

**TÓM TẮT HIỆP ĐỊNH THƯƠNG MẠI
VIỆT NAM - HOA KỲ**

**SUMMARY
OF THE
AGREEMENT BETWEEN
THE U.S. AND VIETNAM ON TRADE RELATIONS**

Ngày 13 tháng 7 năm 2000, Việt Nam và Hoa Kỳ đã ký Hiệp định Thương mại song phương. Hiệp định chính thức có hiệu lực từ ngày 10 tháng 12 năm 2001.

On July 13, 2000, Vietnam and the U.S. signed a landmark Bilateral Trade Agreement. The Agreement entered into force on December 10, 2001.



Tóm tắt Hiệp định do nhóm Luật sư Quốc tế thuộc Văn phòng Luật Sidley Austin Brown & Wood LLP, trước đây thuộc Powell, Goldstein, Frazer & Murphy LLP, và Diễn đàn Giáo dục của Hội Đồng Thương Mại Việt - Mỹ triển khai thực hiện. Dự án xây dựng bản Tóm tắt này đã được hoàn thành với sự hỗ trợ và đóng góp to lớn từ phía Bộ Thương Mại Việt Nam, Cơ quan Đại diện Thương mại Hoa Kỳ (USTR) và Đại sứ quán Hoa Kỳ tại Hà Nội. Bản tóm tắt này đã được sự tài trợ của Quỹ Atlantic Philanthropies, Cơ quan Phát triển Quốc tế Hoa Kỳ (USAID) và Thành viên của Diễn đàn là Hội đồng Thương Mại Việt - Mỹ.

Tài liệu này là bản tóm tắt và là bản dịch không chính thức các điều khoản chính yếu của Hiệp định, không bao hàm tất cả các cam kết trong Hiệp định. Để hiểu chi tiết hơn, xin đề nghị xem bản Hiệp định Thương mại Việt Nam - Hoa Kỳ nguyên bản bằng tiếng Anh và tiếng Việt.

This Summary was developed by the international legal team now at Sidley Austin Brown & Wood LLP, formerly with Powell, Goldstein, Frazer & Murphy LLP, and the U.S.-Vietnam Trade Council Education Forum. Invaluable assistance and contribution has been provided by the Ministry of Trade and the Office of the U.S. Trade Representative (USTR) and the U.S. Embassy in Hanoi towards the completion of this project. Funding for the Summary has been provided by The Atlantic Philanthropies, U.S. Agency for International Development (USAID), and the Forum's affiliate, the U.S.-Vietnam Trade Council.

The document is an unofficial summary and translation of key provisions of the BTA and does not attempt to cover all commitments in the agreement. While every effort has been made to ensure accuracy, please refer to the original English and Vietnamese text of the BTA for further details.

INTRODUCTION

The historic U.S. - Vietnam Bilateral Trade Agreement (BTA) was signed on 13 July 2000 and became effective on 10 December 2001. The Agreement provides equal treatment for both sides and has been deemed beneficial by both Vietnam and the United States.

The BTA was negotiated and agreed upon based on the principles and disciplines of the World Trade Organization (WTO) and thus entails many new legal and technical procedures for Vietnam. It represents an important step in Vietnam's integration into the world economy. Vietnamese and American enterprises will want to devote time to understanding the agreement and this Summary is provided to assist in this effort.

Through the support of the U.S. Embassy in Hanoi and Ambassador Pete Peterson, the U.S. Agency for International Development, the U.S. Information Agency and U.S. companies, the U.S.- Vietnam Trade Council contributed greatly to the negotiation process by providing assistance on technical issues. We would like to acknowledge and thank Ms. Virginia Foote – President, U.S.-Vietnam Trade Council and Mr. Daniel Price – Attorney, now with Sidley Austin Brown & Wood LLP for their knowledge and expertise provided on technical issues.

Although brief, it is our hope that this Summary will represent a first step towards understanding the fundamental disciplines and principals of the BTA.

JOSEPH M. DAMOND

Board Member, U.S.-Vietnam Trade Council
U.S. Chief Negotiator
U.S.-Vietnam Bilateral Trade Agreement

NGUYEN DINH LUONG

Assistant to Minister of Trade
Vietnam Chief Negotiator
U.S.-Vietnam Bilateral Trade Agreement

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CHAPTER I - TRADE IN GOODS

OVERVIEW

The Agreement tracks closely the obligations of WTO Members regarding tariff and non-tariff barriers to trade in goods, thereby fostering free and open trade in goods.

OBLIGATIONS AND DISCIPLINES

Most-Favored Nation (MFN) Treatment [Chapter I, Article 1]

Vietnam and the United States agree to extend to each other most-favored nation (MFN) treatment. This means that the Parties will provide each other's goods the same treatment as they offer like goods produced by other countries. For example, if a third country negotiates a tariff with Vietnam that is lower than what is required by the Agreement, MFN treatment also gives U.S. businesses the right to import at this lower rate. Bringing the Agreement into force and the granting of MFN status should substantially liberalize trade between the two countries. Exceptions to the MFN principle include special treatment accorded other countries within a free-trade area, such as AFTA or NAFTA and special procedures for border trade. [Article 1.3(A) and 1.3(B)]

National Treatment [Chapter I, Article 2]

The Agreement requires Vietnam and the U.S. to provide national treatment to one another's imports. This means that Vietnam and the U.S. agree to treat each other's imports no less favorably than they treat like goods produced by their own nationals. In some instances, such as when there is a need to protect the environment or national security, the Parties retain the right to derogate from the national treatment principle. The national treatment obligation covers the following matters:

Taxes - Internal taxes or charges will not be applied to imports from the other Party in excess of those applied to like domestic products. [Article 2.2]

Example: If domestic producers are exempt from paying certain taxes, foreign producers will also be exempt from paying them.

Domestic Law – With the exception of reservations made in the Agreement and its annexes, imported products from the other Party will be accorded treatment no less favorable than the treatment of like domestic products under domestic law affecting their sale, purchase, transport, distribution, storage or use. [Article 2.3]

Example: A Party cannot prevent imported beer from being sold at the same outlets at which domestic beer is sold.

Technical Regulations and Standards - Technical regulations and standards may not be used to create obstacles to trade or to protect domestic production, and must be applied so that imports receive the same or better treatment as like domestic products. [Article 2.6]

Example: A Party may not require imported steel girders to satisfy higher stress tests than domestically produced girders.

Sanitary and phytosanitary measures, which are not inconsistent with the provisions of GATT 1994, may only be applied to the extent necessary to protect human, animal, or plant life and health [Article 2.6(A)] and when based on scientific principles supported by sufficient evidence and a risk assessment.

Example: A Party may adopt a measure, which restricts imports of fruits sprayed with an insecticide where sufficient scientifically-based evidence exists to show the insecticide causes cancer, and that the risk of such cancer is sufficiently high when the product is ingested.

Standards that involve the environment, national security requirements or the prevention of deceptive practices may also be justified as long as they are not formulated or applied so as to restrict trade any more than is necessary to fulfill legitimate objectives. [Article 2.6(B)]

Example: A Party may adopt labeling requirements that require producers to disclose the manufacturer of a product.

Trading Rights – The Parties agree to grant trading rights to each other’s nationals and companies when the Agreement enters into force. Vietnam agrees to extend these rights according to the following schedule: [Article 7]

Upon Entry Into Force: All domestic companies will be permitted to engage in trading activities in most products immediately after the Agreement enters into force. Enterprises with capital directly invested by U.S. nationals and companies will also be able to import goods to the extent those products are used in the companies’ production or export activities, regardless whether such imports are specifically identified in their initial investment license. [Article 7(A) and Article 7(B)] The right to trade certain goods identified in separate annexes to the Agreement will be phased in more gradually. [Annex B and C]

3 Years After Entry Into Force: Three years after the Agreement enters into force, enterprises with capital directly invested by U.S. nationals and companies in production and manufacturing will be able to engage in trading activities. [Article 7(C)] U.S. nationals and companies will also be able to enter into joint ventures with Vietnamese partners to engage in trading activities in all products, as long as the U.S. partner holds no more than a 49 percent equity share in the joint venture. The right to trade in certain goods identified in separate annexes to the agreement will be phased in gradually. [Article 7(D)]

7 Years After Entry Into Force: U.S. companies will be able to establish wholly-owned trading companies in Vietnam seven years after the Agreement enters into force, again subject to the phase-in exceptions for products listed in the annexes to the Agreement. [Article 7(E)]

Non-Tariff Barriers [Chapter I, Article 3]

The Agreement requires the Parties to eliminate all non-tariff barriers, including import and export restrictions, quotas, licensing requirements, and controls for all product and service categories over a period of three to seven years, depending on the product. [Article 3.1 and 3.2]

Customs Fees and Valuation [Chapter I, Article 3]

The Parties agree that no administrative fee or charge imposed by customs authorities and relevant agencies in connection with importing or exporting a good will exceed the actual cost of the service provided by that authority. [Article 3.3]

In addition, within two years of the Agreement's effective date, the Parties agree that customs valuation of imports will comply with the standards established in the WTO Agreement on Customs Valuation. Customs valuation rules determine how much an imported good is worth for customs and tariff purposes. [Article 3.4 and 3.5]

Tariff Reductions [Chapter I, Article 3.6 and Annex E]

Tariffs on imports of the U.S. and Vietnamese origin will be significantly reduced on a broad range of products over a period of three years as committed in Annex E of the Agreement. On average, Vietnam's tariffs will be reduced by one-third to one-half.

Emergency Safeguards [Chapter I, Article 6]

The Parties agree to consult about market disruptions that may occur due to rapid increases in imports of one another's like products when such increases are a significant cause of, or threaten to be a significant cause of, material injury to the domestic industry. [Article 6.1] In the event the Parties are unable to remedy the problem through consultations, the Agreement permits a Party to protect its domestic industry by imposing so-called safeguard measures on imports, in the form of quantitative restrictions, increased tariffs or other restrictions, to counteract the disruption. The Party whose imports are affected by a safeguard measure will be allowed to derogate from its obligations under the Agreement with respect to substantially equivalent trade. [Article 6.2] The Agreement does not restrict either Party from the application of its laws and regulations applicable to unfair trade, including antidumping and countervailing duty laws. [Article 6.4]

Commercial Disputes [Chapter I, Article 7]

The Agreement contains important provisions for the settlement of private commercial disputes, guaranteeing nondiscriminatory access to courts and administrative bodies, encouraging the use of arbitration under internationally recognized rules, and providing for enforcement of arbitral awards.

State Trading [Chapter I, Article 8]

This provision permits the Parties to maintain state trading enterprises and to grant these enterprises exclusive or special privileges to import and export the products listed in a separate Annex to the Agreement. These state enterprises, however, must observe the non-discrimination principles of the Agreement in their purchases and sales of imports or exports. [Article 8.1] This means that they must make sales or purchases solely on the basis of commercial consideration, and allow the other Party's companies adequate opportunity, in accordance with customary business practices, to compete for participation in such purchases or sales. [Article 8.2]

CHAPTER II - INTELLECTUAL PROPERTY RIGHTS

OVERVIEW

The Agreement's intellectual property rights Chapter is modeled after the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) and contains minimum standards for the protection and enforcement of intellectual property rights, including, among other things, patents, trademarks, and copyright. In many instances, this Chapter reflects changes in world intellectual property standards that have occurred since the conclusion of the TRIPS Agreement. This Chapter does not, however, duplicate all of the obligations contained in the TRIPS Agreement.

OBLIGATIONS AND DISCIPLINES

General Obligations [Chapter II, Articles 1 - 3]

Applicability of Other Agreements [Article 1] – Like the TRIPS Agreement, the Agreement requires the Parties to comply with the substantive provisions of the Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works. In addition, the Parties must also comply with the substantive economic provisions of the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms, the International Convention for the Protection of New Varieties of Plants (UPOV), and the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (Brussels). If they have not acceded to any of these Conventions, the Parties are to make every effort to accede promptly. [Article 1.3]

National Treatment [Article 3] – The Parties agree to treat one another's nationals as well as or better than they treat their own nationals with respect to the acquisition, protection, enjoyment and enforcement of intellectual property rights, except in limited circumstances. [Article 3.1] Unlike the TRIPS Agreement, however, the Parties are not required to provide most-favored nation treatment with regard to the obligations in this Chapter. Thus, Vietnam may grant owners of intellectual property rights from third countries a higher level of protection than it grants to U.S. intellectual property owners.

Copyright and Related Rights [Chapter II, Article 4]

Transfer of Rights – For copyright and related rights, persons acquiring or holding economic rights are permitted to freely and separately transfer such rights. [Article 4.3]

Duration – The Parties are to provide a term of protection (if not calculated on the basis of the life of a natural person) of not less than 75 years from authorized publication or, if the work is not published with authorization within 25 years of creation, then of not less than 100 years from creation. [Article 4.4] This is longer than the term specified in the Berne Convention incorporated by reference in the TRIPS Agreement.

Computer-Related Works – The Agreement builds on the standards provided in the Berne Convention by specifying that computer programs are “literary works” within the meaning of the

Convention and that compilations of data, including those in machine-readable form, are protectable works. [Article 4.1(A) and 4.1(B)] Authors of these works are specifically provided the right to authorize or prohibit: the importation of copies of the work, the first public distribution of the original and copies of the work, communication of the work to the public, and the rental of the original or a copy of a computer program for the purposes of commercial advantage. A rental right is required. [Article 4.2]

Sound Recordings – Rights holders in sound recordings are provided the right to authorize or prohibit: the direct or indirect reproduction of the recording, importation of copies of the recording, the first public distribution of originals or copies of the recording, and the rental of the original or a copy of the recording for the purposes of commercial advantage. Putting an original or copy of a sound recording on the market, even with the consent of the right holder, will not exhaust the rental right. [Article 4.6]

“Bootlegging” – To prevent bootlegging, performers have the right to authorize or prohibit: the making of recordings of their live musical performances, the reproduction of those recordings, and the transmission to the public of a performance, and to prohibit traffic in any unauthorized recordings of such a performance. [Article 4.7]

Encrypted Program-Carrying Satellite Signals [Chapter II, Article 5]

The Parties agree to provide criminal and civil remedies for serious violations involving the protection of encrypted program-carrying satellite signals, [Article 5.1] including the construction of or trade in a device or system that the person knows is primarily of assistance in the unauthorized decoding of such signals, and the willful distribution of such signals decoded without authorization by the lawful distributor. [Article 5.2(A) and 5.2(B)]

Trademarks [Chapter II, Article 6]

Rights – The Agreement adopts the definitions of trademark and service mark found in the TRIPS Agreement. In the U.S.-Vietnam Agreement, however, Parties are also required to protect certification marks and collective marks. [Article 6.1] Furthermore, each Party commits to provide the owner of a registered mark the right to prevent anyone, without consent, from using identical or similar signs for identical or similar goods or services, where such use would result in a likelihood of confusion. [Article 6.2]

Registration – Unlike the TRIPS Agreement, Parties have to provide a system of registration for trademarks. [Article 6.4] While registrability of a trademark can depend on use, actual use of the mark cannot be a condition for filing an application, and failure to use the mark in the first three years following application cannot be a basis for refusing registration. Only after three years can unjustified non-use be a reason for cancellation of registration. [Article 6.3]

Licensing and Assignment – While a Party can determine conditions on the licensing and assignment of trademarks, compulsory licensing is not permitted by the Agreement and use of the mark cannot be encumbered by special requirements. [Article 6.12]

Term – Initial registration must be for a term of at least 10 years (three years longer than the minimum term under the TRIPS Agreement), with the opportunity to renew for subsequent 10-year periods. [Article 6.8]

Patents [Chapter II, Article 7]

Rights – As in the TRIPS Agreement, patents will be made available for product or process inventions in all fields of technology, provided that the invention is new, resulted from an inventive step and is capable of industrial application. [Article 7.1] The Parties may exclude certain inventions from patentability when necessary to protect public order or morality, to protect human, animal, or plant life, or to avoid serious prejudice to the environment, so long as the exclusion is not made merely because the exploitation is prohibited by their law. [Article 7.2(A)] The Parties may exclude inventions related to surgical and therapeutic procedures from patentability. [Article 7.2(B)] The Parties may also exclude certain plant and animal varieties from patentability, but must protect them under the provision of the International Convention for the Protection of New Varieties of Plants. (UPOV Convention 1991) [Article 7.2(C)]

Where the subject matter of a patent is a product, the patent confers on the owner the right to prevent others from making, using, selling offering for sale or importing the subject matter of the patent, without consent. [Article 7.3(A)]

Where the subject matter of a patent is a process, the patent confers on the owner the right to prevent others from using that process and from using, selling, offering for sale or importing at least the product obtained directly by that process, without consent. [Article 7.3(B)]

Exceptions to Exclusivity – The Agreement permits exceptions to the exclusive rights conferred by a patent, as long as such exceptions do not conflict with normal exploitation or unreasonably prejudice the legitimate interests of the patent owner. [Article 7.4]

A Party may also allow use of the subject matter of a patent on a case-by-case basis without the consent of the owner (i.e., compulsory licensing), where several conditions have been met. Efforts at obtaining authorization from the right holder on reasonable commercial terms must have been taken, the use must be limited in scope and duration to the purpose for which it was authorized, and the use must be non-exclusive and non-assignable, and must be predominantly for the supply of the Party's domestic market. [Article 7.8(A) – (F)] The owner must be compensated, and decisions granting such use must be reviewable by higher administrative or judicial authorities. [Article 7.8(H) -- (J)] Dependent patent compulsory licenses may only be issued to remedy adjudicated violations of the competition laws. [Article 7.8(L)]

Term – The Parties commit to providing patent protection for 20 years from the date of filing. Parties may, however, provide for patent term restoration. [Article 7.10]

Layout Designs (Topographies) of Integrated Circuits [Chapter II, Article 8]

Right – The Parties will make it unlawful, without the right holder's authorization, to reproduce, import or distribute a protected layout design (or a circuit or other article incorporating that design), unless the person doing so did not or could not have known that it was incorporating an unlawfully reproduced layout design. [Article 8.2 – 8.3]

Licensing – Compulsory licensing will not be permitted by the Parties. [Article 8.5]

Term – Protection will be provided for 10 years from the date of filing an application for registration, or from the date on which the layout design is first commercially exploited (anywhere in the world), whichever is first. [Article 8.7] Parties can, however, provide that the protection lapses 15 years after creation of the layout design. [Article 8.8]

Confidential Information/Trade Secrets [Chapter II, Article 9]

Protection Against Misappropriation – The Parties commit to providing legal means for a person to prevent confidential information from being disclosed to, acquired by or used by others without consent of the person lawfully in control of the information in a manner contrary to honest commercial practices. [Article 9.1]

This protection must last as long as the information is not generally known, has commercial value given its secrecy, and is actively maintained as secret by the person lawfully in control of the information. [Article 9.2(A) – (C)]

Data Protection – The Parties must protect undisclosed test and other data, submitted to the Party in connection with a request for marketing approval, from unfair commercial use and from disclosure. The phrase “unfair commercial use” is defined to include reliance on data submitted by others to show that a product is safe and effective. [Article 9.5] The term of protection must be at least five years from the date on which marketing approval was granted for a product based on the protected data. [Article 9.6]

Industrial Designs [Chapter II, Article 10]

Right – As in the TRIPS Agreement, Parties are to provide for the protection of independently created industrial designs that are new or original. [Article 10.1] Owners of protected designs must have the right to prevent others, without consent, from making, selling, importing or distributing for commercial use articles bearing or embodying a copy of the protected design. [Article 10.3]

Term – Protection of industrial designs must be for a term of at least 10 years. [Article 10.5]

Enforcement [Chapter II, Articles 11 - 15]

Internal Measures – Like the TRIPS Agreement, the Agreement requires the Parties to provide expeditious remedies to prevent infringement and remedies sufficient to deter future infringement, including particular judicial and administrative procedures [Article 12], prompt and effective provisional measures secured by sufficient evidence and a security or equivalent assurance [Article 13], and criminal procedures and penalties for willful trademark counterfeiting or infringement of copyrights or neighboring rights on a commercial scale. [Article 14] Decisions on the merits must be in writing and follow specified guidelines.

Border Measures – Like the TRIPS Agreement, the Agreement requires the Parties to adopt procedures allowing right holders, with valid grounds and evidence, and on the provision of adequate security, to lodge an application with the customs authorities to suspend release of

imported goods suspected to be counterfeit trademark goods or unauthorized copies of works protected by copyrights or neighboring rights. [Article 15.1]

Damages –The Agreement requires the Parties to authorize judicial authorities to order the infringer to pay the rightholder damages adequate to compensate for the injury sustained. [Article 12.2]

Criminal Penalties -- The Parties are required to provide criminal penalties for willful trademark counterfeiting and copyright infringement on a commercial scale. [Article 14]

PHASE-IN

Vietnam [Chapter II, Article 18]

Vietnam will phase-in its obligations under the Agreement under the following schedule:

With respect to trademarks and patents, 12 months after entry into force of the Agreement; [Article 18(A)]

With respect to copyright and related rights, and confidential information/trade secrets, 18 months after entry into force of the Agreement; [Article 18(B)]

With respect to the protection of encrypted program-carrying satellite signals, compliance with the terms of the Geneva Convention, the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite, and compliance with the term requirements for copyright and related rights, 30 months after entry into force of the Agreement; [Article 18(C)]

With respect to any other obligations, 24 months after entry into force of the Agreement. [Article 18(D)]

United States [Chapter II, Article 18]

Although the U.S. generally commits to implement the obligations in the Agreement immediately upon its entry into force, it maintains an exception with respect to the protection of layout designs (topographies) of integrated circuits and national treatment for such protection, which it will implement 24 months after entry into force of the Agreement. [Article 18.2]

Implementation into Domestic Law [Chapter II, Article 18]

Each Party shall immediately comply with the intellectual property requirements codified in Chapter II of the Agreement to the extent possible under its existing laws, and cannot take measures during the transition periods described above that would result in a lesser degree of consistency with Chapter II. [Article 18.4] This obligation ensures, among other things, that no transition period will be available for complying with the requirements of the U.S.-Vietnam treaty on copyright protection, which contains many of the same requirements as the Agreement.

CHAPTER III - TRADE IN SERVICES

OVERVIEW

The chapter of the Agreement dealing with trade in services is modeled on the WTO General Agreement on Trade in Services (GATS). In the BTA, the U.S. extends to Vietnamese nationals and companies the same access it accords to WTO members, as described in the U.S. GATS schedule. Vietnam has for the first time agreed to liberalize a broad array of services sectors, including, among others, telecommunications, accounting, banking and distribution services. These broad commitments will create valuable opportunities and ensure ready access to the U.S. and Vietnamese markets for investors and companies of the other country. These commitments also help signify Vietnam's commitment to join the international economy and, ultimately, the World Trade Organization (WTO).

THE BASIC AGREEMENT

Scope and Coverage

The rules extend to measures taken by central, regional or local governments, as well as by non-governmental entities exercising authority delegated by the government. Like the GATS, the Agreement defines trade in services in terms of the following four "modes of supply" in which services are delivered:

Mode 1 – "Cross-border" supply occurs when a service supplier located in one country provides services to a customer in another country, e.g., a lawyer in Washington, D.C. e-mails an opinion to a client in Hanoi.

Mode 2 – "Consumption abroad" occurs when a national of one country travels to another country, where it is then supplied with the service, e.g., a Vietnamese student travels to the United States to attend school.

Mode 3 – A service supplier is said to have a "commercial presence" when it sets up a branch or subsidiary in another country in order to provide a service there, e.g., a U.S. bank opens a branch in Hanoi.

Mode 4 – "Presence of a natural person" refers to situations in which a person travels from one country to another and there provides a service to a customer, e.g., a dentist travels to Hanoi to open a practice.

The Agreement defines the extent to which Vietnam and the United States will provide market access and national treatment to each other's services and service suppliers. For example, Vietnam has agreed that it will provide national treatment for U.S. companies in the legal services sector when such services are provided through Modes 1-3. [Annex G, p.G4]

OBLIGATIONS AND DISCIPLINES

General Description of Obligations [Chapter III, Articles 2 - 8]

Most-Favored Nation Treatment (MFN) – The United States and Vietnam agree to extend most-favored nation (MFN) treatment to one another’s services and service suppliers. This means that the Parties will extend to each other’s services and service suppliers the same or better treatment as they extend to services and service suppliers provided by or based in other countries with which they have MFN relationships. [Article 2.1] This obligation applies to all service sectors and all modes of supply except those for which a Party has taken an exemption. Exceptions are identified in separate Schedules compiled by the Parties.

Market Access – In each of the service sectors identified in its Schedule, a Party must provide market access to services and service suppliers of the other Party. The Agreement identifies six types of market access restrictions that a Party may not maintain or adopt in such sectors. These restrictions include, among other things, limitations on the number of service suppliers, limitations on the total value of service transactions, limitations on the total quantity of service output, and restrictions on the type of legal entity or joint venture through which a service may be supplied. [Article 6.2(A) – (F)]

National Treatment – The Agreement requires Vietnam and the United States, in each of the sectors identified in their Schedules to provide national treatment to one another’s service providers. This means that the Parties agree to treat each other’s services and service suppliers the same as, or better than, they treat services provided by or service suppliers operated by their own nationals. [Article 7.1]

Domestic Regulation – Each Party will administer its laws and regulations affecting trade in the services sectors identified in its Schedule in a reasonable, objective and impartial manner. [Article 4.1]

Applications for authorization to provide particular services must be processed within a reasonable time. [Article 4.3] Decisions regarding such applications can be reviewed by domestic tribunals. [Article 4.2(A)] Licensing or qualification requirements and technical standards that must be met to provide a service must be based on objective criteria, must not be more burdensome than necessary, and must not in themselves restrict the supply of a service. [Article 4.4(A)]

Monopolies and Exclusive Service Suppliers – Each Party must ensure that monopoly service providers that compete in lines of business outside their monopoly rights do not act inconsistently with the Party’s MFN commitments or sector-specific commitments and do not abuse their monopoly position. [Article 5.1 and 5.2]

GATS Annexes –The Agreement incorporates four of the Annexes or other auxiliary commitments attached to the GATS. With fairly minor modifications, the Parties incorporate by reference the GATS Annex on Financial Services, Annex on Movement of Natural Persons and Annex on Telecommunications. Significantly, the Parties also incorporate by reference the Telecommunications Reference Paper, a common set of binding regulatory commitments developed during the WTO basic telecommunications negotiations.

Additional commitments – The Parties may negotiate additional commitments with respect to measures affecting trade in services. [Article 8]

Scheduled Commitments of the United States [Chapter III, Annex G – U.S.]

U.S. commitments on MFN, national treatment and market access mirror those included in its GATS Schedule, with two exceptions in the financial services sector. With respect to the financial services as listed in Paragraph 5(a)(x) [trading of money market instruments, foreign exchange, derivative products, exchange rate and interest rate instruments, transferable securities, and other negotiable instruments and financial assets including bullion] and (xi) [Participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues] of the GATS Annex on Financial Services, the United States can limit market access with respect to cross-border (Mode 1) trade; and, with respect to commercial presence (Mode 3), may limit market access to the establishment of representative offices. [p. G1]

Scheduled Commitments of Vietnam [Chapter III, Annex G - Vietnam]

Horizontal Commitments – In addition to its sector-specific commitments, Vietnam has made several so-called “horizontal commitments” that apply to all services provided through commercial presence (Mode 3) and the presence of U.S. natural persons in Vietnam (Mode 4). These horizontal commitments are as follows:

Market Access Limitations

Commercial Presence: U.S. service providers must obtain a license in order to establish a commercial presence in Vietnam. [Mode (3), p.G2] Vietnam is in the process of drafting laws and regulations regarding branches of foreign companies. Consequently, unless otherwise specified in its schedule, Vietnam has not agreed to provide market access for branches of U.S. companies. [Mode (3), p.G2]

Apart from the limitation regarding branches, and unless otherwise provided in the Schedule, U.S. companies are not limited to a particular corporate form to do business in Vietnam or limited to a particular percentage of equity ownership. If representative offices are established, they may not engage in profit-taking activities in Vietnam. [Mode (3), p.G2]

U.S. companies which had already established a commercial presence in Vietnam will receive the better of the treatment provided for in their commercial presence license or the treatment required by the Agreement. [Mode (3), p.G2]

Presence of Natural Persons: U.S. companies establishing a representative office, branch or subsidiary in Vietnam, and U.S.-invested service providers will be granted the necessary entry and work permits to allow U.S. persons with unique and non-substitutable skills to enter and work in Vietnam. U.S. service salespersons not based or paid in Vietnam but negotiating for the sale of services in Vietnam will be granted entry for a period of 90 days. [Mode (4), p.G3]

National Treatment Limitations

Commercial Presence: Issues relating to investment in services that are not addressed in Vietnam’s services Schedule are governed by the terms of the Agreement pertaining to investment. In case of a conflict, the obligations set forth in Vietnam’s services Schedule prevail over the investment provisions of the Agreement. [Mode (3), p.G2]

Presence of Natural Persons: U.S. companies establishing a representative office, branch or subsidiary in Vietnam, and U.S.-invested service providers will be granted the necessary entry and work permits to allow U.S. persons with unique and non-substitutable skills to enter and work in Vietnam. U.S. service salespersons not based or paid in Vietnam but negotiating for the sale of services in Vietnam will be granted entry for a period of 90 days. [Mode (4), p.G3]

Sector-Specific Commitments –Vietnam’s Schedule identifies the sectors and sub-sectors in which it will provide national treatment and market access. Most of these commitments are described below. Except where indicated below, Vietnam has agreed to ensure market access and national treatment with respect to Modes 1-3 in the identified sectors. Vietnam made no commitments with respect to services provided through Mode 4 (presence of natural persons) except those specified in the horizontal commitments.

Legal Services

Market Access Limitations

Commercial Presence: 100-percent equity ownership in companies, joint ventures, and branches is permitted. U.S. lawyers may not appear before Vietnamese courts. However, U.S. firms may advise on Vietnamese law if they hire persons with Vietnamese law degrees who satisfy the requirements applied to like Vietnamese practitioners. Branches of law firms may receive a 5-year renewable license. [Mode (3), p.G4]

Accounting, Auditing and Book-Keeping Services

Market Access Limitations

Commercial Presence: For the first three years under the Agreement, licenses will be granted on a case-by-case basis. The company must employ at least five persons with Vietnamese CPAs who have practiced in Vietnam for more than one year. [Mode (3), p.G5]

For the first two years under the Agreement, firms with U.S. equity will only be allowed to supply services to foreign-invested enterprises and foreign funded projects in Vietnam. [Mode (3), p.G5]

Taxation Services

Market Access Limitations

Commercial Presence: For the first five years under the Agreement, licenses will be granted on a case-by-case basis. For the first five years under the Agreement, firms with U.S. equity will only be allowed to supply services to foreign-invested enterprises and foreign funded projects in Vietnam. [Mode (3), p.G6]

Architectural Services

Market Access Limitations

Commercial Presence: Branches are not permitted. In addition, for a period of two years from the date of establishment and operation, 100% U.S.-owned companies may only provide services to enterprises with foreign directly-invested capital in Vietnam. U.S. companies have to be legally registered in the United States. [Mode (3), p.G6]

Engineering Services

Market Access Limitations

Commercial Presence: Branches are not permitted. In addition, for a period of two years from the date of establishment and operation, 100% U.S.-owned companies may only provide services to enterprises with foreign directly-invested capital in Vietnam. U.S. companies have to be legally registered in the United States. [Mode (3), p.G7]

U.S. companies and companies with U.S. directly-invested capital are not permitted to carry out topographic, construction geological, metrology, geological and environment investigations; or technical investigations for designing rural-urban construction plans or sector-construction plans, unless otherwise authorized by Vietnam. [Mode (3), p.G7]

Computer and Related Services

Market Access Limitations

Commercial Presence: Branches are not permitted. In addition, for a period of two years from the date of establishment and operation, enterprises with 100% U.S.-owned capital may only provide their services to enterprises with foreign invested capital in Vietnam. U.S. companies have to be legally registered in the United States. [Mode (3), p.G 7 - 8]

Advertising Services

Vietnam has not agreed to provide market access for advertising services for wines and cigarettes. [Sector 1.C (a), p.G8]

Market Access Limitations

Commercial Presence: U.S. companies may only establish a commercial presence through joint ventures or business cooperation contracts with Vietnamese partners. U.S. investment is limited to 49 percent of the legal capital for the first five years under the Agreement, 51 percent for years six and seven, and is unlimited thereafter. [Mode (3), p.G8]

Market Research

Market Access Limitations

Cross-Border: Vietnam has not agreed to provide market access for the cross-border supply of market research services. [Mode (1), p.G9]

Commercial Presence: U.S. companies may only establish a commercial presence through joint ventures or business cooperation contracts. U.S. investment is limited to 49 percent of the legal capital for the first five years under the Agreement, 51 percent for years six and seven, and is unlimited thereafter. [Mode (3), p.G9]

National Treatment Limitations

Cross-Border: Vietnam has not agreed to ensure national treatment for the cross-border supply of market research services. [Mode (1), p.G9]

Management Consulting

Market Access Limitations

Commercial Presence: U.S. companies may only establish a commercial presence through joint ventures or business cooperation contracts. After the Agreement has been in effect for five years, enterprises with 100% U.S. ownership are permitted. [Mode (3), p.G9]

Telecommunication Services Generally

Vietnam's commitments on telecommunication services are divided into separate sub-sectors, including value-added services, basic telecommunication services, and voice telephone services. Vietnam's commitments in each of these sub-sectors are described below. In addition, as noted above, the Parties have incorporated the GATS Annex on Telecommunications as well as the Telecommunications Reference Paper. [Annex F, p. F1 - 2]

The percentage limitations on U.S. equity described below will be reviewed and possibly increased after the Agreement has been in effect for three years.

Value-added Telecommunication Services

Market Access Limitations

Cross-Border: The provision of value-added services is only permitted through business contracts with Vietnamese gateway operators. [Mode (1), p.G 11]

Commercial Presence: Initially, U.S. service suppliers may establish a commercial presence only through a business cooperation contract with a Vietnamese partner authorized to provide telecommunications services. Two years after the Agreement enters into force (three years in the case of internet services), joint ventures with Vietnamese partners may be established with up to 50% U.S. equity ownership. Joint ventures may not construct their own long-distance and international circuits, but must lease them from Vietnamese operators. [Mode (3), p.G10]

Basic Telecommunications Services

Market Access Limitations

Cross-Border: The provision of basic telecommunications services is only permitted through business contracts with Vietnamese gateway operators. [Mode (1), p.G10]

Commercial Presence: Initially, U.S. service suppliers may establish a commercial presence only through a business cooperation contract with a Vietnamese partner authorized to provide telecommunications services. Four years after the Agreement enters into force, joint ventures with Vietnamese partners may be established with up to 49% U.S. equity ownership. Joint ventures may not construct their own long-distance and international circuits, but must lease them from Vietnamese operators. [Mode (3), p.G10]

Voice Telephone Services

Market Access Limitations

Cross-Border: The provision of voice telephone services is only permitted through business contracts with Vietnamese gateway operators. [Mode (1), p.G11]

Commercial Presence: Initially, U.S. service suppliers may establish a commercial presence only through a business cooperation contract with a Vietnamese partner. Six years after the Agreement enters into force, joint ventures with Vietnamese partners may be established with up to 49% U.S. equity ownership. [Mode (1), p.G11]

Audio Visual Services

Market Access Limitations

Cross-Border: Vietnam has not agreed to provide market access for the cross-border supply of audio visual services. [Mode (1), p.G12]

Consumption Abroad: Vietnam has not agreed to provide market access for the consumption abroad of audio visual services. [Mode (2), p.G12]

Commercial Presence: U.S. service suppliers may establish a commercial presence only through a business cooperation contract or joint venture with a Vietnamese partner. For 5 years after the date of entry into force of the Agreement, U.S. ownership may not exceed 49%. After 5 years, U.S. ownership may not exceed 51%. [Mode (3), p.G12 -13]

National Treatment Limitations

Cross-Border: Vietnam has not agreed to provide national treatment for the cross-border supply of audio visual services. [Mode (1), p.G12]

Consumption Abroad: Vietnam has not agreed to provide national treatment for the consumption abroad of audiovisual services. [Mode (2), p.G12]

Construction and Related Engineering Services

Market Access Limitations

Cross-Border: Vietnam has not agreed to provide market access for the cross-border supply of construction and related engineering services. [Mode (1), p.G12]

Commercial Presence: Branches are not permitted. For 3 years after the establishment and operation, 100% U.S. owned enterprises may only provide services to enterprises with foreign directly-invested capital in Vietnam. U.S. companies must be legally registered for operation in the United States. [Mode (3), p.G12]

National Treatment Limitations

Cross-Border: Vietnam has not agreed to provide national treatment for the cross-border supply of construction and related engineering services. [Mode (1), p.G13]

Distribution Services

Market Access Limitations

Cross-Border: Vietnam has not agreed to provide market access for the cross-border supply of distribution services. [Mode (1), p.G13]

Commercial Presence: For some industrial products, Vietnam's market access limitations in the distribution services sector are subject to the additional limitations contained in a separate Annex to the Agreement, which provides phase-out periods for such restrictions. [Mode (3), p.G13]

Three years after the effective date of the Agreement, joint ventures with Vietnamese partners may be established with up to 49% U.S. equity. Six years after the effective date of the Agreement, no limitation of U.S. ownership in joint ventures will apply. [Mode (3), p.G13]
Seven years after the effective date of the Agreement, companies with 100 percent U.S. equity will be permitted. [Mode (3), p.G13]

One retail outlet may be established as of right, while additional outlets will be considered on a case-by-case basis. [Mode (3), p.G13]

National Treatment Limitations

Cross-Border: Vietnam has not agreed to provide national treatment for the cross-border supply of distribution services. [Mode (1), p.G13]

Educational Services

Market Access Limitations

Cross-Border: Vietnam has not agreed to provide market access for the cross-border supply of educational services. [Mode (1), p.G14]

Commercial Presence: U.S. companies may only establish a commercial presence through a joint venture. Seven years after the entry into force of the Agreement, schools with 100% U.S. invested capital may be established. [Mode (3), p.G14]

National Treatment Limitations

Cross-Border: Vietnam has not agreed to provide national treatment for the cross-border supply of educational services. [Mode (1), p.G14]

Commercial Presence: Foreign teachers employed by educational units with U.S. invested capital must have 5 years of teaching experience and be recognized by the Ministry of Education. [Mode (3), p.G14]

Insurance Services

Market Access Limitations

Cross-Border: Vietnam has agreed to allow market access for the cross-border supply of insurance services provided to enterprises with foreign invested capital or foreigners working in Vietnam; reinsurance services; insurance services in international transportation; insurance brokering and reinsurance brokering services; and advisory, claim settlement and risk assessment services. [Mode (1), p.G14]

Commercial Presence: Three years after the effective date of the Agreement, U.S. companies can form joint ventures with a Vietnamese partner, as long as U.S. equity participation does not exceed 50%. Five years after the Agreement enters into force, percentage limitations on U.S. equity will be eliminated. [Mode (3), p.G15]

For a period of three years after the effective date of the Agreement, companies with U.S. equity participation are prohibited from providing motor vehicle, construction and other types of “mandatory” insurance. After three years, joint ventures with some U.S. equity participation will be permitted to provide this type of insurance, and after six years, companies with 100% U.S. equity participation will be able to do so. [Mode (3), p.G15]

Until five years after the effective date of the Agreement, reinsurance must be conducted through the Reinsurance Company of Vietnam and must be in a minimum proportion of 20%. [Mode (3), p.G15]

National Treatment Limitations

Commercial Presence: National treatment is not guaranteed for the provision of “mandatory” insurance (such as motor vehicle and construction insurance). [Mode (3), p.G15]

Banking

Market Access Limitations

Cross-Border: Vietnam has not agreed to allow market access in banking and other related services, except for financial information services and advisory, intermediation and other auxiliary services. [Mode (1), p.G16]

Commercial Presence: U.S. banks may establish branches, joint ventures with Vietnamese banks, wholly-owned U.S. financial leasing companies, or joint venture financial leasing companies with Vietnamese partners. [Mode (3)(a), p.G16]

For the first three years under the Agreement, the only legal form apart from banks and leasing companies in which U.S. companies may provide financial services is through joint ventures with Vietnamese partners. During the first nine years under the Agreement, U.S. equity in joint venture

banks must be between 30% and 49%. After year nine, 100% equity participation in subsidiary banks will be allowed. [Mode (3)(b) and (c), p.G16]

Over a phase-in period, Vietnam will gradually permit U.S. bank branches to increase the amount of deposits they can accept in dong from certain Vietnamese legal and natural persons relative to the branch's paid-in capital. After the phase-in period, U.S. bank branches are entitled to full national treatment. [Mode (3)(e), p.G16 -17]

Eight years after the effective date of the Agreement, financial institutions with U.S. equity will be allowed to issue credit cards on a national treatment basis. [Mode (3)(f), p.G17]

Vietnam has reserved the right to limit, on a national treatment basis, equity investment by U.S. banks in privatized Vietnamese state-owned banks. [Mode (3)(d), p.G16]

National Treatment Limitations

Cross-Border: Vietnam has not committed to national treatment for the cross-border provision of banking and other related services, except for financial information services and advisory, intermediation and other auxiliary services. [Mode (1), p.G16]

Commercial Presence: To establish commercial presence as a branch of a U.S. bank, a U.S. bank subsidiary or a U.S.-Vietnam joint venture, a license must be obtained. [Mode (3)(a), p.G16]

A U.S. parent bank provide minimum capital of \$15 million to establish a branch. Establishing a U.S.-Vietnam joint venture bank or a U.S. bank subsidiary requires minimum capital of \$10 million. [Mode (3)(b) and (3)(c), p.G16]

For the first three years under the Agreement, financial institutions with 100% U.S. equity ownership may not take an initial mortgage interest in land use rights. After three years, however, these institutions will be allowed to take an initial mortgage interest in land-use rights held by foreign-invested enterprises, and may use mortgages or land-use rights for the purposes of liquidation in case of default. [Mode (3)(d), p.G16]

Establishing a wholly-owned subsidiary of a U.S. financial leasing company or a joint venture leasing company requires three consecutive profitable years, and \$5 million in legal capital. [Mode (3)(e), p.G16-17]

For the first three years under the Agreement, Vietnam can withhold national treatment with respect to access to central bank rediscounting, swap, and forward facilities. [Mode (3)(f), p.G17]

Securities-Related Services

Market Access Limitations

Cross-Border: Vietnam has not agreed to provide market access for the cross-border supply of securities-related services. [Mode (1), p.G18]

Commercial Presence: Non-bank U.S. securities service suppliers may only establish a commercial presence in Vietnam in the form of a representative office. [Mode (3), p.G1 18]

National Treatment Limitations

Cross-Border: Vietnam has not agreed to provide national treatment for the cross-border supply of securities-related services. [Mode (1), p.G18]

Health-Related Services

Market Access Limitations

Commercial Presence: U.S. operators may provide services through the establishment of 100% U.S.-owned operations, joint ventures with Vietnamese partners or through business cooperation contracts. The minimum investment capital is \$20 million for a hospital, \$2 million for a polyclinic unit, and \$1 million for a specialty unit. [Mode (3), p.G 19]

Tourism And Travel-Related Services

Market Access Limitations

Commercial Presence: U.S. companies may establish a commercial presence to provide hotel and restaurant services, in conjunction with investment for the construction of a hotel, either in the form of business cooperation contracts, joint ventures with Vietnamese partners, or companies with 100% U.S. equity investment. [Mode (3), p.G19]

Limitations apply with respect to travel agencies and tour operators, however. Companies involved in supplying these services may establish a commercial presence only through a joint venture with Vietnamese partners. Joint ventures with Vietnamese partners are initially limited to U.S. capital contributions of not more than 49%. Three years after the effective date of the Agreement, however, 51% participation will be permitted, and after 5 years, all limitations will be abolished. [Mode (3), p.G20]

National Treatment Limitations

Commercial Presence: Tourist guides in joint ventures must be Vietnamese citizens. Service supplying companies with U.S. invested capital may only supply inbound services. [Mode (3), p.G20]

CHAPTER IV - DEVELOPMENT OF INVESTMENT RELATIONS (AND RELATED INVESTMENT PROVISIONS)

OVERVIEW

The Agreement includes a set of rules to facilitate cross-border investment between the two countries. The provisions codified in the treaty include, among other things, a guarantee of most-favored nation treatment (MFN) and national treatment; a prohibition against expropriation without payment of prompt, adequate and effective compensation; the right to select senior management; the repatriation of capital; guarantees of fair and equitable treatment, full protection and security, treatment in accordance with customary international law, and freedom from arbitrary and discriminatory measures; and prohibitions on technology transfer requirements and trade-related investment measures (TRIMs). The Parties also consented to investor-state arbitration of disputes arising out of the Agreement, an investment authorization or an investment agreement. Both Parties took reservations with respect to certain requirements of the Agreement. The Parties' obligations apply to a state enterprise to the extent that the enterprise exercises any regulatory, administrative or other governmental authority delegated to it by the government.

OBLIGATIONS AND DISCIPLINES

Scope of Protected Investments [Chapter IV]

Investments protected by the Agreement include all investments in the territory of a Party owned or controlled by nationals or companies of the other Party, and include, among other things, companies and enterprises, equity or other interests in a company; contract rights, tangible and intangible property, intellectual property rights, and rights conferred pursuant to law, including licenses and permits. [Article 1(A) – (F)]

The Agreement pertains to all covered investments existing at the time the Agreement enters into force as well as those established or acquired thereafter. [Article 14]

National Treatment and Most - Favored Nation Treatment [Chapter IV]

The Parties are required to provide the better of national treatment or MFN treatment with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of covered investments. [Article 2.1] State enterprises must also accord national treatment or MFN treatment to investments, subject to specific limitations regarding prices and fees for goods and services under the control of the Vietnamese Government. [Article 2.1] Sector-specific exceptions to the Parties' national treatment and MFN obligations are identified in an Annex to the Agreement. [Annex H, Paragraph 1]

General Standard of Treatment [Chapter IV, Article 3]

The Parties must accord to covered investments fair and equitable treatment, full protection and security, and treatment no less favorable than that required by applicable rules of customary

international law. [Article 3.1] They also must not impair by unreasonable and discriminatory measures the management, conduct, operation and sale or other disposition of covered investments. [Article 3.2]

Dispute Settlement [Chapters IV and VII]

The Parties consented to allow investors to submit disputes arising out of or relating to investment authorizations, investment agreements or alleged breaches of the investment-related provisions of the Agreement to local courts or tribunals, previously agreed dispute settlement procedures, or international arbitration. [Chapter IV, Article 4.1 – 4.8]

Investors may challenge tax measures related to an investment agreement or authorization in accordance with the Agreement's dispute resolution process. [Chapter VII, Article 4.1(b)(ii)] Investors may not, however, challenge a tax measure on grounds that it otherwise violates the Agreement, unless the investor claims that the tax measure is expropriatory. [Chapter VII, Article 4.1(B)(i)] Claims that a tax measure is expropriatory are subject to the normal dispute resolution provisions in the treaty, but only if certain special conditions are met. [Chapter VII, Article 4.2] The special conditions are explained below in the section regarding expropriation.

Technology Transfer [Chapter IV, Article 7]

The Parties are prohibited from mandating or enforcing, as a condition on the establishment, acquisition, expansion, management, conduct or operation of a covered investment, any requirement to transfer technology, a production process or other proprietary knowledge. [Article 7] Exceptions are permitted when applying generally applicable environmental laws that are consistent with the provisions of the Agreement or when the measures are taken pursuant to an order, commitment or undertaking that is enforced by a court, administrative tribunal or competition authority to remedy an alleged or adjudicated violation of competition laws. [Article 7.1 and 7.2]

Entry, Sojourn and Employment of Aliens [Chapter IV, Article 8]

Subject to the Parties' laws relating to the entry and sojourn of aliens, employees of an enterprise of one Party who are executives or managers or possess specialized knowledge relating to the operations of an investment may be transferred to operations in the territory of the other Party and may hold top managerial positions. [Article 8.1] Labor laws may be applied unless they impair the general obligation in the Agreement regarding the entry, sojourn and employment of aliens. [Article 8.3]

Preservation of Rights [Chapter IV, Article 9]

Covered investments are entitled to the better of the treatment provided by the Agreement; the laws, regulations and administrative procedures, or administrative or adjudicatory decisions of a Party; international legal obligations; or obligations assumed by a Party, including those contained in an investment agreement or investment authorization. [Article 9.1 – 9.3]

Expropriations and Compensation [Chapters IV and VII]

A Party cannot expropriate an investment except when done for a public purpose, in a non-discriminatory manner, in accordance with due process of law and the general standard of treatment described above, and upon payment of prompt, adequate and effective compensation. [Chapter IV, Article 10.1]

Investors are permitted to submit claims to international arbitration alleging that a tax measure is expropriatory. [Chapter VII, Article 4.2] However, the investor must first refer the matter to the relevant tax authorities of both Parties. If, within 9 months, the tax authorities of both Parties agree that the tax is not expropriatory, the investor cannot submit the issue to arbitration. [Chapter VII, Article 4.2]

MFN and national treatment is required when a Party adopts measures relating to losses as a result of war, armed conflict or similar events. Compensation is required when losses incurred during such events are the result of requisitioning by the government or when the government unnecessarily destroys all or part of the investment. [Chapter IV, Article 10.2]

Trade-Related Investment Measures [Chapter IV]

Neither Party shall apply any TRIMs that are inconsistent with the WTO TRIMs Agreement. [Article 11.1] The Agreement directly incorporates the Illustrative List [Annex I] of prohibited TRIMs from the TRIMs Agreement, which includes, among other things, measures such as local content requirements.

At the time the Agreement enters into force, the Parties must eliminate the trade balancing requirements and foreign exchange controls on imports included in the Illustrative List of the TRIMs Agreement. Vietnam agreed to eliminate all other TRIMs no later than five years after the date of entry into force of the Agreement, or the date required under the terms and conditions of Vietnam's accession to the WTO, whichever is earlier. [Article 11.2]

Currency Transfers [Chapter VII, Article 1]

Currency transfers relating to a covered investment shall be made in U.S. dollars or another currency designated by the IMF as a freely usable currency. [Article 1.1] In all cases, transfers should be permitted as agreed in an investment authorization or investment agreement. The Parties shall grant the better of MFN or national treatment with respect to all transfers. [Article 1.3]

A Party may prevent a transfer through the equitable, non-discriminatory and good faith application of its laws relating to: bankruptcy, insolvency or the protection of the rights of creditors, issuing, trading or dealing in securities, futures, options, or derivatives, reports or records of transfers, criminal or penal offenses, or ensuring compliance with orders or judgments in judicial or administrative proceedings. [Article 1.6(A) – (E)]

VIETNAMESE RESERVATIONS [ANNEX H: VIETNAM]

Sectoral Reservations to National Treatment Obligations [Annex H: Vietnam]

In certain sectors, Vietnam may adopt or maintain measures that are not consistent with national treatment. These sectors are: broadcasting, television, production, publication, and distribution of cultural products; investment in insurance; banking; brokerage, dealership in securities and currency values, and other related services; mineral exploration and exploitation; construction, installation, operation and maintenance of telecommunication facility; construction and operation of inland water, sea and air ports; cargo and passenger transportation by railway, airway, road, sea, and inland water-way transportation; fishing and fish catching; real estate business. [Paragraph 1]

In the event that there is conflict between the above and that of commitments made in Chapter IV on Investment Relations and Annex H, the provisions set forth in Annex G shall prevail. [Chapter VII, Article 6]

National Treatment Reservations with Respect to Measures Taken for the Development of Local Raw Material Sources [Annex H: Vietnam]

For up to 5 years after the entry into force of the Agreement, Vietnam may require that investment projects in certain sectors be undertaken in conjunction with the development of the local resources in those sectors (processing of paper, vegetable oil, milk, cane sugar, wood processing. [except for projects using imported wood]) [Paragraph 2]

National Treatment Reservations with Respect to Export Requirements [Annex H: Vietnam]

For up to 7 years after the entry into force of the Agreement, Vietnam may require that investment projects export at least 80% of their products in the following sectors only: Cement production; paints and construction steel; detergent powder; tires and ceramics; PVC and other plastics; footwear; clothing; construction steel; detergent powder; tires and inner tubes for automobiles and motorbikes; NPK fertilizer; alcoholic products; tobacco; papers. (including printing, and writing paper, photocopy) [Paragraph 3]

Requirements on Investment Capital [Annex H: Vietnam]

After the entry into force of the Agreement, U.S. investors will be allowed to contribute, increase and reinvest capital in any currency. [Paragraph 4.1(a)] However, U.S. investors may not acquire more than 30% of the shares of an equitized State enterprise. [Paragraph 4.1(c)] For up to 3 years from the entry into force of the Agreement, certain additional limitations apply which relate to capital contributions and the transfer of interests in joint ventures and U.S.-owned enterprises. [Paragraph 4.1(b)(i) – (iii)] U.S. investors are not allowed to establish a joint stock company, and an enterprise in Vietnam that is wholly or partially owned by U.S. nationals or companies may not issue bonds or shares to the public in Vietnam. [Paragraph 4.1(b)(iv)]

Organization and Management of Joint Ventures [Annex H: Vietnam]

Vietnam may require for up to 3 years from the entry into force of the Agreement that the General Director or First Deputy General Director of a joint venture be a Vietnamese citizen. During this period, certain decisions relating to the organization and operation of the enterprise shall be decided on the basis of consensus. [Paragraph 4.2 (a) and 4.2(b)]

Prices and Fees of Some Goods and Services Under the State's Control [Annex H: Vietnam]

Vietnam shall gradually eliminate discriminatory prices and fees for goods and services under the State's control over a period of 4 years. [Paragraph 4.3(a) – (c)]

Government Subsidies and Supports [Annex H: Vietnam]

Vietnam is not required to extend to nationals or companies of the United States Government subsidies and supports granted to domestic enterprises, which include land allocation for investment projects, preferential credits, research and development and education assistance programs and certain other forms of Government supports. [Paragraph 4.4]

Ownership, Use of Land and Residences [Annex H: Vietnam]

Vietnam will create favorable conditions for exercising the mortgage and transfer of land use rights. U.S. investors may lease land for investment purposes but may not own land and residences. Furthermore, for up to 3 years after the entry into force, U.S. investors are not allowed either to mortgage land use rights at foreign credit institutions operating in Vietnam or to transfer land use rights except for the case of transfers of invested assets associated with the land within the lease period. [Paragraph 4.5 and 4.6]

Evaluation Regime for Investment Licensing [Side Letter]

Vietnam may maintain an evaluation regime for investment licensing in several sectors, including, among others, broadcasting, transportation services, construction and operation of sea, river and air ports, certain financial services, construction, installation and maintenance of telecommunication facilities, real estate and certain infrastructure development projects. [Paragraph 1(a)] Depending on the size of the project, Vietnam may also maintain an evaluation regime for projects in power, mining, metallurgy, cement, chemicals, and agriculture. [Paragraph 1(b)]

Registration Regime for Investment Licensing [Side Letter]

Vietnam will phase in over 2-9 years a registration regime for investment licensing in most sectors to replace the current evaluation regime. [Paragraph 2(a) – (c)]

With certain exceptions, U.S. investors shall be allowed to choose their local partners and the location, form, and apportionment of their investments, and to decide all matters relating to the

operation of such investment, consistent with generally applicable Vietnamese laws and regulations. [Paragraph 5 (c)]

The registration regime shall be applied on a national treatment and MFN basis. [Paragraph 5(d)]

Applications for Investment Licenses [Side Letter]

U.S. applicants for investment licenses are entitled to MFN treatment. [Paragraph 3(a)] In addition, the licensing criteria must be transparent. [Paragraph 3(b)] With certain exceptions, the granting of a license cannot be made contingent on selecting a local partner or locating production or other facilities in a certain location, and cannot be designed to discourage or prohibit investment in a particular sector. [Paragraph 3(e)]

For sectors that are not subject to an evaluation or registration regime, Vietnam must, within 6 years of the entry into force of the Agreement, apply licensing requirements and procedures on a national treatment basis. [Paragraph 4(a) – (b)]

U.S. RESERVATIONS [ANNEX H: UNITED STATES]

In certain sectors, the United States may adopt or maintain measures that are not consistent with national treatment. These sectors include, among others, atomic energy, customhouse brokers, broadcast licenses, subsidies or grants, landing of submarine cables, and certain state and local measures. [Paragraph 1]

In certain sectors, the United States took both national treatment and MFN reservations. These sectors include, among others, fisheries, air and maritime transport, financial services, leasing of minerals and pipeline rights-of-way on government lands, and certain satellite transmissions. [Paragraph 2]

OTHER

The Parties agreed to endeavor to negotiate a bilateral investment treaty in good faith within a reasonable period of time. [Chapter IV, Article 13]

CHAPTER V -- BUSINESS FACILITATION

OVERVIEW

The chapter of the Agreement dealing with business facilitation includes a set of commitments to develop investment relations and to facilitate business activity regarding trade in goods and services. These commitments facilitate the creation of valuable business opportunities for U.S. and Vietnamese companies and investors interested in the other country's market. Both countries have agreed to permit such essentials to business success as advertising, marketing studies, and the sale of products directly to consumers. Similarly, among other things, businesses may import office equipment, stock samples and replacement parts, and secure access to public utilities.

OBLIGATIONS AND DISCIPLINES

Right to Import Office Equipment for Use [Chapter V, Article 1(A)]

U.S. companies and nationals may import into Vietnam equipment used in the operation of their business, such as typewriters, computers, photocopiers, and fax machines. Likewise, Vietnamese companies and nationals may import such equipment into the United States.

Access to Office Space and Living Accommodations [Chapter V, Article 1(B)]

The Parties will permit the access and use of office space and living accommodations in a non-discriminatory manner and at market prices. This commitment does not affect immigration rules or procedures governing the conduct of foreign missions.

Right to Engage Agents, Consultants and Distributors [Chapter V, Article 1(C)]

The Parties grant private parties the right to engage agents, consultants, and distributors at market rates. This commitment does not affect immigration rules or procedures governing the conduct of foreign missions.

Right to Advertise Products & Services [Chapter V, Article 1(D)]

The Parties agree to permit various forms of advertising for goods and services, such as television, radio, print and billboard, and the use of preaddressed cards and envelopes.

Direct Contact and Sales [Chapter V, Article 1(E)]

Vietnam will encourage direct contact and permit sales between U.S. businesses and Vietnamese consumers as well as organizations whose decisions affect potential sales. The U.S. will do the same for Vietnamese businesses.

Market Studies [Chapter V, Article 1(F)]

Businesses may conduct market studies, either directly or by contracting for the service.

Stocking of Samples and Replacement Parts [Chapter V, Article 1(G)]

Businesses may stock an adequate supply of samples and replacement parts for after sales service or for covered investment products.

Non-discriminatory Access to Government Provided Products & Services [Chapter V, Article 1(H)]

Both Parties must provide access to government provided products and services, including public utilities, in a non-discriminatory manner and at prices not greater than those charged to third-country nationals or companies, where the government controls or sets such prices.

Nondiscriminatory Treatment [Chapter V, Article 2]

As in other chapters, the Parties are required to provide at least the better of national treatment or MFN treatment with respect to access and use of office space, living accommodations, and governmentally-provided products and services.

Applicability of Other Chapters [Chapter V, Article 3]

In many instances, this chapter supplements the commitments of other chapters of the Agreement. Should a conflict arise regarding the commitments of this chapter and the chapter on Trade in Goods, Trade in Services, or the Development of Investment Relations, however, the provisions of such other chapter will apply.

CHAPTER VI -TRANSPARENCY-RELATED PROVISIONS AND RIGHT TO APPEAL

OVERVIEW

The Parties agree to publish all laws, regulations, and general administrative procedures and they will enforce only measures that are published. To the extent possible, the Parties will permit public comment regarding the formulation of such measures. In addition, the Parties will provide access to economic and trade data. To facilitate this requirement, the Parties will designate an official journal for the publication of all measures of general application and will administer such measures in a uniform, impartial, and reasonable manner. Also, the Parties will maintain administrative and judicial tribunals for the prompt review of administrative action related to the Agreement, and they will permit the right to appeal adverse decisions. Finally, both Parties agree to ensure that all import-licensing procedures are implemented in accordance with the internationally accepted standards of the WTO Agreement on Import Licensing. In short, the Agreement tracks closely the obligations of WTO Members regarding transparent laws, regulations, and administrative procedures, thereby fostering predictability and encouraging commercial activity.

OBLIGATIONS AND DISCIPLINES

Publication of Laws, Regulations and Administrative Procedures [Chapter VI, Article 1]

The Parties are required to publish all measures in advance of implementation and to designate a contact point to answer questions regarding any measure or proposed measure. This commitment requires the Parties to publish information so that businesses have time to familiarize themselves with a new measure in advance of its enforcement, and the publication must include such essentials as the effective date of the measure, the product or service affected, and any authority that must be approved or consulted when implementing the measure.

Access to Economic, Trade and Other Data [Chapter VI, Article 2]

The Parties commit to provide access to data on the national economy and individual sectors, but there is no requirement to disclose confidential information that would harm law enforcement efforts, be contrary to the public interest, or prejudice commercial interests. Confidential information means specific information about the importation of a product that would have a significant adverse effect on the price or quantity available of such product; however, it does not include information the WTO requires its Members to disclose.

Public Comment [Chapter VI, Article 3]

To the extent possible, the Parties will permit the opportunity to comment on any measure that may affect the conduct of business activities.

Publication of Unpublished Laws [Chapter VI, Article 4]

The Parties agree to publish all laws that have not been made publicly available and agree not to enforce laws until they have been published.

Designation of Official Journal [Chapter VI, Article 5]

The Parties are required to publish, on a regular basis, all laws, regulations, and administrative procedures in an official journal that is made readily available to the public.

Administration [Chapter VI, Article 6]

The Parties must apply all laws, regulations, and administrative procedures in a uniform, impartial, and reasonable manner.

Administrative Review and Right to Appeal [Chapter VI, Article 7]

The Parties agree to prompt review and correction of administrative action and to the right for entities to appeal an administrative decision to a court for review. If appealed to a court, the decision must be in writing and the Party must advise whether there is any opportunity for further appeal.

Import Licensing Procedures [Chapter VI, Article 8]

Both automatic and non-automatic licensing procedures must be implemented in a transparent and predictable manner. Tracking the provisions of the WTO Agreement on Import Licensing, the Parties agree that their measures will comply with international standards. Among other things, this means a commitment to be no more administratively burdensome than absolutely necessary to administer the measure, to publish sufficient information so as to enable traders to understand how to obtain licenses, and to ensure that the period of license validity is of reasonable duration and not so short as to preclude imports.

CHAPTER VII -- GENERAL ARTICLES

OVERVIEW

The General Articles relate to miscellaneous topics that apply to all chapters of the Agreement, such as cross border transactions and transfers, national security provisions, general exceptions, taxation, operation of the Agreement, and entry into force.

OBLIGATIONS AND DISCIPLINES

Cross Border Transactions and Transfers [Chapter VII, Article 1]

Unless parties to a transaction agree otherwise, all transactions must be in U.S. dollars or another freely usable currency. [Article 1.1] Nondiscriminatory treatment must be provided regarding all transfers into and out of each Party. [Article 1.2] Such transfers include contributions to capital, returns from the partial or complete sale of an investment, fees such as interest or royalty payments, payments made under contract, or compensation pursuant to expropriation, war damages, or an investment dispute. [Article 1.3(A) – (E)] National treatment and MFN treatment must be provided with respect to opening and maintaining accounts, in both local and foreign currency, and having access to funds deposited in financial institutions. In addition, nondiscriminatory treatment must be provided to payments, remittances and transfers, rates of exchange, and other related matters, including access to freely usable currencies. [Article 1.2(A) – (B)] The Parties agree to adhere to the obligations of the International Monetary Fund regarding cross-border transactions and transfers, and they will permit returns in kind when called for by written agreement. [Article 1.4 and 1.5] Nothing prevents a Party from preventing a transfer if it conflicts with that Parties' bankruptcy, securities, or reporting requirements or otherwise constitutes a criminal offense or violates judicial orders. [Article 1.6] Similarly, a Party may require compliance with customary banking procedures, measures to protect creditor-rights, and other rules that ensure stability of the national financial system. [Article 1.7(A) and 1.7(B)]

National Security [Chapter VII, Article 2]

A Party may take actions considered necessary to protect its essential security interests.

General Exceptions [Chapter VII, Article 3]

The provision is modeled on the exceptions in the WTO General Agreement on Trade in Services (GATS), the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), and the General Agreement on Tariffs and Trade (GATT 1994), and generally does not prevent measures in compliance with those Agreements. [Article 3.1(A) – (C)] Similarly, it does not prevent either Party from applying its laws relating to foreign missions [Article 3.2], and nothing in the Agreement limits the application of any existing or future agreements between the Parties on trade in textiles and textile products. [Article 3.3]

Taxation [Chapter VII, Article 4]

Unless provided for in the chapter on Trade in Goods or the chapter on the Development of Investment Relations, the Agreement does not impose any obligations regarding tax matters. [Article 4.1] In the chapter on Trade in Goods, with the exception of the requirement to provide national treatment regarding tariff and non-tariff measures, the commitments involving tax

matters do not apply to direct taxes, such as taxes on total income, inheritances, salaries, or capital appreciation. [Article 4.1(A)] In the chapter on investment, a private party subject to an investment agreement or authorization may bring a tax claim to dispute settlement. [Article 4.1(B)] If the claim involves expropriation, the investor may submit the dispute to arbitration provided the Parties disagree over whether the tax measure is expropriatory. [Article 4.2]

Consultations [Chapter VII, Article 5]

The Parties will consult periodically regarding the operation of the Agreement and will consult promptly at either's request to discuss matters concerning interpretation or implementation of the Agreement. [Article 5.1 and 5.2] To this end, the Parties will establish a Joint Committee on Development of Economic and Trade Relations. The Committee will monitor the implementation and operation of the Agreement, ensure that a satisfactory balance of concessions is maintained, and serve as the appropriate channel for consultations to discuss matters relating to the Agreement and to the enhancement and diversification of bilateral economic and trade relations. [Article 5.3] The Committee will be co-chaired by representatives of the Parties at the ministerial level and the other members will be selected from agencies responsible for implementing the Agreement. The Committee will meet annually or when needed as requested by either Party. [Article 5.4]

Applicability in Case of Conflict [Chapter VII, Article 6]

In Annex H, Vietnam reserves the right to adopt or maintain exceptions to national treatment in the area of investment. This Annex applies to any investment in a service sector not specified in Vietnam's services schedule, called Annex G. In the event of a conflict between a provision in Annex H or the Investment Licensing Letters and a provision in Annex G, the provision of Annex G prevails to the extent of the inconsistency.

Annexes, Schedules, and Investment Licensing Letters [Chapter VII, Article 7]

The Annexes, Schedules, and Investment Licensing Letters have the same legal force and effect as any other part of the Agreement.

Final Provisions, Entry into Force, Duration, Suspension and Termination [Chapter VII, Article 8]

The Agreement will come into force on the day both countries exchange letters of notification and complete legal procedures necessary for entry into force. [Article 8.1] The Agreement will last three years and will be extended for successive terms of three years, unless either Party informs the other of an intent to terminate the Agreement with at least thirty days notification prior to the end of the term. [Article 8.2] If either Party does not have the domestic authority to carry out the obligations made under this Agreement, then either may suspend this Agreement in whole, or with the consent of the other Party, in part. This includes MFN treatment. In case of such an event, both Parties will work to the fullest extent possible under domestic law to minimize the unfavorable effects on existing trade relations between the two countries. [Article 8.3]