VIETNAM

TRADE SUMMARY

The U.S. goods trade deficit with Vietnam was $10.1 billion in 2008, an increase of $1.4 billion from $8.7 billion in 2007. U.S. goods exports in 2008 were $2.8 billion, up 46.6 percent from the previous year. Corresponding U.S. imports from Vietnam were $12.9 billion, up 21.3 percent. Vietnam is currently the 50th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Vietnam was $281 million in 2007 (latest data available), down from $314 million in 2006.

The United States and Vietnam met four times in 2008 under the Trade and Investment Framework Agreement (TIFA). These meetings 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.

IMPORT POLICIES

Tariffs

The United States negotiated significant reductions in tariff rates for many key U.S. exports in the context of Vietnam's entry into the WTO in January 2007. 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, including on agricultural products, such as fresh apples, cooked and raw frozen poultry, cheese, potato products, prepared meat products, flatbread, tomato concentrate, and ice cream powder. Several beverage products also face high tariffs, including distilled spirits, powdered teas, nutritional supplements, and protein drink mixes. Vietnam also imposes high tariffs on selected equipment for restaurant use and large engine motorcycles. In 2008, Vietnam raised applied tariffs on a number of imports, including meat and poultry, automobiles, and automobile parts, partially reversing substantial tariff reductions made in 2007.

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 any quantitative restrictions on imports or other nontariff measures, such as quotas, bans, permits, prior authorization requirements, licensing requirements, or other restrictions having the same effect, 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 an import licensing regime on a number of products, mostly consumer goods. The United States has expressed concerns regarding the discretionary nature of elements of these regulations and will continue to monitor 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 products 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. Consistent with Vietnam's WTO accession commitments, the new law will harmonize excise taxes effective January 1, 2010 to a single *ad valorem* rate for all beer, regardless of packaging, and for all distilled spirits over 20 percent alcohol by volume.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Sanitary and Phytosanitary Measures (SPS)

Vietnam is working on bringing its SPS regime in line with international standards. The Ministry of Agriculture and Rural Development currently serves as Vietnam's enquiry point and notification authority under the WTO Agreement on SPS. Vietnam established its SPS National Authority in October 2007 and made its first notifications to the WTO in January 2008.

The United States continues to urge Vietnam to adopt SPS measures consistent with international guidelines, recommendations, and standards, specifically for beef and poultry imports. In May 2006, the United States and Vietnam concluded an agreement in which Vietnam agreed to recognize the U.S. food safety and inspection systems for beef, pork, and poultry as equivalent to its own inspection system. At that same time, Vietnam opened its domestic market to imports of U.S. beef and beef products from cattle under 30 months of age. The United States is working with Vietnam to secure full market opening for all U.S. beef and beef products from cattle of all ages in accordance with the World Organization for Animal Health (OIE) guidelines for a "controlled risk" country for bovine spongiform encephalopathy (BSE). Vietnam is currently conducting a risk assessment of the United States' BSE controls for all ages. The United States also has raised concerns with Vietnam regarding the scientific basis for Vietnam's zero tolerance for salmonella on uncooked poultry meat.

Vietnam is developing agricultural biotechnology regulations for establishing field trials, protecting biodiversity, assessing risks to human health, and managing trade in biotechnology-derived products. While some of these regulatory developments are promising for biotechnology adoption, others raise potential concerns. The United States will continue to engage with Vietnam to assure that the flow of trade in biotechnology-derived commodities remains unhindered.

Standards and Technical Barriers to Trade

The 2007 Law on Standards and Technical Regulations designated the Ministry of Science and Technology as the responsible agency for issuing and managing national standards, while line ministries are responsible for national technical regulations. Vietnam's Directorate for Standards and Quality is the enquiry and notification point under the WTO Agreement on Technical Barriers to Trade.

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.

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.

EXPORT SUBSIDIES

In 2008, Vietnam abolished the Export Assistance Fund, a support program that, among other things, provided financial support for limited periods of time to exporters facing financial difficulties.

INTELLECTUAL PROPERTY RIGHTS (IPR)

Vietnam has made considerable progress over the past few years in modernizing its legal framework for IPR protection. The 2005 Intellectual Property Law (IP Law) established the legal framework for the civil litigation of IPR cases and authorized the courts to provide injunctive relief. Vietnam also revised its Civil Code in 2005 to increase the scope of protected IPR, including satellite signal carrying encrypted programs, layout-designs of semiconductor integrated circuits, business secrets, trade names, plant varieties, and geographical indications. In August 2008, Vietnam issued a revised ordinance governing the levels of administrative fines in an attempt to ensure that administrative agencies were able to utilize the fine structure provided for in the IP Law. Nonetheless, the United States remains concerned about a range of IPR issues and will continue to work closely with Vietnam to address these concerns and strengthen its IPR regime.

Intellectual Property Laws

Trademark infringement is widespread and victims of trademark infringement have encountered difficulties implementing National Office of Intellectual Property (NOIP) enforcement decisions, despite recent positive developments in enforcement. Obtaining expeditious adjudication of patent and trademark violations remains difficult and enforcement of administrative and court findings of IPR infringement remain problematic. The United States is working closely with both U.S. industry and relevant Vietnamese agencies under the TIFA to improve implementation of Vietnam's laws and regulations with respect to protection of intellectual property.

Vietnam has regulations addressing the protection against unfair commercial use of undisclosed test and other data submitted to regulatory authorities to obtain marketing approval for pharmaceutical and agricultural chemical products. The U.S. pharmaceutical industry has expressed concerns regarding implementation of these regulations. Literary, artistic, architectural, and scientific works receive copyright protection, and performances, sound recordings, visual recordings, broadcasts, and satellite signals carrying encoded programs receive related rights protection. After Vietnam joined the Berne and Geneva Conventions, the Vietnam Office of Literary and Artistic Copyright under the Ministry of Culture, Sports and Tourism, which manages copyrights and related rights protection, made an effort to tighten copyright protection on foreign musical and theatrical works, and sound recordings. All event organizers must now obtain permission in writing from copyright holders before performing their works.

Enforcement

Vietnam has been working to strengthen its enforcement regime. In 2008, it issued an inter-ministerial circular providing for criminal penalties for willful and commercial-scale copyright infringement and trademark counterfeiting. Draft IPR-specific revisions to modernize the Criminal Code to meet international standards are under review and are expected to be submitted to the National Assembly for consideration in 2009.

Administrative remedies remain the most commonly used means of enforcing IPR in Vietnam because they are the most cost effective and the least time consuming. Substantial compensation for IPR violations, however, is only available under the civil remedies section of the IP Law. Vietnam's courts are untested in this regard, and concerns remain as to whether rights holders have adequate access to effective civil remedies under the IP Law. Criminal offences are prosecuted under the Criminal Code, and criminal proceedings are regulated under the Criminal Procedure Code. In practice, criminal prosecutions typically require large-scale IPR violations involving large quantities or high value goods.

Despite the progress in putting in place a legal framework for copyright protection, enforcement remains uneven, particularly for certain categories of physical products, such as software, music and video CDs, VCDs, and DVDs. Industry estimates that piracy rates for software, music, and videos have run in excess of 90 percent over the past several years. Vietnamese police have investigated, and in some cases raided and fined, businesses suspected of using pirated software. Rights holders continue to seek additional enforcement actions against the variety of devices used for signal theft and the illegal distribution of movies by television broadcasters. Vietnam took effective action in 2008 against a state-owned cable broadcast company after the U.S. Government and industry raised concerns. Vietnam also has taken some initial action to address the rising rates of Internet piracy, reportedly fining two internet service providers for offering unlicensed content for download. The U.S. Government will continue to work with Vietnamese authorities to improve their ability to extend copyright protection to the digital and broadcast environments.

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, the professions, and distribution services. As part of these negotiations, Vietnam also retained some market access limitations and exceptions to national treatment.

Advertising and Marketing Research Services

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

Audiovisual Services

Foreigners may invest in cinema construction and operation only through joint ventures with local Vietnamese partners, subject to government approval. In addition, the total number of foreign films imported into Vietnam each year may not exceed two thirds of the number of films domestically produced. Imported films are subject to censorship before public viewing, a process which is nontransparent and for which the right of appeal of a censor's decisions is not well established.

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

Foreign participation in joint ventures with service providers is permitted, 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 facility-based basic services (*e.g.*, public voice service owning transmission facilities) is generally capped at 49 percent. In January 2010, foreign equity of up to 65 percent will be allowed for non-facilities based service suppliers (*i.e.*, suppliers which do not own transmission capacity but contract for such capacity, including submarine cable capacity from a facilities-based supplier). Vietnam's regulations for the telecommunications sector have not been updated following Vietnam's WTO accession, but it is currently drafting a new, comprehensive telecommunications law. The United States has encouraged Vietnam to ensure that this new law is developed in a transparent and WTO-consistent manner.

While Vietnam has opened up the telecommunications sector to competition, the facilities-based market is generally still restricted to state-owned or state-controlled enterprises, although joint ventures with foreign firms are possible. In 2010, Vietnam will open its telecommunications market and permit majority-owned foreign supply in basic public telecommunications services offered on a non-facilities basis (fixed and mobile services offered by leasing transmission capacity from a Vietnamese company).

Distribution Services

Foreign participation in this sector is allowed without equity limitations. However, certain goods are excluded from Vietnam's distribution sector commitments either during a phase-out period or for 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, including in the distribution of videos (tapes, VCDs, and DVDs) and pharmaceuticals.

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.

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, and insurance. Investments greater than VND300 billion (approximately US$ 17 million), those 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 Land Law of 2003 permits foreign invested enterprises to lease land for a renewable period of 50 years, 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 under developed in Vietnam. Development has been hampered by the low number of Internet subscribers, government fire walls, limited bandwidth and other problems with the Internet infrastructure, limited 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 and approvals, which in turn create opportunities for corruption. Low pay for government officials and inadequate accountability systems contribute to these problems. In 2008, Vietnam scored a 2.7 out of a possible score of 10 points on Transparency International's Corruption Perception Index, ranking 121 out of 180 countries. Top leaders in the Communist Party of Vietnam and Vietnamese government officials have publicly acknowledged that these are urgent 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.