Vietnam - Trade Barriers

Includes the barriers (tariff and non-tariff) that U.S. companies face when exporting to this country.

Last Published: *1/24/2017*

Overview

Vietnam eliminated many non-tariff 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, which appeared to be inconsistent with its WTO commitments. Nonetheless, many other non-tariff barriers remain in place.

Customs: Vietnam implemented the WTO Customs Valuation Agreement through the 2006 Customs Law and related regulations, which significantly improved 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, unclear rules and regulations, red tape, and corruption as the most common issues. The U.S. continues to work with Vietnam to monitor implementation of the WTO Customs Valuation Agreement.

In 2014, the Vietnam National Assembly passed a revised Customs Law, which came to effect on January 1, 2015. The revised law regulates the implementation of a national singular form in customs operation that applied risk management principles, new regulations on the establishment of the Customs Department, the authorization of the Customs Authorities to determine the origin of goods, specifying the conditions to be an agent of customs procedures, duration for customs authorities to do customs clearance, new regulations on customs declaration, and more.

Trading Rights: Import rights are granted for all goods, except for a limited number of products reserved for importation through state trading enterprises and 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).

Import Prohibitions: According to Decree No. 187/2013/ND-CP dated November 20, 2013, Vietnam currently prohibits the importation of some products, including weaponry, ammunition, explosive materials, military technical equipment, firecrackers, second-hand consumer goods, types of publications, and cultural products in the category prohibited from dissemination and circulation in Vietnam, right-hand-drive motor vehicles, materials and transport facilities, chemicals, plan protection agents prohibited from use in Vietnam, scrap and waste, refrigerating equipment using C.F.C., products, raw material containing asbestos of the group of amphibole, chemicals on list of prohibited chemicals.

Price Registration and Stabilization: Circular 122 on price management and its registration entered into force in 2010. 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 steel, liquefied petroleum gas, chemical fertilizers, plant protection products, animal drugs and vaccines, salt, milk and nutritional powders for children under six years old, sugar, rice, animal feed, coal, paper, and textbooks. In 2012, the National Assembly promulgated the Price Law, which became effective on Jan 1, 2013. While this law supersedes Circular 122, the Vietnamese government policy with regard to price stabilization of certain items did not change. The U.S. Government and other foreign governments have repeatedly raised concerns with the Vietnamese government about Circular 122's and the Price Law's impact on American products and continues to press the issue.

Automation: Besides import taxes, excise taxes are another powerful and effective tool for the government of Vietnam in controlling the number of imported cars. Excise taxes are historically based on the cost of goods, but when the terms and conditions of bilateral/multilateral agreements impacting the import of cars come into effect, the government has turned their calculation method to a selling price basis. In addition, other "applicable rates" are also subject to increases.

From December 2015, new import tariff rates on cars rose with the highest rate of two and half times as the previous applicable rates. According to Circular No. 163/2015/TT-BTC, the tariff on sixteen out of nineteen transportation vehicles in the stated group of HTS 87.04 was raised from 2% to 70%, the highest committed levels possible with the WTO. Cars with capacity of 45 tons and above are not applicable, since Vietnam still hasn't been able to manufacture them domestically.

In addition, the MoF is considering increasing import tariffs on used tractor trailers and car trailers from 5% to 30%, which is the highest rate authorized by the National Assembly. Since used tractors trailers and car trailers are not under the commitments between Vietnam and the WTO, it is likely that the proposal will be approved by the MoF by the middle of June 2016.

Oil and Gas: Petro Vietnam has a monopoly on the import and distribution of gas products in Vietnam and the business is divided up between state owned enterprises Petrolimex, Petro Vietnam and Saigon Petro for oil products.

ICT: The Ministry of Information and Communications issued Decree 72/2013-ND-CP on the management, provision, and use of internet services and online information in September 2013. This decree has raised serious concerns among the online business community and freedom of information advocates. Key concerns are the requirement for online service providers to enforce prohibitions on a broad and vaguely defined range of online activities, and states service providers must locate server systems within the country of Vietnam. It remains unclear exactly how Decree 72 will apply to foreign cross-border service providers and what effect it will have on cross-border data flow. The Government of Vietnam was expected to release an implementing circular clarifying this point by the end of 2014, but the release of the circular is yet to be seen.

According to the Circular 31/2015/TT-BTTT guiding implementation of Decree 187/2013/ND-CP, from December 2015 some used consumer goods are prohibited from import including: used mobile phones, line telephones with wireless handsets, laptops, PDA's, notebooks, subnotebooks, pocket cassette recorders, television cameras, digital cameras and video camera recorders, wrist watches, and pocket watches. The Circular is also applicable for other used goods, such as used motorcycles and bicycles.

Nevertheless on May 6, 2016, the Prime Minister of Vietnam issued Decision No. 18/2016/QD-TTg, which specifies the situation that allows the import of information technology products on the list of import prohibitions. According to the decision, some used IT products in the form of moving production facilities within the same organization can be imported.

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).

E-commerce remains underdeveloped in Vietnam due to concerns about data protection and data privacy, insufficient 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. Some U.S. e-commerce businesses have experienced intermittent blocking of their websites in Vietnam.

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 established.

Distribution Services: Foreign participation in this sector, which includes commissioned agent services, wholesale services, retail services, and 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 U.S. will continue to seek greater clarity and transparency in distribution licensing to address issues with the current procedures.

Health Care: Circular 30/2015/TT-BYT issued by Ministry of Health in 2015 provides that an import license is required for 25 diagnostic devices and 24 treatment devices. The list of these 49 devices can be made available upon request. Circular 24/2011/TT-BYT issued by Ministry of Health on June 21, 2011, and Circular 20/2014/TT-BKHCN issued by MOST in 2014 stipulates that used medical devices for commercial purpose are not allowed into Vietnam.

On Jan 19, 2012, the Ministry of Health and Ministry of Finance issued a Joint-Circular on medicine tenders in health care units. This circular stipulates that domestically produced medicines should be given preference in procurement orders when using state capital for hospitals and clinics. The circular states that domestic products should be selected in these procurement orders if the price and quality is the same as the equivalent foreign product. The U.S. government is working closely with industry representatives to raise this issue with the Government of Vietnam, as the FDA standards are much higher than industry standards here.

Food and Beverage: In 2013, the Government Office issued instructions to the relevant agencies for the implementation of Directive No. 23/CT-TTg dated September 7, 2012, of the Prime Minister on strengthening state management over the activities of temporary import for re-export, trans-shipment and bonded warehouses. Prior to that, Directive No. 23, from 2012, banned imports for re-export and trans-shipment of a variety of hazardous waste items and temporarily banned imports for re-export and transshipment of a variety of products including used consumer goods, frozen animal by-products, and offal. The directive made a third category of items, including still yet-to-be specified meats and seafood products that are subject to MOIT permit requirements. Directive 23 also imposed new conditions on the import for re-export of wine, beer, and tobacco products.

Decision 1079 issued in 2014 by MoF, concerns the application of price stabilization measures for milk products for children less than six years of age. The decision applied price ceilings and mandates price reductions on a wide range of dairy products for an initial period of 12 months. It also dictated a maximum profit margin for retail sales of targeted products. In May 2015, this decision was extended for an additional 18 months by MoF and is set to expire at the end of 2016. The U.S. Government is actively raising concerns about these measures to the Vietnamese government.

Construction: Joint-Circular No. 58/2015/TTLT-BCT-BKHCN issued by MOIT and the Ministry of Science and Technology (MOST), providing for management of domestically produced and imported steel quality, is effective from March 21, 2016, and specifies that products can only clear customs when import organizations and individuals provide qualified test results of imported steel that meet the quality requirements stipulated in this Joint-Circular by the Vietnamese Government.

Banking and Securities Services: All Foreign equity in joint venture banks is limited to 49 percent. Although the equity limit on a single foreign strategic investor in a Vietnamese bank has been raised from 15 percent to 20 percent since January 2014, the cap on total foreign ownership in Vietnamese banks will remain at 30 percent. Since 2012, 100 percent foreign ownership of securities firms has been permitted.

In 2010, Vietnam made progress in strengthening the country's banking sector by officially publicizing 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 that 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 other sectors in which foreign investment is subject to certain conditions ("conditional sectors"). Vietnam also has specific laws that apply to investment in conditional sectors such as banking, securities, insurance, mining, telecommunications, real estate, and ports and aviation. Investments in conditional sectors, and other projects deemed sensitive, are subject to extensive, additional review, sometimes requiring the Prime Minister's approval which can often delay the issuance of investment licenses.

Other Barriers: Corruption has been identified by both foreign and domestic firms in Vietnam in all phases of business operations as a large obstacle to their business activities. The lack of transparency, accountability, and media censorship as well as widespread official corruption and an inefficient bureaucracy, remain serious problems.

Competition among government agencies for control over businesses and investments has created confusing and overlapping jurisdictions and overly bureaucratic procedures with in the government and from ministry to ministry and this in turn creates an environment ripe with opportunities for corruption. Low pay for government officials and inadequate accountability systems also 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 an effort to enhance transparency. The United States will continue to work with Vietnam to support administrative reform efforts and promote greater transparency.

Many foreign businesses have expressed frustration and concern over regulations governing work permits for foreign employees in Vietnam. In 2013, the Government of Vietnam issued Decree 102 regarding the implementation of work permit provisions in the Labor Code. This decree introduced a new pre-recruitment procedure that requires the employers to submit a request for approval their annual report that shows their need for expatriate employees to the local provincial government. The decree also reduces the length of work permits from three years to two years and eliminates the possibility of receiving permit extensions. Decree 102 also abolishes the regulation that a foreigner who is here to work for a time period of less than 3 months does not require a work permit. The U.S. Government and business associations regularly raise concerns about these new requirements to the Vietnamese officials.

In April of 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 be involved in the projects. This directive also states that authorities and state business groups should only call for international tenders on the projects using state capital when local companies are not be able meet the qualifications to bid.

All land in Vietnam is owned and managed by the state and, as such, neither foreigners nor Vietnamese nationals can own land. Investors can obtain land use rights and mortgage the structures erected on that land and the value of land use rights.

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