

In 2010, Vietnam will open its telecommunications market and permit majority-owned foreign supply in basic public telecommunications services offered on a nonfacilities basis (fixed and mobile services offered by leasing transmission capacity from a Vietnamese company).

Distribution Services

Foreign participation in commission agents' services, wholesale services, retail services, and franchising is limited to joint ventures until January 2009. After January 1, 2009, this restriction will be lifted and 100 percent foreign-owned entities will be allowed in the sector. Vietnam requires an economic needs test for additional foreign-invested retail outlets after the initial outlet is established. The United States will continue to monitor the implementation of this requirement.

Vietnam's WTO distribution commitments also cover foreign participation in direct sales activities, an important sector for U.S. businesses.

Banking and Securities Services

Vietnam began to allow foreign banks to establish 100 percent foreign-owned subsidiaries in April 2007. Equity in joint venture banks is still limited to 49 percent. In 2012, 100 percent foreign ownership of securities firms will be permitted.

INVESTMENT BARRIERS

Vietnam's Investment Law includes provisions designating certain sectors in which foreign investment is prohibited and others in which foreign investment is subject to conditions ("conditional sectors"). There are specific laws that also apply to investment in conditional sectors such as banking, securities, and insurance. Investments greater than VND300 billion and those in conditional sectors are required to undergo an investment evaluation.

All land in Vietnam is owned and managed by the state and, as such, neither foreigners nor Vietnamese nationals can own land. The Land Law of 2003 permits foreign invested enterprises to lease land for a (renewable) period of 50 years, obtain land rights, and mortgage both the structures erected on that land and the value of land use rights.

ELECTRONIC COMMERCE

Electronic commerce remains an undeveloped sector in Vietnam. Obstacles to its development include the low number of Internet subscribers, government fire-walling, limited bandwidth and other problems with the Internet infrastructure, limited financial services sector (including few credit cards users), and regulatory barriers.

In 2006, a new Law on Electronic Transactions became effective, facilitating electronic commerce by giving legal standing to electronic contracts and electronic signatures, as well as allocating the responsibilities of parties with respect to the transmission and receipt of electronic data.

OTHER BARRIERS

Both foreign and domestic firms have identified corruption in Vietnam, in all phases of business operations, as an obstacle to their business activities. In 2007, Vietnam scored a 2.6 out of a possible score of 10 points on Transparency International's Corruption Perception Index, ranking 123 out of 179 countries. In large part, lack of transparency, accountability, and media freedom, as well as widespread official corruption and inefficient bureaucracy remain serious problems. Top leaders in the Communist Party of Vietnam and Vietnam's government have publicly admitted that these are urgent problems.

Competition among government agencies for control over business and investments has created confusing and overlapping jurisdictions, and bureaucratic procedures and approvals, which in turn create opportunities for corruption. Low pay for government officials and inadequate systems for holding officials accountable for their actions compound the problems. Implementation of Vietnam public administration reform program, developed with the assistance of the World Bank and the United States Agency for International Development, combined with Vietnam obligations under the transparency provisions of the BTA, are expected to improve the situation.