VIETNAM

TRADE SUMMARY

U.S. goods exports in 2014 were $5.7 billion, up 13.7 percent from the previous year. Vietnam is currently the 44th largest export market for U.S. goods. Corresponding U.S. imports from Vietnam were $30.6 billion, up 24.0 percent. The U.S. goods trade deficit with Vietnam was $24.9 billion in 2014, an increase of $5.2 billion from 2013.

The stock of U.S. foreign direct investment (FDI) in Vietnam was $1.4 billion in 2013 (latest data available), up from $1.1 billion in 2012.

Trade Agreements

Vietnam is a participant in the Trans-Pacific Partnership (TPP) negotiations, through which the United States and 11 other Asia-Pacific partners are working to establish a comprehensive, high-standard, next-generation regional agreement to liberalize trade and investment in the Asia-Pacific. Once concluded 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; set high standards for regional trade and investment that promote U.S. interests and values; and serve as a potential platform for economic integration across the Asia-Pacific region. The United States is proposing to include in the TPP agreement ambitious commitments on goods, services, and other traditional trade and investment matters, and enforceable labor and environment obligations. TPP will also address a range of new and emerging issues of concern to U.S. businesses, workers and other stakeholders in the 21st century. In addition to the United States and Vietnam, the TPP negotiating partners currently include Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, and Singapore.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

On October 27, 2014, Vietnam issued a revised Circular 34, which establishes labeling and other requirements for prepackaged food and beverages, food additives and food processing aids. Vietnam notified the original circular to the WTO Committees on Technical Barriers to Trade and Sanitary and Phytosanitary Measures in 2012 and 2013, respectively, but did not notify the revised regulation to the relevant WTO Committees, limiting the time exporters had to bring products into compliance with the requirements, which became effective on December 19, 2014.

Vietnam made several significant revisions to Circular 34, but did not address some concerns raised or clarifications requested. For example, Vietnam maintained certain requirements concerning the production date and shelf-life of products, despite Codex recommendations for quality-based dates of duration. In addition, it did not clarify the extent to which it requires percentage labeling of ingredients.

Sanitary and Phytosanitary Barriers

Vietnam continues to work to ensure that its SPS regulatory regime is consistent with international standards. However, beginning in April 2010, Vietnam proposed a series of SPS measures purportedly to address broad food safety concerns, but which appear to unnecessarily restrict trade in food and agricultural products.

In 2012, Vietnam issued Decree 38, an implementing regulation for its comprehensive Food Safety Law. Decree 38 is broad in scope, covering regulations for a wide variety of horticultural, seafood, and meat products, and it applies to both foreign suppliers and domestic producers. Since 2012, three Vietnam Ministries (Health, Agriculture and Rural Development, and Industry and Trade) have sought to clarify their jurisdictions on food safety and continue to promulgate circulars implementing aspects of Decree 38. Enforcement of these implementing circulars is variable and creates considerable uncertainty for traders. The United States will continue to raise these issues with Vietnam.

Food Safety

Beef and Beef Products

During Vietnam's negotiations for accession to the WTO, Vietnam agreed to allow imports of U.S. beef and beef products from cattle under 30 months old. In 2011, the two sides further agreed on requirements for the export of live cattle to Vietnam, but beef and beef products were still restricted to products derived from animals less than 30 months of age. In February 2015, following discussions between the two governments, Vietnam agreed to remove the remaining restriction on age and restored full market access for U.S. beef and beef products. The United States will monitor implementation closely.

Offal Products

In recent years, the Ministry of Agriculture and Rural Development (MARD) partially removed a prior ban on the importation of offal products from all countries. In September 2013, it eliminated the remaining ban on so-called "white offals," and in February 2014 Vietnam reached agreement with the United States on the terms and conditions necessary to resume trade in those products, pending the individual registration of U.S. beef, pork, or poultry processing facilities. Following MARD's meat and poultry audit of the U.S. food safety inspection system conducted in November 2014, MARD continued to maintain that "white offal" was higher risk, and it increased the inspection rate on shipments, temporarily stopping approval of U.S. facilities exporting offals. The United States continues to urge Vietnam to remove any remaining obstacles to trade in offal products.

Products of Animal Origin

Vietnam's Circular 25 requires producers of food of animal origin to provide extensive information on their individual facilities, including proprietary information, in order for foods produced in those facilities to remain eligible for export to Vietnam. The United States continues to work with Vietnam on resolving long-term issues related to this regulation, including exporting company registration requirements and the need for a transparent, timely, and consistent review and approval process for new applicants.

Products of Plant Origin

In December 2013, Vietnam's National Assembly passed a new Plant Health Law updating the overall guidance on the issues of plant health quarantine, pesticide regulation, and import and export of plant origin products. The law and its subsequent guiding decrees and circulars entered into force January 1, 2015. The United States commented on several of the implementing regulations that were notified to the WTO in 2014 and will monitor the application of these regulations. In particular, the U.S. government and U.S. companies have raised concerns about the apparent lack of science-based justification and transparency by Vietnam's regulatory authority with respect to requirements of government-issued phytosanitary certification or equivalent for products of plant origin. Vietnam's enforcement in this area has created uncertainty for U.S. exporters of pre-packaged, consumer-oriented or highly- processed foods of plant origin for which such certificates are not normally issued nor required.

IMPORT POLICIES

Tariffs

The majority of U.S. exports to Vietnam face tariffs of 15 percent or less, although consumer-oriented food and agricultural products continue to face generally higher rates. In recent years, Vietnam has increased applied tariff rates on a number of products, although the rates remain below its WTO bound levels. Products affected by such tariff adjustments include sweeteners (such as fructose and glucose), shelled walnuts, ketchup and other tomato sauces, inkjet printers, soda ash, and stainless steel bars and rods. Most of the products for which tariffs have increased are produced by local companies.

Nontariff Barriers

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. Vietnam applies its prohibitions on used and second-hand goods to remanufactured goods as well.

Quantitative Restrictions and Import Licenses

Vietnam maintains tariff-rate quota regimes for salt, tobacco, eggs, and sugar.

Imports of iron and steel were previously subject to a licensing requirement pursuant to Circular 23, issued on August 7, 2012. However, on June 16, 2014, the Ministry of Industry and Trade's (MOIT's) Circular 17 removed this requirement.

On November 26, 2014, the Ministry of Information and Communications issued Circular 18/2014/TT-BTTTT, which guides implementation of Decree 187/2013/ND-CP as it relates to the importation of mobile phones, radio transmitters and radio transmitter-receivers. The Circular stipulates that importers of these items must submit import permit applications to the Communications Ministry that include commercial invoices, contracts, and supporting documents, and that an import permit will be issued within seven working days after submission. The Circular went into effect on January 16, 2015.

On September 7, 2012, the Prime Minister issued Directive 23 on "Certain Imports for Re-Export and Trans-shipment Trade." The directive barred imports of a list of products, mainly which are potentially harmful to the environment. On January 27, 2014, MOIT issued Circular 05/2014, which lists items subject to permanent and temporary bans for re-export under Directive 23. Items include a range of chemicals, plastics and plastic waste, and certain types of machinery and equipment.

Vietnam's Decree 94 on "Wine Production and Wine Trading" entered into force on January 1, 2013. Decree 94 establishes three types of licenses for alcohol: distribution, wholesale, and retail. The decree dictates that only enterprises with liquor distribution licenses are permitted to import liquor and establishes tight quotas for each category of trading license.

On September 17, 2012, the Prime Minister issued Directive No. 24 on "The Vietnamese People Using Vietnam Made Products," and a Government Resolution on "Ensuring Macro-economic Stability, Curbing High Inflation, and Trade Deficits." Through these regulations, the Prime Minister ordered government agencies to implement appropriate measures to encourage the consumption of domestically-produced products.

Price Registration and Stabilization

The National Assembly promulgated the Price Law in 2012, which went into effect on January 1, 2013. The Price Law gives the Ministry of Finance the authority to apply price controls on a set list of products, including petroleum products, electricity, liquidized petroleum gas, nitrogen fertilizers, pesticides, animal vaccines, salt, milk products for children under the age of six, sugar, rice, and basic human medications.

On May 20, 2014, the Ministry of Finance published Decision 1079/2014/QD-BTC regarding the implementation of price stabilization measures for dairy products for children under six years old. The Decision set maximum prices and required price reductions on a number of branded infant and children formula products and also set the maximum wholesale to retail markup for these goods at 15 percent. These measures will stay in effect until at least May 20, 2015, at which time the Ministry will decide whether to lift the measures. The United States is monitoring this issue closely.

Customs

Vietnam has implemented the WTO Customs Valuation Agreement, but importers of poultry have reported concerns with the use of reference prices affecting U.S. exports to Vietnam. The United States will continue to work with Vietnam on implementation of the WTO Customs Valuation Agreement. U.S. exporters also continue to have concerns about aspects of the customs clearance process, citing inefficiency, incorrect HS classification, red tape, and corruption as issues.

On June 23, 2014, Vietnam promulgated a new Law on Customs, to replace the existing Law on Customs starting January 1, 2015. The new law provides a legal framework for the National Single Window and institutes a number of positive changes, including increased electronic filing of customs forms. It also allows for more self-certification by traders, and for an expanded advance rulings system, including classification, origin and customs valuation.

Trading rights

Companies are allowed to import all goods except for a limited number of products, which must be imported by state trading enterprises, including cigars and cigarettes, crude oil, newspapers, journals and periodicals, and recorded media for sound or pictures (with certain exclusions).

Export taxes

Vietnam applies export taxes on a wide range of goods, including minerals, ores, metals, rubber, wood, and hides. Export tax rates range from 5 to 40 percent.

Other Nontariff Barriers

U.S. stakeholders continue to express concern about the impact on foreign firms of product registration requirements for imported pharmaceuticals. Ministry of Health Decision 2962, issued in 2012, limits market access for international pharmaceutical companies, including some from the United States.

GOVERNMENT PROCUREMENT

Vietnam's 2006 Law on Procurement provides for enhanced transparency in domestic procurement procedures; decentralization of procurement decision making to the ministries, agencies, and local authorities; appeals processes; and enforcement provisions. In some sectors, Vietnam has sought to promote the purchase of domestic goods or services in government procurement.

Vietnam has undertaken no international obligations on procurement at this point. Obligations on government procurement negotiated through the TPP would be Vietnam's first binding international commitments to provide market access for foreign suppliers to Vietnam's government procurement market.

Vietnam is not a party 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 (IPR) PROTECTION

Vietnam remained on the Special 301 Watch List in 2014 due to widespread counterfeiting and piracy, unauthorized reception and distribution of satellite channels via illegal decoders and domestic pay TV platforms, and primary reliance on administrative actions and penalties rather than more deterrent mechanisms of IPR enforcement.

SERVICES BARRIERS

Advertising Services

Decree No. 181/2013/ND-CP, issued in 2013, introduced new restrictions with respect to online advertising. The decree requires Vietnamese advertisers to contract with a Vietnam-based advertising services provider in order to place advertisements on foreign websites, and requires any foreign websites to notify the Ministry of Culture, Sports and Tourism in writing of the name and main business lines of the provider that it has retained in Vietnam at least 15 days before publishing an advertisement.

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 for which the right to appeal a censor's decision is not well established.

Broadcasting

Vietnam requires that foreign pay TV providers use a local agent to translate into Vietnamese all movies and programming on science, education, sports, entertainment, and music before they are screened. Decision 18a/2013/QD-TTG, issued in 2013, removed the requirements for news channels to translate their broadcasts and provide a summary of the content in Vietnamese in advance of airing. The measure still 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. The U.S. government continues to raise concerns with the Ministry of Information and Communication and will continue to monitor the implementation of both pay TV regulations.

Telecommunications

Vietnam permits foreign participation in the telecommunications sector, with varying equity limitations depending on the sub-sector. For instance, foreign ownership in services supplying closed-user networks is permitted up to 70 percent, while foreign ownership in facility-based basic services is generally capped at 49 percent. Vietnam also allows foreign equity of up to 65 percent for non-facilities-based public telecommunications services.

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. The share of the market accounted for by the top three telecommunications companies has grown to nearly 95 percent. In addition, the three largest telecommunications firms, which Vietnam had pledged to equitize, remain non-incorporated governmental assets.

The Vietnamese government continues to exercise various forms of control over Internet access. It allows access to the Internet, but only through a limited number of Internet service providers, all of which were State-controlled companies or companies with substantial State control. The Vietnamese government restricts or blocks access to certain websites that it deems politically or culturally inappropriate. In July 2013 Vietnam promulgated Decree 72/2013/ND-CP, which forbids the use of Internet services to oppose the government; harm national security, social order, and safety; or propagandize war, terrorism, hatred, violence, or superstition. The United States has raised concerns about these Internet restrictions with the Vietnamese government and will continue to monitor this issue closely.

Circular 09/2014/TT-BTTTT "Detailing Management, Provision and Use of Information on Websites and Social Networks," which guides implementation of Decree 72, requires Vietnamese companies who operate general websites and social networks, including blogging platforms, to locate a server system in Vietnam and to store posted information for 90 days and certain metadata for up to two years. To date, enforcement of the decree appears to be very limited, but the Ministry of Communications is expected to release guidance on how the decree will apply to foreign cross-border service providers in 2015.

In 2014, the Communications Ministry issued a circular that set a floor for wholesale rates for international voice and data roaming services in Vietnam. As a result of the circular, roaming rates have increased dramatically, with the further result that several U.S. operators have reduced or eliminated roaming services for their U.S. customers in Vietnam. The United States will continue to engage with the Ministry of Communications and monitor this issue closely.

Distribution Services

Foreign investors who seek to open a second retail establishment in Vietnam's retail sector are subject to an economic needs test, which is evaluated by the local authorities and approved by the MOIT. The MOIT issued Circular 8 in April 2013, which provides additional details on the application of the economic needs test, which was first introduced in 2007. The only companies exempted from the economic needs test requirement are small- and mid-sized retail outlets (less than 500 square meters) located in commercial zones. Circular 8 also stipulates that foreign-invested enterprises with export trading licenses can only buy agricultural products from local traders.

Foreign Contractor Tax

Effective October 1, 2014, Ministry of Finance Circular 103 requires local entities to withhold taxes of up to 2 percent when they provide most services for foreign contractors. Previously, withholdings were only required for revenue generating services, but the withholding requirement now applies to services that are generally deductible for local businesses, such as advertising and after-sale warrantee services.

Banking and Securities Services

Vietnamese banking regulations make a distinction between domestic "joint stock" banks (commercial banks with any amount of private ownership) and "joint venture" banks (banks set up by joint venture agreement, typically between domestic and foreign partners). Total cumulative foreign ownership in domestic "joint stock" banks is limited to 30 percent. The Vietnamese government can approve increases in foreign ownership above 30 percent, but no such approvals have been granted to date. Foreign equity in "joint venture" banks is permitted up to 49 percent, but no new joint venture banking licenses have been issued in the past few years.

Foreign bank branches continue to face geographic network restrictions that are not imposed on joint stock banks or joint venture banks, such as being limited to one office per province.

Foreign securities companies are permitted to establish 100 percent foreign-owned subsidiaries in Vietnam, but are limited to 49 percent ownership of local securities companies. The same ownership rule applies to fund management firms.

INVESTMENT BARRIERS

Vietnam's National Assembly passed a new Investment Law on November 26, 2014, that will go into effect July 1, 2015. The most significant change in the new law is that the list of prohibited sectors for foreign investment has changed from a positive list to a negative list, which means that foreign investors can now invest in all sectors except six prohibited by law. An additional 267 sectors are subject to pre-approval by the National Assembly or the Prime Minister before a foreign investment can be made.

The new Real Estate Law allows foreigners with a valid visa, foreign companies, and international organizations to obtain a certificate of land use rights for 50 years, but does not allow foreigners to own real estate. Foreign entities can also mortgage both the structures on the land and the value of the land use rights.

ELECTRONIC COMMERCE

Electronic commerce is growing rapidly in Vietnam. In the area of cloud computing services, stakeholders have raised concerns over the Ministry of Communications' draft IT Services decree, which would impose licensing and registration requirements on IT service providers, including restrictions on the cross-border supply of cloud computing and data center services. As of early 2015, the Communications Ministry has reportedly shelved the draft decree. The U.S. Government will continue to monitor this issue closely.

OTHER BARRIERS

The lack of transparency and accountability, along with reported widespread official corruption and an inefficient bureaucracy, continue to be problems in Vietnam. 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.

Vietnamese courts continue to have a weak track record of enforcing international arbitral awards. In 2012, dozens of Vietnamese companies signed purchase contracts with U.S. cotton suppliers but failed to execute the contracts when world cotton prices fell.