VIETNAM

TRADE SUMMARY

The U.S. goods trade deficit with Vietnam was $11.2 billion in 2010, up $2.0 billion from 2009. U.S. goods exports in 2010 were $3.7 billion, up 19.8 percent from the previous year. Corresponding U.S. imports from Vietnam were $14.9 billion, up 21.0 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 $524 million in 2009 (latest data available), up from $473 million in 2008.

The United States and Vietnam held numerous discussions throughout 2009 under the Trade and Investment Framework Agreement (TIFA). 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). Two rounds of BIT negotiations were held in 2009. An ICT (Information Communication Technology) Commercial Dialogue was held in 2009 and 2010.

In December 2009, the United States announced its intention to enter into negotiations on a regional 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. The TPP negotiating partners currently include Australia, Brunei Darussalam, Chile, Malaysia, New Zealand, Peru, Singapore, and Vietnam.

Vietnam was declared a Next-Tier country under the President's National Export Initiative (NEI).

IMPORT POLICIES

Tariffs

Vietnam significantly reduced its tariff rates for many key U.S. exports in the context of its entry into the WTO in January 2007 and as part of the accession process agreed to bind all tariff lines. As a result, the vast majority of U.S. exports now face tariffs of 15 percent or less. High tariffs on selected products remain, however. U.S. industry has identified a range of products where it sees significant potential for export growth if Vietnam's tariffs could be reduced further. These products 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 also face high tariffs, including distilled spirits, powdered teas, nutritional supplements (including protein drink mixes) and coffee. In addition, Vietnam imposes high tariffs on selected equipment for restaurant use and on large engine motorcycles. After making substantial tariff reductions on a wide range of products in 2007, Vietnam raised applied rates on some products during 2008 and 2009, including meat and poultry, automobiles, paper, steel and fertilizer.

Nontariff barriers (NTBs)

Vietnam has made significant progress in eliminating nontariff barriers (NTBs) under the 2001 United States-Vietnam Bilateral Trade Agreement (BTA) 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 not be consistent with its WTO commitments.

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.

Quantitative restrictions and import licensing: Salt, tobacco, eggs, and sugar are under a tariff-rate quota regime.

In 2008, Vietnam introduced Circular 17, an import licensing regime on a number of products, mostly consumer goods. On May 28, 2010, Vietnam's Ministry of Industry and Trade (MOIT) published Circular 24, which entered into force on July 12 and replaced Circular 17. Circular 24 extends the list of products for which licenses were required under Circular 17 to cover certain food and agricultural products as well as textile and apparel products. Circular 24 requires local importers to obtain an "automatic" import license (AIL) before shipments can be unloaded at a Vietnamese port. The license is not, however, automatic, as product cannot move until the importer has the license in hand, a process that is supposed to take seven days but in practice often takes longer. Many U.S. companies have reported that delays in receiving AILs have resulted in decreased shipments into Vietnam and significant losses. Importers must wait until they have an original Bill of Lading (BL) before applying for the AIL, which limits their ability to apply for AILs early to avoid delays (a BL cannot be obtained until cargo has been loaded). Vietnam has not notified Circular 24 to the WTO.

The U.S. Government has repeatedly raised this issue with the Government of Vietnam. In meetings with Vietnamese officials in Washington, Hanoi, and Geneva, the United States has emphasized that Vietnam is required to notify Circular 24 to the WTO. Further, U.S. officials have noted that this measure has significantly increased the administrative burden and costs for U.S. companies exporting to Vietnam. Working with other governments, the United States has sent letters to the Prime Minister and Vice Minister of Trade in Vietnam regarding Circular 24, and urged Vietnam to notify the full scope of its import licensing requirements at the October 29, 2010 meeting of the WTO Committee on Import Licensing. After the United States informed MOIT officials that, due to the BL requirement, importers of air freight shipments of perishable products would not receive AILs before their cargo expired, MOIT removed the BL requirement for air freight shipments. However, all other aspects of Circular 24 remain in force. The United States also requested additional information on Circular 24, including how products were selected for inclusion.

On April 16, 2010, MOIT issued a list of "dispensable and non-essential import items and consumer goods," which covered 1500 tariff lines. This notification is understood, in practice, to prevent importers from accessing foreign exchange through official channels, thereby restricting imports. The U.S. Government has repeatedly raised this issue with Vietnamese officials, requesting a transparent and clear explanation of the scope and intent of this list.

Price Registration and Stabilization: In late 2009, the Ministry of Finance published a draft regulation that would establish a price registration and stabilization regime for a broad range of goods and services potentially affecting U.S. exports. The United States, along with other governments and private sector interests, repeatedly raised concerns with the Vietnamese government.

Despite foreign government and private sector intervention, on August 12, 2010, MOF officially issued Circular 122 on price management and registration, which entered into force on October 1. Circular 122 states that MOF may apply price controls when prices increase or decrease without a "legitimate excuse," and subjects an extensive list of goods to pricing registration, including cement, steel, liquefied petroleum gas, clean water for commercial use, 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, textbooks, and railway transport. U.S. companies covered under this circular are significantly concerned about the potential impact of the measures, which they report will cause increased administrative costs and, if price controls are applied, loss in profits. They are also concerned the circular is being implemented in a discriminatory manner. The U.S. Government, along with other foreign governments, has repeatedly discussed concerns about Circular 122 with the Prime Minister, Minister of Finance, and Vice Minister of Trade, and will continue to engage the Government of Vietnam about 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 for 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).

Taxes: Vietnam applies a value added tax on goods and services in a number of categories listed in the Law on Value added Tax and related implementing regulations. Certain goods in Vietnam are also subject to an excise tax, levied in accordance with the Law on Excise Tax. This law was revised in late 2008. Effective January 1, 2010, excise taxes were harmonized to a single *ad valorem* rate for all beer, regardless of packaging, and for all distilled spirits over 20 percent alcohol b y volume.

Pharmaceutical companies have raised concerns about possible 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.

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

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. The U.S. software industry has expressed concern about the Vietnamese government's promotion of the use of open source software by government agencies, including specific preferences for open source software in government procurement. It continues to urge the Vietnamese government to use a merit-based approach to software procurement decisions consistent with the APEC Technology Choice Pathfinder Agreement that Vietnam signed in 2006.

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

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Vietnam was listed on the Watch List in the 2010 Special 301 report. While recognizing the strides Vietnam has made in IPR protection and enforcement over the past several years, the United States noted that enforcement efforts have not kept pace with rising levels of IP 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. The special 301 report also noted that IP violations committed over the Internet continue to increase. Over the past year, Vietnamese agencies took some initial steps to enforce IP protections on the Internet, including sending warning letters and meeting with service providers to provide warnings against providing infringing content. The United States will continue to work with Vietnamese authorities and to encourage more vigorous enforcement actions.

In 2009, Vietnam revised its IPR 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 with the aim of further deterring violations.

SERVICES BARRIERS

In the BTA 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 late 2009, Vietnam's Ministry of Information and Communication circulated draft regulations covering pay television that included a proposal to establish a government controlled agency as the only authorized entity for the purchase and distribution of pay television programming. This proposal would have had the effect of requiring all foreign programming and all foreign channels to be sold into the Vietnam market through this "single buyer" government entity. However, the Ministry of Information and Communication subsequently reported that the draft was revised to remove the "single buyer" provision and was submitted to the Deputy Prime Minister for approval, where it is still pending. The United States and industry representatives have registered serious concerns over this proposal. The United States will continue to monitor the development of these regulations.

Express Delivery Services

Foreign participation in joint ventures with express delivery service providers currently is limited to 51 percent of a firm's equity. By January 2012, 100 percent foreign ownership will be permitted in this sector.

Telecommunications

Vietnam permits foreign participation in the telecommunications sector, with varying equity limitations 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 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 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 requirement that all facilities-based operators be majority state owned, limiting the pool of such partners and reinforcing governmental control over market entry. The Law on Telecommunications was issued in September 2009. In 2010, the Ministry of Information and Communication is drafting an implementing decree which proposes limiting a single foreign investor's ownership in a telecommunications enterprise to 30 percent of the charter capital, which is less than the 49 percent listed in the WTO member's Service Schedule. Even if this provision can be interpreted as allowing up to a total of 49 percent foreign ownership, subject to 30 percent limit on any one foreign investor, a number of experts have expressed concern that such a provision would violate international regulations on market access limitations and create potential difficulties foreign-invested enterprises to operate in the sector. The United States will continue to engage Vietnam as it drafts implementing regulations for its new telecommunications law in an effort to address these restrictions.

In 2010, users widely reported incidents of having no access to certain websites, including foreign-based social networking sites, with the apparent involvement of telecommunications operators. Although the Government of Vietnam has officially denied it is blocking certain websites, the government also has not denied efforts to ensure that Internet usage does not promote "antisocial" behavior. 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. In 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 the lending of 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.

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, as well as 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 which in turn create opportunities for corruption. Low pay for government officials and 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.