VIETNAM

TRADE SUMMARY

U.S. goods exports in 2013 were $5.0 billion, up 8.4 percent from the previous year. Corresponding U.S. imports from Vietnam were $24.6 billion, up 21.6 percent. The U.S. goods trade deficit with Vietnam was $19.6 billion in 2013, up $4.0 billion from 2012. Vietnam is currently the 44th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Vietnam was $1.1 billion in 2012 (latest data available), up from $964 million in 2011.

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 seeking to establish a comprehensive, next-generation regional agreement to liberalize trade and investment. 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, and serve as a potential platform for economic integration across the Asia-Pacific region. The TPP agreement will include ambitious commitments on goods, services, and other traditional trade and investment matters. It will also include a range of new and emerging issues to address trade concerns our businesses and workers face 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.

IMPORT POLICIES

Tariffs

Vietnam significantly reduced its tariff rates on many products of interest to the United States when it joined the WTO in January 2007. As a result, the majority of U.S. exports now face tariffs of 15 percent or less. However, 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.

Nontariff Barriers

Vietnam eliminated many nontariff barriers under the 2001 United States-Vietnam Bilateral Trade Agreement (BTA) and through its accession to the WTO, including quantitative restrictions on imports, quotas, bans, permit requirements, prior authorization requirements, licensing requirements, and other restrictions having the same effect, that appeared to be inconsistent with its WTO commitments. Nonetheless, many other nontariff barriers remain.

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.

Quantitative restrictions and import licenses: Vietnam has tariff-rate quota regimes for salt, tobacco, eggs, and sugar.

Imports of iron and steel are subject to a licensing requirement pursuant to Circular 23, issued on August 7, 2012. On September 7, 2012, the Prime Minister issued Directive 23, increasing restrictions on "Certain Imports for Re-Export and Trans-shipment Trade." On February 18, 2013, the Ministry of Industry and Trade (MOIT) issued Circular 5/2013/TT-BCT, which provided implementation details for Directive 23. The circular bans imports for re-export and transshipment of a variety of hazardous waste items and temporarily bans imports for re-export and transshipment of a variety of products. On January 27, 2014 MOIT issued Circular 05/2014, which replaced Circular 05/2013 and updates the lists of items subject to permanent and temporary bans for re-export.

Vietnam's Decree 94 on "Wine Production and Wine Trading," entered into force on January 1, 2013. Decree 94 establishes three types of licenses (liquor distribution licenses, liquor wholesale licenses, and liquor retail licenses), provides that only enterprises with liquor distribution licenses are permitted to directly import liquor, and establishes tight quotas for each category of trading license. These new licensing guidelines have generated concerns about the impact on access of imported products to the Vietnamese market.

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

Price Registration and Stabilization: Circular 122 on price management and registration entered into force in 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. On June 20, 2012, the National Assembly promulgated the Price Law which became effective on January 1, 2013. While this law supersedes Circular 122, Vietnamese government policy regarding price stabilization of certain items will not change.

Customs: Vietnam implemented the WTO Customs Valuation Agreement through the 2006 Customs Law and related regulations, significantly improving its customs valuation process. Despite this positive step, U.S. exporters continue to have concerns about other aspects of the customs clearance process, citing inefficiency, red tape, and corruption as issues. The United States will continue to work with Vietnam to monitor its implementation of the WTO Customs Valuation Agreement.

On September 10, 2013, the Ministry of Finance issued Circular 128, which imposed new regulations on customs procedures, customs control and supervision, and import and export duty administration. The Vietnamese Customs Department maintains a list of reference prices for various agricultural and industrial products which has generated concerns from trading partners, including the United States.

Trading rights: Import rights are granted for all goods except for a limited number of products reserved for importation through state trading enterprises, as well as certain products subject to a phase-in period for trading rights 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).

Other Nontariff Barriers: U.S. stakeholders have expressed 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 procurement procedures; decentralization of procurement decision making to the ministries, agencies, and local authorities; appeals processes; and enforcement provisions.

In 2009, the branch of the Communist Party linked to the state-owned oil and gas enterprise PetroVietnam issued a resolution requiring subsidiaries of the PetroVietnam to give priority to domestic companies when purchasing goods or services relating to oil and gas projects. This measure has significant effects on foreign companies seeking to provide goods and services to support the industry because PetroVietnam dominates the oil and gas industry in Vietnam.

In 2010, the Prime Minister issued Directive 494 on the use and supply of domestic goods in projects using State capital. This directive stipulates that large projects using State capital should be divided into multiple smaller projects to ensure that domestic enterprises can bid and carryout the projects. Furthermore, authorities and state business groups should only call for international tenders on projects using State capital when local companies are not able to meet the qualifications to bid.

In early 2012, the Ministry of Health and Ministry of Finance issued Circular 01/2012/TTLT-BYT-BTC on medicine procurement in health care units. This circular stipulates that domestic medical products should be given preference in procurement orders using government funding for hospitals and clinics if the price and quality is the same as the equivalent foreign product. The U.S. Government has raised this issue with the government of Vietnam.

Vietnam is not a signatory 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 PROTECTION

Vietnam remained on the Special 301 Watch List in the 2013. While recognizing the strides Vietnam has made in improving its intellectual property (IP) regulatory framework and enforcement efforts over the past few years, the United States noted that widespread counterfeiting and piracy, including over the Internet, remain serious concerns. In addition, while Vietnam took action to address signal theft by its State-owned television provider, stakeholders note that unauthorized reception and distribution of satellite channels via illegal decoders and domestic pay television platforms continue.

In the area of enforcement, administrative actions and penalties – which are the most common method of addressing IP infringement in Vietnam – have not had a significant deterrent effect. In recent years, Vietnamese agencies have taken some initial steps to enforce IP protections on the Internet, including by issuing warning letters and by meeting with Internet service providers 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 digital piracy. Vietnam has stated it will clarify IP-related provisions in the Criminal Code through an implementing decree. If adopted, these guidelines would be an important step towards improving law enforcement- related to IP in Vietnam.

SERVICES BARRIERS

Advertising Services

Decree No. 181/2013/ND-CP (Decree 181), 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 (VASP) 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 VASP 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 that is nontransparent and for which the right to appeal a censor's decision is not well established.

Broadcasting

In March 2011, the Prime Minister issued Decision 20 (Regulation on Pay TV Operation Management), which 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. In response to criticism, Decision 18a/2013/QD-TTG was issued in 2013, which 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 Decision allowed for a one-year grace period for compliance, followed by two six-month extensions. The U.S. Government continues to raise concerns over Decision 20 with the Ministry of Information and Communication and will continue to monitor the implementation of these regulations.

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. 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 to be majority State-owned firms, limiting the pool of such partners and reinforcing government control over market entry. The share of the market accounted for by the top three telecommunications companies has grown to nearly 95 percent. The Vietnam Post and Telecommunications Group, which is owned by the Ministry of Information and Communications (MIC), has a majority stake in both Vinaphone and Mobiphone, the second and third largest mobile networks in Vietnam. In addition, the three largest telecommunications firms, which Vietnam had pledged to equitize, remain non-incorporated governmental assets and subject to nontransparent governmental influence.

In the last several years, users frequently reported having no access to certain websites, including foreign-based social networking sites. Nevertheless, the inability to access legitimate websites appears, for most Internet service providers, to be less pervasive. The United States has raised concerns about these Internet restrictions with the Vietnamese government and will continue to monitor this issue closely.

Decree 72 took effect on September 1, 2013 and created numerous concerns for cross-border Internet services providers. The decree enumerates stringent licensing requirements and expands the categories of domestic websites subject to those requirements, such as in-house management controls, local server requirements, and the centralization and authentication of user information. If implemented in its current form, the regulations would establish a "self-policing" model of internet regulation for domestic website companies.

Distribution Services

The Ministry of Industry and Trade (MOIT) issued Circular 8 on April 22, 2013 which provides additional details on the application of an economic needs test which was first introduced in 2007. In Vietnam's retail sector, foreign investors who seek to open a second retail establishment are subject to an economic needs test which is evaluated by the local authorities and approved by the MOIT. The only exception from the economic needs test requirement is for small and mid-sized retail outlets (less than 500 square meters) located in commercial zones. .Additionally, Circular 8 stipulates that foreign-invested enterprises with export trading licenses can only buy agricultural products from local traders, as opposed to directly purchasing products from local farmers.

Banking and Securities Services

Vietnamese banking regulations make a distinction between domestic "joint stock" banks (commercial banks with any amount of private share ownership) and "joint venture" banks (new banks set up expressly based on a joint venture agreement). Total cumulative foreign ownership in any domestic "joint stock" bank is limited to 30 percent of equity. In contrast, foreign equity is permitted up to 49 percent for "joint venture" banks.

New regulations designed to improve the capital position of the banking industry have also introduced new requirements and restrictions, such as those for calculation of capital adequacy ratios, which can cause compliance-related difficulties. Foreign bank branches face restrictions, such as being limited to one office per province.

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"). 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 government, and, as such, neither foreign nationals nor Vietnamese nationals can own land. The 2006 Investment Law permits foreign-invested enterprises to lease land for a period of 50 years and up to 70 years in special cases. Investors can obtain land use rights and can mortgage both the structures erected on that land and the value of the use rights.

ELECTRONIC COMMERCE

Electronic commerce is growing rapidly in Vietnam. 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. On May 16, 2013, Vietnam issued Decree No. 52/2013/ND-CP which outlines registration and licensing procedures for electronic businesses, which came into force on July 1, 2013.

In the area of cloud computing services, stakeholders have raised concerns over a draft decree issued by the Ministry of Information and Communication that would impose licensing and registration requirements on providers of information technology services, including restrictions on the cross-border supply of cloud computing and data center services.

OTHER BARRIERS

The lack of transparency and accountability, along with widespread official corruption and inefficient bureaucracy, continues 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.

In 2013, the Vietnamese courts rejected cotton contract default arbitration 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. The International Cotton Association monitors the execution of purchase contracts and can grant arbitration awards to cotton suppliers when purchasers default on their contracts. The September 10, 2013 International Cotton Association Default List included 34 cases of Vietnamese companies that failed to fulfill awards decided by international arbitral bodies. As of March 7, 2014, Vietnamese courts have rejected 29 of the 30 cotton contract arbitration awards brought before them.