VIETNAM

TRADE SUMMARY

The U.S. goods trade deficit with Vietnam was $13.1 billion in 2011, up $2.0 billion from 2010. U.S. goods exports in 2011 were $4.3 billion, up 17.0 percent from the previous year. Corresponding U.S. imports from Vietnam were $17.5 billion, up 17.6 percent. Vietnam is currently the 45th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Vietnam was $623 million in 2010 (latest data available), up from $525 million in 2009.

The United States and Vietnam held numerous discussions throughout 2011 under the Trade and Investment Framework Agreement, including convening at the Ministerial level in May 2011. The TIFA provided a forum to help monitor and implement Vietnam's WTO commitments, address bilateral trade issues, and promote increased trade and investment. In June 2008, the two countries launched negotiations for a Bilateral Investment Treaty (BIT). Three rounds of BIT negotiations were held in 2009 and 2010. Information Communication Technology Commercial Dialogues were held in 2009 and 2010.

In December 2009, the United States announced its intention to enter into an Asia-Pacific trade agreement called the Trans-Pacific Partnership (TPP), with the objective of shaping a high standard, broad-based regional agreement. This agreement will create a potential platform for economic integration across the Asia-Pacific region, a means to advance U.S. economic interests with the fastest-growing economies in the world, and a tool to expand U.S. exports, which are critical to U.S. economic recovery and the creation and retention of high-paying, high-quality jobs in the United States. In addition to Vietnam, the TPP negotiating partners currently include Australia, Brunei, Chile, Malaysia, New Zealand, Peru, and Singapore. Japan, Canada, and Mexico also have expressed interest in joining the negotiations.

IMPORT POLICIES

Tariffs

Vietnam significantly reduced its tariff rates on products of interest to the United States in the context of its entry into the WTO in January 2007 and as part of the accession process agreed to bind all tariffs. As a result, the vast majority of U.S. exports now face tariffs of 15 percent or less. However, Vietnam has recently increased tariff rates on a range of products, in some cases up to its WTO bindings. Most recently, in June 2010, the Ministry of Finance issued Circular 91, which raised tariff rates on 10 product categories, including shelled walnuts, tomato ketchup and other tomato sauces, and ink-jet printers. U.S. industry has identified significant barriers arising from high tariffs applied on a range of products. In the agricultural and horticultural sectors, priorities identified include fresh apples, cherries, pears, and citrus; almonds; cooked and raw frozen poultry; fresh/chilled and frozen pork; cheese; frozen potato products; flatbread; tomato concentrate and tomato sauce; ice cream powder; cereals and preparations; sugars; and confectionaries. Several beverage products were also identified, including distilled spirits, powdered teas, nutritional supplements (including protein drink mixes) and coffee. In addition, high tariffs were noted on selected equipment for restaurant use, large engine motorcycles, automobiles and automotive parts, and plastics. To address these concerns, the United States and Vietnam are currently negotiating reciprocal preferential tariff concessions in the context of the TPP negotiations.

Nontariff barriers

Vietnam has made significant progress in eliminating nontariff barriers under the 2001 United States-Vietnam Bilateral Trade Agreement and through Vietnam's accession to the WTO. As a result, Vietnam has eliminated many quantitative restrictions on imports and other nontariff measures, such as quotas, bans, permits, prior authorization requirements, licensing requirements, or other restrictions having the same effect, that would be inconsistent with its WTO commitments. However, other nontariff barriers remain.

Import prohibitions: Vietnam currently prohibits the commercial importation of a limited number of products, including cultural products deemed "depraved and reactionary," firecrackers, certain children's toys, second-hand consumer goods, right-hand drive motor vehicles, and used spare parts for vehicles. In July 2010, Vietnam prohibited the importation of certain variety cuts of beef, pork, and poultry. U.S. meat exporters have reported that the measure has had a significant impact on U.S. exports to this growing market. The United States and other trading partners continue to raise concerns both bilaterally and in the WTO in order to restore trade in these important products.

Quantitative restrictions and import licensing: In July 2010, Vietnam's Ministry of Industry and Trade (MOIT) enacted Circular 24, imposing an import licensing requirement on a wide range of products including industrial products, certain food and agricultural products, and textile and apparel products. U.S. exporters have identified several transparency concerns with Circular 24 and a number have faced difficulty in receiving approval for their products. The United States continues to raise concerns regarding these requirements in bilateral meetings and in relevant committee meetings at the WTO seeking notification of the measure under the WTO Import Licensing Agreement, and urging the government of Vietnam to revise the measure to address U.S. concerns.

On May 6, 2011, MOIT issued Notice 197, which went into force on June 1, 2011. Notice 197 restricts the import of wines, spirits, cosmetics, and mobile phones to three seaports (Hanoi, Da Nang, and Ho Chi Minh City), and requires importers to submit new documentation that must be notarized by Vietnam's diplomatic missions abroad. The United States has raised questions and concerns regarding this measure bilaterally and in the WTO Technical Barriers to Trade Committee. The United States will continue to press Vietnam to address its concerns on this measure.

Price Registration and Stabilization: Circular 122 on price management and registration entered into force on October 1, 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/nutritional powders for children under six years old, sugar, rice, animal feed, coal, paper, and textbooks. U.S. companies with products covered under this circular are concerned about the potential impact of the measures, which they believe may be implemented in a discriminatory manner. The United States and other foreign governments have repeatedly raised concerns about Circular 122 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 implementing regulations, significantly improving customs valuation in Vietnam. However, U.S. exporters report that inefficient customs clearance remains a key concern. The United States will continue to work with Vietnam to monitor implementation of the WTO Customs Valuation Agreement and other customs issues as part of the ongoing TIFA dialogue.

Trading rights: Import rights are granted for all goods except for a limited number of products reserved for importation through state trading enterprises and those products subject to a phase in period 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). The United States continues to monitor Vietnam's implementation of its trading rights commitments under the WTO.

Other Nontariff Barriers: U.S. stakeholders have raised concerns about apparent discriminatory treatment against foreign firms across a range of product registration requirements for imported pharmaceuticals. The United States will continue to work closely with the Ministry of Health and other relevant agencies to seek improvements in the transparency of the pharmaceutical regulatory process.

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

GOVERNMENT PROCUREMENT

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

Vietnam is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Vietnam maintained its position on the Watch List in the 2011 Special 301 report. While recognizing the strides Vietnam has made in intellectual property rights (IPR) protection and enforcement over the past several years, the United States noted that enforcement efforts have not kept pace with rising levels of IPR infringement and piracy in the country. Furthermore, administrative enforcement actions and penalties, the most commonly used means of enforcing IPR in Vietnam, have not served as a sufficient deterrent. Over the past year, Vietnamese agencies took some initial steps to enforce IPR protections on the Internet, including by issuing warning letters and by meeting with Internet service providers (ISPs) 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 piracy. The United States will continue to work with Vietnamese authorities and encourage more vigorous enforcement actions.

In 2009, Vietnam revised its intellectual property law, as well as IPR related provisions in the Criminal Code, to provide criminal penalties for IPR infringement conducted on a commercial scale. Vietnam has stated it will clarify the IPR related provisions in the Criminal Code through an implementing decree. The United States continues to monitor implementation of these important provisions. In September 2010, Vietnam issued a new decree on administrative penalties for industrial property violations.

SERVICES BARRIERS

In the Bilateral Trade Agreement and in Vietnam's WTO services schedule, Vietnam committed to a high level of liberalization in a broad array of service sectors, including financial services, telecommunications, express delivery, professional services, and distribution services. As part of these negotiations, Vietnam also retained some market access limitations and exceptions to national treatment.

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 which is nontransparent and for which the right of appeal of a censor's decisions 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 that advertisement to be approved for placement in a Vietnamese broadcast. U.S. content providers report that these new requirements will make it difficult for U.S. and other foreign news carriers to operate in Vietnam. The United States continues to raise concerns over Decision 20 with the Ministry of Information and Communication and will continue to monitor the implementation of these regulations.

Express Delivery Services

As of January 2012, 100 percent foreign ownership is permitted in this sector.

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. As of January 2010, 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 be majority state-owned firms, limiting the pool of such partners, and reinforcing government control over market entry. There are signs this policy may be easing, however, with one purely private facilities-based supplier reportedly licensed. In 2011, Vietnam issued decree 25/2011/ND-CP on the implementation of the 2009 Law on Telecommunications. This decree stipulates that an organization or individual owning more than 20 percent of charter capital or shares in telecommunication enterprises shall not be allowed to possess more than 20 percent of charter capital or shares of other telecommunication enterprises doing business in the same market. While this rule may help in preventing consolidation in the market, promoting competition (currently, both the mobile and fixed sectors have numerous participants), the effect on foreign participation (where a foreign firm may seek stakes in more than one entity) remains unclear.

In 2010 and 2011, users widely reported incidents of having no access to certain websites, including foreign-based social networking sites, with the apparent involvement of Vietnamese ISPs. Although the government of Vietnam has officially denied it is blocking certain websites, it has publicly stated that it has undertaken efforts to ensure that Internet usage does not promote "antisocial" behavior. The Vietnamese government's blocking of legitimate websites appears to be occurring less frequently for most, (though not all) Internet service providers, however, in some cases ISPs appear to be using blocking as a means to extract commercial concessions from site operators. The United States has raised serious concerns about these Internet restrictions with the Vietnamese government and will continue monitor this issue closely.

Distribution Services

Foreign participation in this sector, which includes commission agents' services, wholesale services, retail services, franchising, and direct sales activities, is allowed without equity limitations. However, foreign-invested distributors are restricted from trading in a limited number of goods that are excluded from Vietnam's distribution sector commitments either during a phase out period or for an indefinite time period, as set out in Vietnam's WTO Schedule of Specific Commitments. The United States continues to urge Vietnam to further reduce or eliminate these product-specific restrictions on foreign-invested distributors, including in the distribution of videos (tapes, VCDs, DVDs) and pharmaceuticals. In addition, the United States will continue to seek greater clarity and transparency in distribution licensing to address issues with licensing procedures.

Banking and Securities Services

Foreign equity in joint venture banks is limited to 49 percent. Beginning January 2012, 100 percent foreign ownership of securities firms will be permitted.

In 2010, Vietnam made progress in strengthening the country's banking sector by officially promulgating the Law on Credit Institutions and Circular 13 (and subsequent amendment Circular 19) on prudential ratios for credit institutions. While these new regulations are aimed at improving the capital position of the banking industry, they have also introduced new requirements and restrictions, such as those for calculation of capital adequacy ratios, which can cause compliance-related difficulties. Foreign banks have also raised concerns about provisions in the Law on Credit Institutions which limit lending by foreign bank branches in Vietnam based on their local charter capital, rather than on the global capital of the parent bank.

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 such as 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 state and, as such, neither foreigners nor Vietnamese nationals can own land. The 2006 Investment Law permits foreign invested enterprises to rent 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 remains underdeveloped in Vietnam. Development has been hampered by the low number of Internet subscribers, concerns about data protection and data privacy, limited bandwidth and other problems with the Internet infrastructure, limitations in the financial services sector (including few credit cards users), and regulatory barriers. 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. As noted above, some U.S. companies have experienced intermittent blocking of their websites in Vietnam.

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. The lack of transparency, accountability, and media freedom, along with widespread official corruption and inefficient bureaucracy, remain serious problems.

Competition among government agencies for control over business and investments 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 transparency. The United States will continue to work with Vietnam to support administrative reform efforts and promote greater transparency.