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TRADE SUMMARY

The landmark U.S.-Vietnam Bilateral Trade Agreement that seeks to normalize trade relations between the two countries came into effect on December 10, 2001, and Vietnam began receiving NTR treatment. As a result of the lowering of tariffs from an average of 40 percent to an average of 3 percent, Vietnamese exports to the U.S. have increased rapidly over the last year.

The U.S. trade deficit with Vietnam was \$1.8 billion in 2002, a decrease of \$1.2 billion from \$593 million in 2001. U.S. goods exports in 2002 were \$580 million, up 26.1 percent from the previous year. Corresponding U.S. imports from Vietnam were \$2.4 billion, up 127.4 percent. Vietnam is currently the 65th largest export market for U.S. goods.

IMPORT POLICIES

Tariffs

Vietnam's tariff schedule was rationalized in 1992 and simplified in 1999, following Vietnam's accession to the ASEAN Free Trade Area (AFTA). Currently, there are three sets of tariff rates: most favored nation (MFN) rates that apply to about 75 percent of total imports, including US imports; Common Effective Preferential Tariff (CEPT) rates that apply to imports from ASEAN countries; and general tariff rates (50 percent higher than MFN) that apply to all other countries (including Mexico, Argentina and Brazil). The average (un-weighted) MFN tariff rate has increased in recent years as Vietnam moves to convert quantitative restrictions to tariffs; in 2002 it stood at 15.7 percent. However, the number of tariff lines and the maximum tariff rate have decreased. Under the terms of the US-Vietnam Bilateral Trade Agreement (BTA), Vietnam is obligated to reduce significantly tariffs by an average of about one-third to one-half on a broad range of US imports over a period of three years. The average (unweighted) CEPT rate was 10.7 percent in 2002 and is expected to decline to three percent by 2006.

Vietnam's tariff regime suffers from a lack of transparency. The National Assembly establishes tariff bands for each product. The government is free to adjust applied tariffs within the bands and does so frequently. There

is no published tariff schedule, and it is often difficult to determine when and how tariffs have changed.

In addition to formal tariffs, Vietnam applies "price differential surcharges" on some products, although there is no fixed list of goods subject to these surcharges. In principle, these surcharges are applied to both import and export products where there exists a major differential between the domestic and world prices as a result of international fluctuations. Import surcharges range from four percent to 40 percent and are imposed mainly on "sensitive" products such as glassware, construction glass, paper, steel, ceramic products and alcoholic goods.

Non-tariff barriers

Non-tariff barriers (NTB's) were introduced in Vietnam when the country shifted from CMEA to market trade in the late 1980s to early 1990s and quickly became a key component of Vietnam's trade policy. In the past few years, Vietnam has made significant progress in reducing the use of NTBs and, under the terms of the BTA, Vietnam agreed to eliminate all non-tariff barriers, including import and export restrictions, quotas, licensing requirements, and controls for all product and service categories over a period of three to seven years, depending on the product.

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, toxic chemicals, "depraved and reactionary" cultural products, firecrackers, some children's toys, cigarettes, second-hand consumer goods, right-hand drive motor vehicles, used motor vehicles and parts, used internal combustion engines of less than 30 horsepower, asbestos materials under the amphibole group, various encryption devices, and encryption software.

Quantitative restrictions and non-automatic licensing: Vietnam has been phasing out the use of quantitative restrictions on imports. By January 2003, all quantitative restrictions on imports were to be abolished with the exception of sugar (to be kept until 2005) and petroleum products. Quantitative limitations on exports in most sectors have been eliminated as well, with

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the exception of textiles, garments, and a list of sensitive items.

Special authority regulation: Previously, importers required approval from the relevant ministry(ies) to import many goods. This system was changed in 2001. Now, seven ministries and agencies are responsible for overseeing a system of minimum quality/performance standards for animal and plant protection, health safety, local network compatibility (in the case of telecommunication), money security, and cultural sensitivity. Goods that meet the minimum standards can be imported upon demand and in unlimited quantity and value.

Foreign Exchange system: In 1998, the State Bank of Vietnam (SBV) issued a foreign exchange surrender requirement for all exporters, including foreign invested enterprises. A series of reductions decreased this requirement from 80 percent of foreign exchange balances to 30 percent as of May 2002. According to Vietnam's commitments under its March 2001 Poverty Reduction Growth Facility with the IMF, the surrender requirement will be eliminated completely by the end of 2003.

May 2000 amendments to the Law on Foreign Direct Investment (FDI) allowed FDI enterprises to purchase foreign currency at authorized banks to finance current and capital transactions and other permitted transactions. Vietnam also committed under the IMF program to remove the remaining exchange restrictions on current international transfers and payments by the end of 2002. Controls on current account transactions have been liberalized. A 1998 Decree allowed both residents and non-residents to open and maintain foreign exchange accounts with authorized banks in Vietnam. A 2001 Circular permitted foreign investors to transfer abroad profits and other legal income upon presentation of relevant documents to the authorized banks.

Customs: Vietnam is phasing out minimum import prices in its customs valuation system. The number of commodity groups subject to a minimum value was reduced from 34 in 1997 to seven in 2000. These include: beverages of all kinds; tires, rubber inner tubes and mud-resistant fronts used for cars, motorcycles and bicycles; floor tiles and sanitary wares; construction glass

and vacuum flasks; engines; electric fans; motorcycles; and, unprocessed tobacco.

Under the terms of the BTA, Vietnam agreed that no administrative fee or charge imposed by customs authorities in connection with importing or exporting any good will exceed the actual cost of the service provided by customs. Vietnam also agreed by December 2003 to adopt a system of customs valuation for imports that complies with the standards established in the WTO Agreement on Customs Valuation.

Trading rights: Under the terms of the BTA, three years after the entry-into-force of the BTA, enterprises with capital directly invested by U.S. nationals and companies in production and manufacturing will be able to engage in trading activities in most products and will be able to enter into joint ventures with Vietnamese partners to engage in trading activities in all products, as long as the U.S. partner holds no more than a 49 percent share in the venture. Seven years after entry-into-force of the BTA, U.S. companies will be able to establish wholly-owned trading companies in Vietnam. The right to trade in certain goods is subject to a phase-in period.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Vietnamese law requires all imports to have a label with contents and instruction for use in Vietnamese. The labels can be placed on the goods after they have been imported.

The Ministry of Science and Technology publishes a list of imports and exports requiring state quality control. The items are listed with their HS numbers and are grouped under functional agencies including the Ministry of Public Health, the Ministry of Agriculture and Rural Development, the Ministry of Industry, the Ministry of Fisheries, and the Ministry of Science and Technology. Some items are subject to national standards; some are subject to regulations of the functioning agencies; and some are subject to both. Other items are subject to GOCT (the standards system that was created by the Soviet Union which now applies only to explosives and explosive accessories). Exporters and importers must have permits from the functioning agencies or a receipt showing an inspection is in process for the controlled items at the time they go through customs.

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GOVERNMENT PROCUREMENT

Government procurement practices can be characterized as a multi-layered decision-making process, which often lacks transparency and efficiency. Although the Ministry of Finance allocates funds, various departments within the ministry or agency involved determine government procurement needs. Competition for government procurements may take any of several forms: sole source direct negotiation, limited tender, open tender, appointed tender, or special purchase. Currently, ministries and agencies have different rules on minimum values for the purchase of material or equipment, which must be subject to competitive bidding. High-value or important contracts such as infrastructure, (except World Bank, Asian Development Bank, UNDP, or bilateral official development assistance projects) require bid evaluation and selection and are awarded by the Prime Minister's office or any other competent body. No consolidated or regular official listing of government tenders exists; however, some solicitations are announced in the both Vietnamese and English language newspapers.

EXPORT SUBSIDIES

Export credit is very limited in Vietnam. The Export Promotion Fund managed by the Ministry of Finance provides small loans to Vietnam's exporters for investment, but not working capital. The Fund also provides very small incentive awards for exporters in all sectors who meet a certain level of export value.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Vietnam is a member of the World Intellectual Property Organization (WIPO) and is a signatory to the Paris Convention for Industrial Property. It has acceded to the Patent Cooperation Treaty and the Madrid Agreement. While not yet a party to the Berne Convention, Vietnam agreed under the 1997 U.S.-Vietnam Bilateral Copyright Agreement to provide U.S. copyrights protection on a national treatment basis in accordance with the terms of that convention. Under the terms of the BTA, Vietnam is obligated by December 2003 to make its system for protecting IPR, including enforcement, consistent with the WTO TRIPS agreement. Considerable progress has been made over the past few years in establishing the

legal framework for IPR protection, with new regulations expanding legal protection to areas previously not covered, such as business secrets and new plant varieties. However, that process is not yet complete.

Enforcement of IPR protection remains extremely weak. The BTA requires the Government of Vietnam to provide expeditious remedies to prevent and deter infringement of IP rights, including particular judicial and administrative procedures, prompt and effective provisional measures secured by sufficient evidence, and criminal procedures and penalties for willful trademark counterfeiting or infringement of copyrights or neighboring rights on a commercial scale.

Patent and Trademarks

Trademark registration in Vietnam is relatively straightforward, although infringement is widespread and enforcement of administrative orders and court decisions finding IPR infringement remains problematic. Vietnam's laws offer some protection for foreign patent holders, but there are infringements. The National Office of Industrial Property (NOIP), under the Ministry of Science and Technology (MOST), administers Vietnam's patent and trademark registration systems. NOIP has made significant progress in recent years to build adequate capacity to record and adjudicate patent and trademark claims, and is working with a number of foreign patent and trademark agencies to enhance its systems. Yet obtaining expeditious adjudication and administrative enforcement of patent and trademark violations remains difficult.

Copyright

Vietnam's copyright office is under the control and supervision of the Ministry of Culture and Information. Significant progress has been made in putting in place the laws to protect copyrights, including those belonging to foreigners, but enforcement is almost non-existent. This is particularly true for certain categories of products, such as PC software, music and video CDs, VCDs, and DVDs. Industry estimates of piracy rates for software, music, and videos run as high as 99 percent. Local police authorities often are slow to act on administrative orders fining infringement and enforce court decisions.

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SERVICES BARRIERS

Under the terms of the BTA, Vietnam agreed for the first time to liberalize a broad array of services sectors, including telecommunications, accounting, banking, and distribution services, and to apply MFN treatment to U.S. services suppliers in all sectors and for all modes of supply (with itemized exceptions). The BTA also incorporated the WTO Agreements on Trade in Services (GATS) (except Paragraphs 3 and 4), Annex on Movement of Natural Persons, Annex on Telecommunications (except Paragraphs 6 and 7), and the Telecommunications Reference Paper. Vietnam's commitments to liberalize market access on services are phased in over specified time periods depending on the sector. The commitments by sector are as follows:

Accounting, Auditing, and Book-keeping Services: For the first three years under the BTA, licenses will be granted on a case-by-case basis. The company must employ at least five persons with licenses to be a CPA in Vietnam who have practiced in Vietnam for more than one year. For the first two years under the BTA, firms with U.S. equity will only be allowed to supply services to foreign-invested enterprises and foreign funded projects in Vietnam. Branching is not permitted.

Taxation Services: For the first five years under the BTA, licenses will be granted on a case-by-case basis, and firms with U.S. equity will only be allowed to supply services to foreign-invested enterprises and foreign funded projects in Vietnam. Branching is not permitted.

Architectural, Engineering, and Computer Services: For a period of two years from the date of establishment and operation, U.S.-owned companies may only provide services to enterprises with foreign directly-invested capital in Vietnam. U.S. companies have to be legally registered in the U.S. Branching is not permitted.

U.S. companies and companies with U.S. directly-invested capital are not permitted to carry out topographic, construction geological, metrological, geological, and environmental investigations; or technical investigations for designing rural-urban construction plans, unless otherwise authorized by the Government of Vietnam.

Legal Services: Under the terms of the BTA, 100 percent equity ownership in companies, joint ventures, and branches are permitted. U.S. lawyers may not appear before Vietnamese courts. However, U.S. firms may advise on Vietnamese law if they hire persons with Vietnamese law degrees who satisfy the requirements applied to like Vietnamese practitioners. Branches of law firms may receive a five-year renewable license.

Advertising Services and Market Research: Vietnam has not agreed to provide market access for advertising services for wines and cigarettes or for the cross-border supply of market research services. U.S. companies in these sectors may only establish a commercial presence through joint ventures or business cooperation contracts with Vietnamese partners. U.S. investment is limited to 49 percent of the legal capital for the first five years under the Bilateral Trade Agreement, 51 percent for years six and seven, and is unlimited after that. Vietnam has not agreed to ensure national treatment for the cross-border supply of market research services.

Management Consulting: U.S. companies may only establish a commercial presence through joint ventures or business cooperation contracts. After the BTA has been in effect for 5 years, enterprises with 100 percent U.S. ownership will be permitted.

Telecommunication Services: Initially, the provision of basic telecommunications services, value-added telecommunications services, and voice telephone services are only permitted through business contracts with Vietnamese gateway operators. Two years after entry-into-force of the BTA (three years in the case of Internet services), U.S. value-added telecommunications service providers may establish joint ventures with Vietnamese partners with up to 50 percent equity ownership. These joint ventures may not, however, construct their own long-distance and international circuits. Four years after entry-into-force of the BTA, U.S. basic telecommunications service suppliers can establish joint ventures with Vietnamese partners with up to 49 percent U.S. equity ownership. These joint ventures may not, however, construct their own long-distance and international circuits. Six years after entry-into-force of the Agreement, U.S. voice telephone service providers may establish joint

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ventures with Vietnamese partners with up to 49 percent U.S. equity ownership.

Audio Visual Services: Vietnam has not agreed to provide market access or national treatment for cross-border supply or consumption abroad of audio visual services. U.S. service suppliers may establish a commercial presence only through a business cooperation contract or joint venture with a Vietnamese partner. For the first five years after entry-into-force of the BTA, U.S. ownership may not exceed 49 percent. After five years, U.S. ownership may not exceed 51 percent.

Construction and Related Engineering Services: Vietnam has not agreed to provide market access or national treatment for the cross-border supply of construction and related engineering services. Branches are not permitted. For the first three years after their establishment and operation, 100 percent U.S.-owned enterprises may only provide services to enterprises with foreign directly-invested capital in Vietnam. U.S. companies must be legally registered for operation in the U.S.

Distribution Services: Vietnam does not provide market access or national treatment for the cross-border supply of distribution services. Three years after entry-into-force of the BTA, U.S. service providers may establish joint ventures with Vietnamese partners with up to 49 percent U.S. equity. After six years, U.S. ownership in joint ventures will be unlimited. After seven years, companies with 100 percent equity will be allowed. One retail outlet may be established as of right, while additional outlets will be considered on a case-by-case basis. For some agricultural and industrial products, market access in this sector is subject to additional limitations, which will be phased out over a period of three to five years. There are a limited number of products for which Vietnam did not commit to allow distribution services.

Educational Services: Vietnam will not provide market access or national treatment for the cross-border supply of educational services. For the first seven years after entry-into-force of the BTA, U.S. companies may only establish a commercial presence through a joint venture. After that, schools with 100 percent U.S.-invested capital may be established. Foreign teachers employed by educational units with U.S.-invested capital must have five years

teaching experience and be recognized by the Ministry of Education.

Insurance Services: Vietnam has agreed to allow market access for the cross-border supply of insurance services to enterprises with foreign invested capital or foreigners working in Vietnam; reinvestment services; insurance services in international transportation; insurance brokering and reinsurance brokering services; and advisory, claim settlement, and risk assessment services. Three years after entry-into-force of the BTA, U.S. companies can establish joint ventures with Vietnamese partners with up to 50 percent U.S. equity participation. After five years, 100 percent U.S.-invested companies may be established.

Companies with U.S.-invested capital cannot provide insurance for motor vehicle third party liability, insurance in construction and installation, insurance for oil and gas projects, or insurance for projects and construction of high danger to public security and environment. Three years after entry-into-force of the BTA, this limitation is eliminated for joint ventures. After six years, this limitation is eliminated for companies with 100 percent U.S. capital.

For the first 5 years after entry-into-force of the BTA, any company with U.S. capital must reinsure through the Reinsurance Company of Vietnam.

Banking: Vietnam has not agreed to provide market access or national treatment for the cross-border provision of banking services, except for financial information services and advisory, intermediation, and other auxiliary services. U.S. banks may establish branches, joint ventures with Vietnamese banks, wholly owned U.S. financial leasing companies or joint venture financial leasing companies with Vietnamese partners.

For the first three years after entry-into-force of the BTA, the only legal form apart from banks and leasing companies in which U.S. companies may provide financial services is through joint ventures with Vietnamese banks. During the first nine years, U.S. equity in joint venture banks must be between 30 percent and 49 percent. After nine years, 100 percent equity participation in subsidiary banks will be allowed.

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The right of U.S. banks to accept Vietnamese currency deposits on the same basis as domestic banks will be phased in over eight years for business clientele and ten years for retail depositors. After this, U.S. bank branches will be entitled to full national treatment. In addition, financial institutions with U.S. equity cannot issue credit cards on a national treatment basis until eight years after entry-into-force of the BTA.

Vietnam reserved the right to limit, on a national treatment basis, equity investment by U.S. banks in privatized Vietnamese state-owned banks.

U.S. bank branches, subsidiaries, or U.S.-Vietnam joint ventures must obtain a license to establish a commercial presence in Vietnam. A U.S. parent bank must provide minimum capital of \$15 million to establish a branch. Establishing a U.S.-Vietnam joint venture bank or a U.S. bank subsidiary requires minimum capital of \$10 million.

For the first three years after the entry-into-force of the Agreement, financial institutions with 100 percent U.S. equity ownership may not take an initial mortgage interest in land use rights. After three years, these institutions will be allowed to take an initial mortgage interest in land-use rights held by foreign-invested enterprises, and may use mortgages or land-use rights for the purpose of liquidation in case of default.

Establishing a wholly-owned subsidiary of a U.S. financial leasing company or a joint venture leasing company requires three consecutive profitable years, and \$5 million in legal capital.

For the first three years under the BTA, Vietnam is not obligated to provide national treatment with respect to access to central bank rediscounting, swap, and forward facilities.

Non-banking Financial Services: The BTA allows 100 percent U.S. equity in financial leasing and in other leasing after 3 years.

Securities-Related Services: Vietnam has not agreed to provide market access or national treatment for the cross-border supply of securities-related services. Non-bank U.S. securities service suppliers may only establish a commercial presence in Vietnam in the form of a representative office.

Health-Related Services: U.S. operators may provide service through the establishment of 100 percent U.S.-owned operations, joint ventures with Vietnamese partners or through business cooperation contracts. The minimum investment capital is \$20 million for a hospital, \$2 million for a polyclinic, and \$1 million for a specialty unit.

Tourism and Travel-Related Services: U.S. companies may establish a commercial presence to provide hotel and restaurant services, in conjunction with investment for the construction of a hotel, either in the form of business cooperation contracts, joint ventures with Vietnamese partners, or companies with 100 percent U.S. equity investment.

There are limitations with respect to travel agencies and tour operators. U.S. companies supplying these services may establish a commercial presence only through a joint venture with Vietnamese partners and can initially only contribute 49 percent of the capital. Three years after entry-into-force of the BTA, 51 percent participation will be allowed, and all limitations will be abolished after five years. Tourist guides in joint ventures must be Vietnamese citizens. Service supplying companies with U.S.-invested capital may only supply inbound service.

INVESTMENT BARRIERS

At present the Government of Vietnam maintains an extensive investment licensing process, which is characterized by stringent and time consuming requirements that are frequently used to protect domestic interests, limit competition, and allocate foreign investment rights among various countries. Foreign businesses are permitted to remit profits, share revenues from joint ventures, incomes from services and technology transfers, legally-owned capital, and properties in hard currency. Foreigners are also allowed to remit abroad royalties and fees paid for the supply of technologies and services, principal and interest on loans obtained for business operations, and investment capital and other money and assets under their legitimate ownership. However, their ability to convert dong into hard currency is subject to availability, causing foreign-invested enterprises to experience problems in securing hard currency.

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The BTA provides a broad range of benefits to U.S. investors in Vietnam that should significantly enhance the investment environment for U.S. firms. Vietnamese investment obligations under the BTA include: providing national and most-favored-nation treatment, except where explicit exceptions have been made; guaranteeing access to third-party investor-state dispute settlement; and ensuring treatment of expropriation consistent with international standards. In addition, Vietnam is obligated gradually to discontinue application of any TRIMS or performance requirements inconsistent with the WTO TRIMS agreement. Vietnam currently imposes a number of performance requirements with respect to the establishment of an investment and/or the receipt of a benefit or incentive. The BTA obligates Vietnam to phase out several TRIMS-inconsistent local content requirements within five years or less of the BTA's entry-into-force. Vietnam is also obligated to refrain from imposing requirements to transfer technology as a condition for the establishment, expansion, acquisition, management, conduct, or operation of an investment.

ANTICOMPETITIVE PRACTICES

Vietnam maintains a policy of bias in favor of domestic-market oriented industries, particularly those dominated by state-owned enterprises. Although all registered firms, regardless of ownership, can engage legally in foreign trade, barriers exist that discourage trading by non-state enterprises. For example, stringent regulatory requirements demanded by ministries prevent private firms from exporting rice or importing fertilizer. Also, monopolies in production result in monopolies in trading, as in the case of coal. The tariff structure also favors domestic industries, particularly those dominated by state-owned enterprises. Most lower tariffs are on items predominantly used by those enterprises as inputs.

ELECTRONIC COMMERCE

To date, e-commerce has not made much progress in Vietnam. Obstacles to its development include: the low number of Internet subscribers in-country, obtrusive firewalls, limited bandwidth and other problems with the Internet infrastructure, limitations of the financial system (including the low number of credit cards in use), and regulatory barriers. However, recent developments to facilitate the

growth of e-commerce in Vietnam include legal acceptance of e-signatures and implementation of the electronic inter-bank transaction system. The number of online transactions has been increasing.

The Government of Vietnam continues to attempt to keep close control on all websites established in Vietnam. In October 2002, the Government of Vietnam passed a new regulation on the establishment and modification of websites. The regulation requires domestic and foreign agencies, organizations, and enterprises to obtain a license from the Ministry of Culture and Information before establishing new websites. The Ministry then has 30 days to make a decision on granting the license. The regulation also requires diplomatic and other foreign entities to obtain written approval from the Ministry of Foreign Affairs (MFA) before requesting a license from MOCI. Vietnam may also require organizations to request permission from MOCI before making changes to the content of their existing websites based on licensing requirements in the regulation.

OTHER BARRIERS

Corruption

U.S., other foreign, and domestic firms have identified corruption in Vietnam in all phases of business operations as an obstacle to their business activities. Vietnam scored a 2.6 out of a possible high score of 10 points on Transparency International's Corruption Perception Index. In large part due to a lack of transparency, accountability, and media freedom, widespread official corruption and inefficient bureaucracy remain serious problems that even the Communist Party of Vietnam and the Government of Vietnam admit they must address on an urgent basis. Competition among government agencies for control over business and investments has created a confusion of overlapping jurisdictions and bureaucratic procedures and approvals, which in turn create opportunities for corruption. Low pay for government officials and woefully inadequate systems for holding officials accountable for their actions compound the problems. Implementation of the Government of Vietnam's public administration reform program, developed with the assistance of the World Bank, as well as Vietnam's obligations under the transparency provisions of the BTA promise some improvement in the situation in the

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medium to long term, but it appears unlikely there will be much improvement in the near term.

