



# The Next Stage of US-Vietnam Relations: A Blueprint to Deepen Trade and Investment Ties

May 10, 2019

## EXECUTIVE SUMMARY

---

### Why Vietnam?

2019 marks the 25th anniversary of the normalization of trade and investment relations between the United States and Vietnam. During this period, the two countries have significantly strengthened their economic, political and security ties. Normalization of the economic relationship was followed by the restoration of diplomatic relations in 1995, the conclusion of a bilateral trade agreement in 2000, and Vietnam's accession to the World Trade Organization (WTO) in 2007.

These milestones have transformed the bilateral relationship and spurred robust economic growth and development in Vietnam. Bilateral goods trade grew from \$1.5 billion in 2000 to \$59 billion in 2018, and Vietnam is now the 16<sup>th</sup> largest trading partner of the United

States, while the United States is now Vietnam's third largest trading partner. During this period, Vietnam's per capita income tripled from \$2,160 to \$6,140 in 2017; the share of people living below the national poverty line fell to 2 percent in 2017 from 17 percent a decade earlier, and Vietnam's ranking on the WTO's Ease of Doing Business rose to 69 from a high of 99 in 2013.

US-Vietnamese military and security ties are strong, and the two countries have worked closely to address a variety of commercial issues over the past two years. However, there is an opportunity to elevate and intensify the engagement between the two countries on trade issues. Recognizing Vietnam's economic dynamism and commercial and strategic significance, the United States hopes to enhance bilateral trade relations and promote fair and reciprocal trade. At the same time,

Vietnam seeks to expand trade and investment with the United States. It also sees an opportunity to benefit from the shifts in regional supply chains resulting from growing tensions between the United States and China and to showcase its strengths as an alternative destination for US investment.

The size and rapid growth of economic ties and the tremendous economic interests both sides have in maintaining and expanding the relationship make it incumbent upon Washington and Hanoi to develop a vision for the future of the commercial relationship. The business communities in both countries want to be partners in developing this vision.

### **How do we get there?**

We recognize that the business community's ambitions sometimes run into political headwinds, but it is our strong position that the United States and Vietnam must consider options for deepening trade and investment ties. After reviewing possible approaches, we recommend launching an initiative to intensify commercial engagement under the auspices of the existing Trade and Investment Framework Agreement (TIFA). We believe that by strengthening and reinforcing existing processes, we can create new and better results, including agreements designed to achieve concrete outcomes on priority issues. Using the existing institutional TIFA framework, which both sides have found productive, would facilitate immediate resolution of key bilateral issues, detailed below, building confidence and paving the way for future FTA negotiations. This initiative could also help promote bilateral trade and investment in areas of key interest to both countries.

Under the initiative, the United States and Vietnam would elevate the level of TIFA discussions to more senior officials; we recommend that this be in the Office of the Government (OOG) in Vietnam, and the United States Trade Representative (USTR) in the

United States. Both play central roles in their respective countries in developing and coordinating policy across the many ministries and departments that have equities on trade and investment issues. We would expect that the Ministry of Industry and Trade would also play an important role. Taking advantage of the TIFA architecture, both sides would identify a discrete set of new initiatives in areas of priority mutual interest, in which the United States and Vietnam could negotiate agreements with specific commitments. Where appropriate, the United States could provide technical assistance, capacity building, and/or financing to support implementation, working in close coordination with the private sector.

To start, the two governments should consider issues on which common approaches are critical to increasing trade and investment, supporting their economic growth and development objectives and promoting their regional and global competitiveness. For Vietnam, this also would include promotion of infrastructure development, economic diversification, innovation and higher value-added economic activity, and good governance.

### **The blueprint**

To achieve these goals, the two countries should focus on a blueprint that addresses issues including digital trade, intellectual property rights, customs and trade facilitation, technical barriers to trade, sanitary and phytosanitary standards, and energy infrastructure.

Digital trade. The US and Vietnam should negotiate an agreement on digital trade, which would distinguish Vietnam as a leader in developing a balanced, predictable, and forward-looking approach to digital trade issues and enhance its attractiveness as an investment destination. The agreement should include state-of-the-art obligations like those in the US-Mexico-Canada Agreement that ensures the free flow of data across borders for all

industries, including financial institutions. It should also include a bilateral dialogue to increase cooperation on privacy, cybersecurity, and other emerging digital trade issues. The United States and Vietnam also should seek to address issues surrounding Vietnam's implementation of laws related to digital trade, particularly the Cybersecurity Law, and measures on electronic payment services, as well as its upcoming data privacy law. In addition, it should seek to remove barriers to the deployment of state-of-the-art technologies such as additional licensing requirements for the import of products containing cryptography.

Intellectual property rights (IPR). The United States and Vietnam should negotiate an agreement on IPR, which would help Vietnam promote economic growth and development and attract foreign investment, including in advanced industries, which would otherwise likely go to China or other competitors in the region. The agreement would include a robust program of technical assistance and capacity-building for implementation of the IPR commitments Vietnam made in its recently-concluded trade agreements, focusing particularly on those areas where Vietnam is likely to face the most significant challenges.

Customs and trade facilitation. The United States and Vietnam should negotiate a customs and trade facilitation agreement, which would help reduce duty evasion and increase government revenues, diminish public health and safety risks from counterfeit products and other illegal trade, and promote bilateral trade. The agreement would contain commitments no less rigorous than those in CPTPP and the EU-Vietnam FTA and provide for capacity-building and technical support from the United States, especially on risk management -- the application of transparent procedures designed to ensure compliance with customs laws and regulations and to minimize risks that customs controls will be circumvented.

Technical Barriers to Trade (TBT). The United States and Vietnam should negotiate an agreement or series of agreements on TBT issues to help align US and Vietnamese standards. Doing so would facilitate trade by eliminating the need for companies to develop products that meet unique standards of each market, encouraging transparency and good governance, and promoting interoperability and shared regulatory principles to achieve common public health, safety or environment standards.

Sanitary and Phytosanitary Standards (SPS). The United States and Vietnam should negotiate an agreement on SPS issues including obligations to strengthen disciplines for science-based SPS measures modeled on those in the US-Mexico-Canada Agreement (USMCA) in order to help align US and Vietnamese standards, better protect the health and safety of their respective food supplies, encourage transparency and good governance, and promote bilateral agricultural trade, a priority interest for both countries.

Energy Infrastructure. The United States and Vietnam should negotiate an agreement on energy infrastructure to address non-tariff barriers, standards and other issues that would help Vietnam develop the energy infrastructure needed to support its growing economy.

Substantive progress in these areas will address many longstanding market access concerns and would support Vietnam's aspirations to propel itself to the next sphere of economic competitiveness. Moreover, these are all areas in which progress would be consistent with the longer-term goal of a high-standard trade agreement, should both choose to pursue it.

#### Next Steps

Economic relations between Vietnam and the US have grown exponentially since the two countries restored diplomatic ties, and further

deepening economic cooperation presents important opportunities for both countries. The two sides should initiate discussions as soon as possible and conclude agreement on the specific initiatives to be addressed in time for General Secretary Trong's expected 2019 visit to Washington, or on the margins of the APEC meeting in Chile, or another mutually-convenient venue. Following signature, the two

sides should immediately begin work on the various initiatives, with a first meeting under the intensified TIFA to be held in spring 2020, and a second meeting to be held in the fall surrounding the APEC meeting in Malaysia.

These initiatives are described in greater detail in the attached annex.

## ANNEX

### **The Next Stage of US-Vietnam Relations: A Blueprint to Deepen Trade and Investment Ties May 10, 2019**

#### **Introduction**

Over the last 20 years, the United States and Vietnam have significantly strengthened their economic, political, and security ties. The restoration of diplomatic relations in 1995, the conclusion of a bilateral trade agreement (BTA) in 2000, and Vietnam's accession to the WTO in 2007 have transformed the bilateral relationship and spurred robust economic growth and development in Vietnam. Indeed, since 2000, Vietnam's per capita income tripled from \$2,160 to \$6,140 in 2017; the share of people living below the national poverty line fell to 2 percent in 2017 from 17 percent a decade earlier, and Vietnam's ranking on the WTO's Ease of Doing Business rose to 69 from a high on 99 in 2013.

Since 1995, two-way bilateral trade has grown exponentially from just \$500 million to more than \$58 billion in 2018. The United States is now Vietnam's second largest trading partner, while Vietnam is among the fastest growing export markets in the world for the United States. The United States also is a significant investor in Vietnam. Domestically, the Vietnamese government's economic and political reforms have resulted in rapid and steady economic growth, broad-based welfare gains, and Vietnam's conversion from one of the poorest countries in the world to a middle-income country.

US-Vietnam military and security ties have continued to expand. The United States and Vietnam have significantly increased cooperation based largely on their shared interest in maintaining a stable and peaceful maritime environment. The United States lifted its decades-old arms embargo on Vietnam in 2016, and last year agreed to expand military cooperation over a three-year period, including on humanitarian assistance, disaster relief and peacekeeping operations. Vietnam also hosted a US aircraft carrier visit in 2018, the first docking of its kind since the end of the war in 1975. We now have an opportunity to parallel progress in advancing the economic dimension of the bilateral relationship.

#### **The Case for Enhancing Trade and Investment Ties**

The United States recognizes Vietnam's economic dynamism and commercial significance. With a population of nearly 100 million and economic growth of 7.1 percent in 2018, Vietnam has a large and expanding consumer and capital goods market for US exports. In addition, Vietnam is deeply integrated into regional value chains. As US companies seek to diversify regional operations away from China, Vietnam is an attractive alternative destination.

In light of this economic potential, the United States hopes to continue to strengthen ties to Vietnam. In addition, the United States must work to offset the potential competitive impact on US companies from Vietnam's free trade agreements (FTAs) with other partners. These include the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP), which entered into force for Vietnam in January, as well as Vietnam's FTA with the EU, which has been concluded but not yet ratified.

Vietnam is seeking to expand trade and investment in order to maintain strong economic growth, create jobs, promote further development, and avoid the middle-income trap. It wants to continue to increase its exports and to enhance innovation and productivity, including through investments in infrastructure, technology, industry, services, and education, to move up the value chain.

Vietnam views the United States as an attractive partner for advancing these goals and the most important export market in which it does not enjoy preferential treatment through an FTA. It also sees an opportunity to benefit from the shifts in regional supply chains. Vietnam is seeking to showcase its strengths as an alternative destination for US investment, although it is competing with many other countries in the region also seeking to attract this business.

A deepened economic relationship with the United States, underscored by the fact that President Trump has visited the country twice since 2017, will distinguish it from its competitors. It would send a strong message to potential American investors, and would facilitate continued, and increased, US trade with, and investment in, Vietnam.

### **Options for Deepening Trade and Investment Ties**

The two governments should consider the range of possible approaches: (1) launch FTA negotiations; (2) update the Bilateral Trade Agreement (BTA); and (3) enhance the existing TIFA through a new bilateral initiative focused on achieving concrete outcomes on priority issues.

1. Launch FTA negotiations. The United States and Vietnam could launch negotiations on a comprehensive FTA. This should be the ultimate goal in our commercial relationship.
  - Both countries recognize the benefits of increasing bilateral trade and investment but are focused on other negotiations at this time.
  - Pursuing an FTA would require a clear understanding that they share common objectives and are confident that a negotiation could be successfully concluded. Initiating negotiations without such an understanding risks failure, which could damage this increasingly important strategic partnership.
  - Therefore, as desirable as an FTA ultimately is, political realities are such that shorter-term objectives, including addressing bilateral irritants, strengthening

Vietnam's capacity to implement high-standard commitments, and promoting bilateral trade and investment should be prioritized -- initiatives that would serve as stepping stones to a FTA.

2. Update the Bilateral Trade Agreement (BTA). The United States and Vietnam could update the 2000 BTA, which provided Vietnam conditional most-favored nation status.
  - Updating the nearly 20-year old BTA would allow the two sides to incorporate binding state-of-the-art trade and investment commitments. It could also address outstanding bilateral issues.
  - However, although updating the BTA might be less complicated and time-consuming than negotiating an FTA, the updated BTA would not provide for preferential market access, a significant interest of both countries.
3. Launch a New Bilateral Initiative. The United States and Vietnam could launch a new bilateral initiative by intensifying commercial engagement under the existing TIFA, and elevating the level of discussions to more senior officials.
  - Augmenting the TIFA in this way would energize bilateral engagement and establish common goals on which the two countries could focus.
  - Utilizing the TIFA mechanism ensures continuity and would acknowledge that both the United States and Vietnam recognize the TIFA as a valuable and enduring forum for deepening relations, even as they seek to establish new agreements linked to it to achieve specific goals. Indeed, Prime Minister Nguyen Xuan Phuc, then-Chairman of the Office of Government, headed Vietnam's TIFA delegation when the TIFA was established in 2007, and continues to support the dialogue.

### **Recommendation**

The United States and Vietnam should start the process of deepening trade and investment ties through an enhanced dialogue under the umbrella of the existing TIFA. While the two countries may negotiate an FTA in the future, starting in this way would allow for more immediate resolution of outstanding bilateral issues and would help build confidence for future FTA negotiations. At the same time, the elevated dialogue would promote bilateral trade and investment in areas that will support Vietnam's economic growth and development.

The dialogue should first pursue specific initiatives on areas of priority interest to Vietnam and the United States. Agreeing to start with a discrete set of initiatives would help ensure that substantive results can be achieved in short time frames.

- The United States and Vietnam could negotiate agreements with specific commitments under these initiatives.

- Where appropriate, the United States could provide technical assistance, capacity building, and/or financing to support implementation, working in close coordination with the private sector.

Pursuing such initiatives would require elevating the dialogue to the Deputy Prime Minister level for Vietnam. We would expect the Ministry of Industry and Trade also to play an important role. For the United States, the US Trade Representative would lead and coordinate work, as the official responsible for coordinating US trade policy. All other agencies should support these objectives, including through cabinet-level visits and other activities as appropriate. This would signal the countries' common interest in deepening the relationship and would establish expectations for substantive outcomes from the dialogue. Meetings to review progress should be held twice a year, once in Washington and once in Hanoi, to ensure momentum and timely results.

### **The Blueprint: Potential Initiatives**

Both Vietnam and the United States should propose initiatives under the enhanced TIFA. To start, the two governments should consider issues on which common approaches are critical to increasing trade and investment, supporting their economic growth and development objectives and promoting their regional and global competitiveness. For Vietnam, this would also include promotion of infrastructure development, economic diversification, innovation and higher value-added economic activity, and good governance. To achieve these goals, the two countries should focus on such issues as: digital trade; intellectual property rights (IPR); customs and trade facilitation; regulatory cooperation/technical barriers to trade (TBT); sanitary and phytosanitary standards (SPS); and energy and infrastructure. U.S. aid and technical assistance agencies should prioritize the provision of support to Vietnam in these areas.

#### **A. Digital Trade**

The United States and Vietnam should negotiate a bilateral agreement on digital trade.

The two governments have had divergent views on digital issues. Most recently, the United States has expressed concerns over Vietnam's new Cybersecurity Law and its implementation, as well as on rules related to electronic payments systems. However, the United States and Vietnam have shown an ability to work together constructively to develop pioneering digital trade rules in the TPP negotiations, to which Vietnam made commitments in the CPTPP, including to permit cross-border data flows by businesses and to prohibit data localization requirements.<sup>i</sup> Vietnam also made digital trade/e-commerce commitments in its FTA with the EU, including a commitment for a regulatory dialogue that would address "protection of consumers in the ambit of electronic commerce."<sup>ii</sup> The United States, meanwhile, has worked with its North American partners to advance state-of-the-art disciplines in both the digital trade and financial services chapters of the U.S.-Mexico-Canada Agreement (USMCA).



For Vietnam, a high-standard agreement on digital trade with the United States would distinguish it as a leader in developing a balanced, predictable, and forward-looking approach to digital trade issues.

- An agreement would make Vietnam a more attractive destination for US companies weighing potential investment destinations in the Asia-Pacific region, including for manufacturing which is increasingly reliant on digitization and access to data.
- By undertaking digital trade commitments with the United States that build on and advance its existing commitments beyond those in the CPTPP and agreeing to a dialogue on emerging digital issues, Vietnam would strengthen its cooperation with the United States. This would also help Vietnam to avoid implementing measures that might later require changes if the two sides negotiate an FTA.

A high-standard US-Vietnam digital trade agreement should include:

- Binding obligations like those in the USMCA that ensure the free flow of data across borders, regardless of industry, prohibit the imposition of duties on digital products transmitted electronically, limit the forced disclosure of source code and algorithms as a condition of market access, and enshrine intermediary liability protections for Internet platforms.
- Establishment of a bilateral dialogue like that in the EU-Vietnam trade agreement, to include cooperation on data privacy, cybersecurity, and other emerging digital trade issues.

In addition, the two governments should seek to address US concerns regarding Vietnam's implementation of laws related to digital trade.

- The two governments should reach an understanding on implementation of the Cybersecurity Law, to minimize barriers to legitimate digital trade, to avoid increased costs for small and medium enterprises and startups, and to ensure its consistency with WTO and other trade rules.
- They also should reach an understanding on Vietnam's implementation of measures relating to electronic payment services.
- In addition, the two governments should reach an understanding on the scope of licensing of new technologies such as those containing cryptography for the purposes of import into Vietnam with a view to enable the ease of deployment of state-of-the-art technologies in Vietnam in pursuit of its digital agenda.

#### B. IPR

The United States and Vietnam should negotiate an agreement on IPR that would include a robust program of technical assistance and capacity-building for implementation of Vietnam's IPR commitments in its recently-concluded trade agreements.

Vietnam took on high-standard IPR commitments in CPTPP and the EU-Vietnam FTA because it recognizes the benefits of a stronger IPR regime in advancing its economic growth and development goals and attracting foreign investment, including in advanced industries. Those commitments will require that Vietnam enact, amend, or clarify a host of laws, regulations, administrative decrees or other measures. They also will require Vietnam to establish new institutional structures, processes and measures, and to train government officials.

The United States has an interest in helping to strengthen Vietnam's IPR regime. Since many of the commitments in Vietnam's recent FTAs will apply on a most-favored-nation (MFN) basis, the United States would benefit from supporting Vietnam's implementation efforts.

Capacity-building should be directed at those areas where Vietnam will face the most significant challenges and should include:

- Technical assistance on enacting new measures and policy guidance, including to implement commitments Vietnam made in recent trade agreements. For example<sup>iii</sup>:
  - Vietnam will need to implement commitments on patents, pharmaceuticals, and related issues, including to:
    - Protect undisclosed test data.
    - Establish a system to notify patent holders prior to marketing approval of a follow-on pharmaceutical product; establish procedures and remedies to timely resolve patent disputes; and ensure adequate time prior to marketing for a patent owner to seek available remedies.
    - Adjust patent terms for delays in the first marketing authorization.
  - Vietnam also will need to enact, amend or clarify its IP, telecommunications, civil, criminal, customs, and other laws to implement its IPR enforcement obligations. These include:
    - Providing criminal procedures and penalties for willful trademark counterfeiting or copyright or related rights piracy on a commercial scale, or importation or exportation of counterfeit trademark goods or pirated copyright goods on a commercial scale.
    - Providing criminal procedures and penalties for unauthorized and willful access to a trade secret held in a computer system, misappropriation of a

trade secret, or fraudulent, unauthorized or willful disclosure of a trade secret.

- Providing *ex officio* authority with respect to goods under customs control.
- Providing limitations and exceptions and intermediary liability.
- Providing Technological Protection Measures.
- Vietnam also will have to implement new measures in other areas, such as registration of sound marks and scent marks.
- Supporting the Vietnamese government’s public outreach efforts on the benefits of a robust intellectual property system.
  - In light of the significant changes Vietnam is making to its IPR regime, stakeholders will need to better understand the scope and application of new rules, the value of strong intellectual property protection for the Vietnamese economy, and how they can take advantage of the commercial opportunities of intellectual property.

The US Agency for International Development (USAID) has long provided support to Vietnam for strengthening its IPR regime, including through a series of the Support for Trade Acceleration Project (STAR) projects, focusing on trade agreement negotiation and implementation, competitive economic governance, and sound macroeconomic policy and financial sector regulation. The STAR projects were followed by the Governance for Inclusive Growth (GIG) program in Vietnam, which concluded in December 2018. The GIG program supported reforms in Vietnam’s legal framework – including development and amendment of laws and regulations, impact assessments, and strengthened enforcement – to improve the regulatory environment for doing business in the country. During the period that these projects were active, substantial progress was made in achieving the stated program goals, and bilateral trade increased significantly. New projects on intellectual property, customs, TBT, and other issues would similarly promote strengthened economic governance and sound regulation, and increased bilateral trade and investment.

### C. Customs and Trade Facilitation

The United States and Vietnam should negotiate an agreement on customs and trade facilitation.

Prime Minister Phuc is interested in improving trade facilitation to promote business development. The Vietnamese government also is working to strengthen customs enforcement to reduce duty evasion and increase government revenues and to diminish public health and safety risks from counterfeit products and other illegal trade. A bilateral agreement would advance both these goals, and promote rule of law, transparency, and good governance.

Vietnam made strong commitments on customs and trade facilitation in CPTPP and the EU-Vietnam FTA and will have to change laws, regulations, and administrative procedures to implement those commitments. Vietnam should negotiate similar obligations with the United States to promote bilateral trade. It should also seek capacity-building and technical support from the United States, especially on risk management.

A customs agreement could draw on the 2011 “Protocol to the 1989 Trade and Investment Framework Agreement Between the Government of the United States of America and the Government of the Republic of the Philippines Concerning Customs Administration and Trade Facilitation.”

- This protocol included requirements for publication, simplified customs procedures, use of information technology to expedite release of goods, electronic or automated risk management systems, customs cooperation, confidentiality, express shipments, review and appeal, penalties, and advance rulings.
- The United States and Vietnam could model these commitments on those made in the USMCA, CPTPP, and the EU-Vietnam agreements.
- The two sides also could establish a process to cooperate and share information collected in connection with the importation of goods and to help Vietnam improve its risk management techniques.

#### D. Regulatory Cooperation/TBT

The United States and Vietnam should negotiate an agreement or series of agreements on TBT issues. Further, the US and Vietnam should commit to regulatory cooperation in key sectors to advance sound science, and risk-assessment based regulation. Such cooperation will encourage investment in innovation that can improve consumer welfare in areas such as technology, services, and consumer goods.

Vietnam has taken on high-standard commitments in CPTPP and the EU-Vietnam FTA on standards issues important to its exporters. Negotiating similar commitments with the United States would help align US and Vietnamese standards, encouraging increased bilateral trade and investment.

Some of the most important elements to promote these objectives, include:<sup>iv</sup>

- Cooperate on technical regulations to ensure international standards and recommendations form the basis for technical regulations and do not create unnecessary barriers to trade.
- Use relevant international standards as the basis for technical regulations, except when such international standards would be ineffective or inappropriate.

- Provide national treatment to each other's conformity assessment bodies.
- Provide a reasonable interval between publication of regulation and entry into force so that businesses have sufficient time to meet the new requirements.
- Provide for greater transparency by:
  - Allowing each other's stakeholders to participate in developing technical regulations, standards, and conformity assessment procedures.
  - Publishing new technical regulations and conformity assessment procedures, offering opportunities for public comment, explaining how a final regulation or conformity assessment procedure meets the objectives sought, and providing responses to substantive issues raised by comments.

The United States and Vietnam also could negotiate sector-specific agreements to promote common regulatory approaches on sectors in which Vietnam and the United States aim to increase trade and investment.

- Such agreements could cover sectors including: cosmetics; medical devices; pharmaceuticals; information and communications technology products; wine and distilled spirits; propriety formulas for food products and food additives; and organic products. Additional sectors with common investment include the chemical sector, where Vietnam's draft regulatory work already incorporates domestic and foreign private sector guidance and could serve as a regional model for cooperation and sound science, risk based regulatory approaches.
- In addition, to promote trade and competition and address bilateral friction on autos, the United States and Vietnam should negotiate an agreement on auto standards. The Vietnamese government agreed to accept UN Economic Commission for Europe (UNECE) standards in the EU-Vietnam FTA and could negotiate recognition of US Federal Motor Vehicle Safety Standards (FMVSS) standards as well. An agreement could draw on language in:
  - The US-Korea free trade agreement, including the revisions on auto safety standards contained in the Protocol Between the United States of America and the Government of the Republic of Korea Amending the February 10, 2011 Exchange of Letters.
  - The USMCA, which includes a side letter between the US and Mexico on auto safety standards, affirming that Mexico will continue to recognize and accept FMVSS standards.

#### E. SPS

The United States and Vietnam should negotiate an agreement on SPS issues, while addressing bilateral SPS issues between them.

Vietnam made high-standard commitments on SPS issues in CPTPP and the EU-Vietnam FTA. Vietnam should negotiate similar obligations with the United States to help align US and Vietnamese standards, better protect the health and safety of their respective food supplies, and promote bilateral agricultural trade, a priority interest for both countries.

An SPS agreement could focus on those issues key to promoting bilateral agricultural trade, including:<sup>v</sup>

- Improve communications and information exchange between the governments when either the United States or Vietnam is considering equivalency or regionalization requests.
- Establish rules for identifying and managing SPS risks, which would preserve the ability to maintain regulations that are not more trade restrictive than necessary.
- Promote the use of audits to assess the adequacy of the other country's food safety regulatory system.
- Base import checks for SPS requirements on the actual potential risk posed by the import and to inform importers or exporters a shipment is being prohibited or restricted entry for a reason related to food safety or animal or plant health.
- Ensure that import requirements are non-discriminatory and minimize negative trade effects, and that SPS certificates require only information related to SPS issues.
- Establish a process for public comment on proposed measures and to notify SPS measures.
- Establish a consultative mechanism under which relevant agencies work to find science-based solutions to expeditiously resolve any bilateral SPS matters that emerge.

The United States and Vietnam should also address longstanding SPS issues between them. The US Department of Agriculture has worked with Vietnam's Ministry of Agriculture and the Vietnamese private sector over the past decade to improve management and traceability of Vietnamese fruit exports and to establish alternative treatment options that allowed the resumption of US distiller's dried grains exports to Vietnam. However, the two sides would benefit from broader cooperation aimed at promoting bilateral agriculture trade.

#### F. Energy Infrastructure

The United States and Vietnam should negotiate an agreement on energy infrastructure aimed at removing barriers to trade and investment in this sector.

Vietnam wants to develop its energy infrastructure to support its growing economy. Energy demand is projected to increase by 8 percent annually from 2021-2030, with electricity demand projected to double from 2022-2030. The government is seeking to provide electricity to most households by 2020 and reasonably-priced energy services by 2030.

Vietnam's eighth Power Development Plan (PDP-8), which should be released by the end of 2019, is expected to focus on diversifying Vietnam's energy sources. Hydropower and coal will continue to be major sources of electricity, but the plan will likely call for increased reliance on nuclear and renewable energy, as well as liquefied natural gas (LNG). Abundant international supply of LNG has created incentives for Vietnam to improve its LNG infrastructure and to develop its own offshore gas reserves.

Vietnam permits 100-percent foreign ownership of companies in the energy sector, but companies face other market access barriers as a result of significant energy infrastructure regulatory requirements. Vietnam is open to addressing these issues, and in its recent trade agreement with the EU, Vietnam committed to:<sup>vi</sup>

- Refrain from imposing certain non-tariff barriers, including local content requirements, offsets, and partnerships with local companies.
- Use international standards as a basis for any standard, technical regulation, or conformity assessment procedure.
- Cooperate, including on the design and non-discriminatory implementation of measures promoting the use of energy from renewable sources.

The United States has already engaged with Vietnam on energy infrastructure in a number of ways:

- Under the Asia Enhancing Development and Growth through Energy (Asia EDGE) framework, USAID will provide Vietnam both financial and specialized aid for LNG and gas power infrastructure development.
- USAID is helping Vietnam craft the PDP-8 and an improved power purchase agreement mechanism for renewable energy.
- The US Trade and Development Agency (USTDA) helped finance Vietnam's feasibility studies on wind, solar, and "smart power grids."
- USTDA has announced its intention to help Vietnam Electricity (EVN) develop an LNG import terminal in southern Vietnam.

- The State Department's Bureau of Energy Resources is leading the new US-Vietnam Energy Security Dialogue, which likely will cover trade promotion, regulatory reform, and LNG (technical standards and contracts).

The existing level of US engagement and financial support reflects the importance both the United States and Vietnam have placed on cooperation in the energy sector and underscores the value of an energy agreement for both parties. An agreement should address market access issues, including standards, non-tariff barriers, and other issues that would promote bilateral trade and investment in the energy sector.

## **Conclusion**

Economic relations between Vietnam and the US have grown exponentially since the two countries restored diplomatic ties and further deepening economic cooperation presents important opportunities for both countries. The two sides should initiate discussions as soon as possible and conclude agreement on the specific initiatives to be addressed in time for General Secretary and President Trong's expected 2019 visit to Washington, or on the margins of the APEC meeting in Chile, or other mutually-convenient venue. Following signature, the two sides should immediately begin work on the various initiatives, with a first meeting by spring 2020, and a second meeting in the fall surrounding the APEC meeting in Malaysia.



## ENDNOTES

---

<sup>i</sup> See CPTPP Article 14.11.

<sup>ii</sup> See EU-Vietnam FTA Article 8.52.

<sup>iii</sup> The IPR issues and topics cited in this section track with Vietnam's commitments in the CPTPP and the EU-Vietnam free trade agreements. Specifically:

- Protect undisclosed test data: see EU-Vietnam FTA Article 12.41.
- Establish system to notify patent holders prior to marketing approval of a follow-on pharmaceutical product; procedures and remedies to timely resolve patent disputes; and ensure adequate time prior to marketing for a patent owner to seek available remedies: see CPTPP Article 18.53.
- Patent terms for delays in the first marketing authorization: see EU-Vietnam FTA, Article 12.40
- Criminal procedures and penalties for willful trademark counterfeiting or copyright or related rights piracy on a commercial scale, or importation or exportation of counterfeit trademark goods or pirated copyright goods on a commercial scale: see CPTPP Article 18.77.1 and 18.77.2.
- Criminal procedures and penalties for unauthorized and willful access to a trade secret held in a computer system, misappropriation of a trade secret, or fraudulent, unauthorized or willful disclosure of a trade secret: see CPTPP Article 18.78.
- Ex officio authority with respect to goods under customs control: see (CPTPP Article 18.76).
- Limitations and exceptions and intermediary liability: see EU-Vietnam FTA Article 12.55 and CPTPP Articles 18.65 and 18.66).
- Technological Protection Measures: see EU-Vietnam, Article 12.12.
- Registration of sound marks and scent marks: see CPTPP Article 18.18.

<sup>iv</sup> . The specific regulatory issues and topics cited in this section track with Vietnam's commitments in the CPTPP and the EU-Vietnam free trade agreements, as listed below.

- Cooperate on technical regulations to ensure international standards and recommendations form the basis for technical regulations and do not create unnecessary barriers to trade: see CPTPP Article 8.5.3.
- Use relevant international standards as the basis for technical regulations, except when such international standards would be ineffective or inappropriate: see EU-Vietnam Article 5.4.
- Provide national treatment to each other's conformity assessment bodies: see CPTPP Article 8.6.1.
- Provide a reasonable interval between publication of regulation and entry into force so that businesses have sufficient time to meet the new requirements: see CPTPP Article 8.8.
- Publishing new technical regulations and conformity assessment procedures, offering opportunities for public comment, explaining how a final regulation or conformity assessment procedure meets the objectives sought, and providing responses to substantive issues raised by comments. see CPTPP Article 8.7 and EU-Vietnam FTA Article 5.7

<sup>v</sup> The specific SPS issues and topics cited in this section track with Vietnam's commitments in the CPTPP and the EU-Vietnam free trade agreements, as listed below.

- Improve communications and information exchange between the governments when either the United States or Vietnam is considering equivalency or regionalization requests: see CPTPP Articles 7.7 and 7.8 and EU-Vietnam FTA Article 6.10.

- 
- Establish rules for identifying and managing SPS risks, which would preserve the ability to maintain regulations that are not more trade restrictive than necessary: see CPTPP Article 7.9.
  - Promote the use of audits to assess the adequacy of the other country's food safety regulatory system: see CPTPP Article 7.10 and EU-Vietnam FTA Article 6.7.
  - Base import checks for SPS requirements on the actual potential risk posed by the import and to inform importers or exporters a shipment is being prohibited or restricted entry for a reason related to food safety or animal or plant health: see CPTPP Article 7.11.
  - Ensure that import requirements are non-discriminatory and minimize negative trade effects, and that SPS certificates require only information related to SPS issues: see CPTPP Article 7.12 and EU-Vietnam FTA Article 6.6.
  - Establish a process for public comment on proposed measures and to notify SPS measures: see CPTPP Article 7.13.
  - Establish a consultative mechanism under which relevant agencies work to find science-based solutions to expeditiously resolve any bilateral SPS matters that emerge: see CPTPP Article 7.17.

<sup>vi</sup> See EU-Vietnam FTA Chapter 7.