

MONTHLY REPORT FROM THE USAID SUPPORT FOR TRADE ACCELERATION PLUS PROJECT

MAY 2012

Legislative Function and Processes

National Assembly: The Foreign Affairs Committee of the National Assembly requested USAID STAR Plus support to publish the proceedings of former United States Trade Representative Susan Schwab's discussions with the National Assembly on April 19. Ambassador Schwab's presentation was very well received and the Foreign Affairs Committee wants to make her presentation available to all members of the National Assembly in order to enhance the People's Deputies understanding of the Trans Pacific Partnership FTA.

Trade and Investment Enabling Environment

State-To-State Investor Dispute Settlement: Professor David Gantz of the University of Arizona Law School completed a paper on State-to State Dispute Settlement in the WTO, NAFTA, KORUS, ASEAN and other FTAs. The paper was developed at the request of the Deputy Director General Tu of the Ministry of Justice and will serve as an important resource to those dealing with this issue in the on-going TPP negotiations. The MOJ has requested a number of training programs on topics ranging from an overview of the TPP to commercial mediation, for provincial MOJ staff in the summer of 2012. Professor Gantz may be asked to return to Vietnam to participate in a TPP-focused workshop in June or July.

Database for TPP Negotiators: USAID STAR Plus established a portable database of over 1,000 documents, including the text of trade agreements, tariff schedules and WTO materials that can be used by the Ministry of Industry and Trade's negotiators as a resource during the TPP negotiations. The work was completed in time to make it available during the Dallas round of negotiations in May.. The material was provided earlier on USB drives, but it is also now available in a web-accessible format for business associations, NGOs and anyone else who may be interested. This may evolve into a TPP enquiry point in the future.

Franchising Workshop: STAR Plus met with the Domestic Market Division of the Ministry of Industry and Trade (MOIT) to discuss technical assistance requirements for a workshop on franchising they have requested. The workshop will be held on June 12 in Ho Chi Minh City. It will involve approximately 100 people, including Government representatives from the south, private enterprises (distributors, wholesalers and retailers), franchisors and franchisees. Fred Burke, managing partner of the law firm Baker & McKenzie and Nguyen Ba Binh, a Ph.D. candidate who currently in Australia writing his dissertation on franchising in Vietnam, will be the principal presenters. The content of the workshop is still being discussed. MOIT proposes to cover six issues:

- Clarification the concept of franchising in general and franchising in safe food supply chain, in particular.

- Current status of general franchising and franchising of safe food supply chain in Vietnam (including achievement, limitations, reasons for limitation, etc.).
- International law/regulations & international experiences in general franchising and franchising of safe food supply chain in some advanced countries, such as the US and South Korea.
- What VN regulators and enterprises should do to make general franchising and franchising of safe food supply chain efficient in Vietnam.
- Guideline on procedures/steps needed to make franchising more efficient. (e.g. what are common risks? what are measures of overcoming common risks?)
- Recommendations for changes in law/regulations, where necessary.

Footwear and Apparel Workshops: Andrew Stephens attended two workshops in HCMC sponsored by the American Apparel & Footwear Association on May 17-18. The largest companies in this sector in the United States attended the event. In 2011, Vietnam's apparel and footwear exports totaled \$15 billion and the US market accounted for 43% of the total. The first workshop was on "International Product Safety and Environmental Compliance for U.S. and European Apparel & Footwear Markets." Knowledge gleaned from this seminar will help USAID STAR Plus to prepare for a workshop on the TBT chapter of the TPP FTA, possibly using case studies on U.S. TBT regulations of footwear and apparel. The second workshop is on the TPP FTA, with a focus on the TPP treatment of textiles, apparel, and footwear, including the yarn forward rule of origin. The American Apparel and Footwear Association expressed keen interest in working closely with USAID STAR Plus on issues of mutual interest in the future.

Ministry of Foreign Affairs Training: The first phase of training for mid-level MOFA staff on international economic integration was launched on May 21. Professor William Frasure and Professor Rolf Jensen were the principal presenter during the first phase. This is the third year this training has been held. The program is being conducted in Hanoi and Connecticut, with the first two weeks in Hanoi. John Bentley and Professor James Riedel of Johns Hopkins University 1 also made presentations to the group. In addition to MOFA staff, the participants include representatives of the staff of the Central Committee of the Communist Party. The Government of Vietnam is financing approximately 95% of the total cost of the program, including expenses in the United States.

Customs Research Papers: Janet Labuda submitted two research papers on customs issues (*Yarn Forward Rule of Origin and Investment Potential* and *Importer Self-Certification*). These papers will serve as the foundation for a series of much larger technical assistance efforts to address Customs constraints likely to emerge from the TPP agreement.

Survey of Implementation of Law on Laws: From May 21 to 23, USAID STAR Plus supported the Ministry of Justice in conducting a survey on the implementation of the Law on Local Laws and Decree 55 on establishment of legal divisions at the provincial level. Three provinces were surveyed: Son La, Ga Lai and Da Nang. The MOJ assembled a team of seven experts, including two people from the Office of the Government and the Ministry of Home Affairs. In each province, the inter-ministerial team, with the assistance of the local Department of Justice, organized a mini

workshop for 30 local officials and visits to a local district. All three provinces confirmed that Decree 55 is a great step toward strengthening the rule of laws by mandating the establishment of legal units in 14 local departments. However, implementation has fallen short of expectations due to (i) a lack of implementing circulars and conflicts with Decree 13 on organization of local government; (ii) a lack of resources and personnel ceilings; and (iii) limited knowledge and skills. The Ministry of Justice, OOG and Ministry of Home Affairs representatives confirmed that the Government wants to strengthen the rule of law with this decree and provinces are taking implementation of the decree very seriously. The Ministry of Justice and the Ministry of Home Affairs promised to issue the circular soon. The Ministry of Justice is interested in hosting two workshops: one on the definition of legal normative documents and one on incorporation of international commitments in domestic law. The issue of official letters was also raised. The Ministry of Justice said they will draft a new Law on Administrative Decisions to address this issue. Finally, the need for codification was abundantly clear. The conflict between Decree 55 and Decree 13 is just one example. The lack of clarity with regard to what laws are currently in effect is a huge obstacle to strengthened rule of law.

Dairy Food Safety: USAID STAR Plus met with representatives of the Foreign Agricultural Service, USDA to discuss a proposed program on food safety for dairy products. The US Dairy Export Council and the Food and Agriculture Export Alliance submitted a proposed training program earlier. While the original proposal had considerable merit, USAID STAR Plus and the USDA are working on a revised proposal to more specifically address potential trade barriers to dairy products, especially from the US. Vietnam is the 7th largest market for US dairy products.

Footwear and Apparel Workshops: In 2011, Vietnam's apparel and footwear exports totaled \$15 billion and the US market accounted for 43% of the total. The American Apparel and Footwear Association expressed keen interest in working closely with USAID STAR Plus on issues of mutual interest in the course of a meeting in HCMC.

Financial Sector Enabling Environment and Fiscal and Monetary Policy

National Financial Supervision Commission: USAID STAR Plus met with Mr. Vu Viet Ngoan and senior staff of the National Financial Supervision Commission to discuss next steps in the development of the Financial Stability Report and the Financial Early Warning System. The Commission's work on the Stability Report has been delayed due to staffing shortages and other pressing requirements from the Prime Minister, but work has resumed. We agreed that USAID STAR would provide important inputs to the report by May 31 and June 8. They will have a preliminary draft ready for review by Dr. Chi and Governor Nicholl of USAID STAR Plus by mid-July. The reviews will probably be conducted from HCMC and London rather than in Hanoi in order to minimize costs.

Ministry of Planning and Investment Training: USAID STAR Plus conducted a training of trainers program from May 21 to 23 at the request of the Ministry of Planning and Investment. The training focused on a simplified version of the International Monetary Fund's financial forecasting tools for macroeconomic analysis. Twenty people took part in the training.

Rule of Law

Review of the Law Making Process: In order to fulfill its responsibility for supervising the implementation of laws and regulations, the Legal Department of the OOG conducted a diagnostic study of various local authorities and agencies in both the public and private sectors. On May 15 the delegation worked with the People's Committee of Ba Ria-Vung Tau Province and Petro Vietnam, one of the biggest corporations in Vietnam. In these meetings representatives of OOG and other ministries, such as MOLISA, MOJ, MOIT raised law drafting issues to ask for local authorities and agencies opinions. The OOG expects to collect information from various law implementers so that they can strengthen their law implementation supervision task.

Decentralization: At the request of the Ministry of Planning and Investment (MPI) USAID STAR Plus staff and short-term expert, Professor William Frasure, met with a small group from MPI for three hours. The Ministry is preparing recommendations for policy makers on what steps should be taken to decentralize authority for a number of government functions to various local authorities. One of the major concerns is that elected officials tend to narrowly represent the interests of their community rather than the national interest insofar as decisions regarding investment in infrastructure are concerned. As a result, it is almost impossible to get agreement on some large projects in the national interest. The MPI team was briefed on the US system of local government, authority to raise revenue, the relationship between state governments, the federal government and city and county governments. There was also an extensive discussion of how national government powers can be used to reduce discrepancies between poor communities and wealthy areas. One clear message was that it is impossible to separate investment decisions from politics. Another important lesson was that competition between different political parties is an essential element in ensuring better decision making.

IPR Training for Judges: USAID STAR Plus worked with Peter Fowler of the US Patent and Trademark Office (USPTO) to bring two senior US Federal judges to Hanoi and HCMC to participate in a series of IPR training programs. The judges arrived in Hanoi on May 26. In Hanoi they met with private law firms, judges and other officials involved with IPR. On May 29 they met with the US Ambassador before departing for HCMC. In HCMC the judges were invited to HCMC Law University, the Vietnam Anti-Counterfeiting and Trademark Protection Association (VATAP) and the HCMC IPR Association to talk about Intellectual Property cases and Intellectual Property Rights (IPR) specialized judges. The Consulate in HCMC also hosted a roundtable with Judge Bernice Donald and local female judges and attorneys at the Consulate.

IPR Training: Professor Xuan Thao Nguyen of Southern Methodist University in Texas gave a series of lectures on intellectual property rights protection at the Hanoi Law University and Vietnam National University School of Law. IPR has been identified by USTR and others as one of the most important issues for the on-going Trans Pacific Partnership Free Trade Agreement. In addition to providing lectures, she worked with the faculty to develop a new curriculum on IPR. She also donated more than \$600 worth of books to the Hanoi Law University library and met with the

Ministry of Justice to discuss a scholarship program to enable Government officials and students to study at SMU.

IPR and International Trade Capacity Building: On May 11, USAID STAR Plus participated in a discussion with Prof Thao, from Southern Methodist University School of Law and the Hanoi Law University on developing a syllabus on intellectual property rights (IPR)-related courses for the international trade law program, i.e (i) IPRs for international trade, (ii) E-commerce, (iii) IT and the law. Professor Thao, with financial and technical help from USAID STAR Plus, will write three case books on these subjects. It will take six months to complete each book. We plan to bring Professor Thao to Vietnam again in December 2012 to discuss the first book, and to train Hanoi Law University faculty so they can teach those subjects to their students.

Workshop on the New Constitution: The American Bar Association and the Vietnam Lawyers Association held a workshop on proposed changes to Article X of Vietnam's Constitution from May 15-16 in Ha Long Bay. USAID STAR Plus provided two US experts, John Bentley and William Frasure, of Connecticut College, to discuss the history of prosecutorial powers in the USA, the importance of prosecutorial independence and the role of the prosecution in civil appeals. Experts from China and Russia also made presentations on the subject.

Organization of the Government: To get recommendations on changes that may be necessary to improve the implementation of laws and regulations at the local level, the Legal Department of the OOG conducted a diagnostic study of several local authorities and agencies in both the public and private sectors in May. A workshop was held in Ho Chi Minh City on May 17 to obtain input from academics, local government officials and others. There was obvious tension between the desire to devolve more power to the local level and the desire to ensure strong central control. Any delegation of authority to local level bodies is also complicated by the fact that the capacity to fulfill government obligations varies greatly from one province to another. The participants heard about the lessons learned from the recent trip to the United States, but it was clear that a uniquely Vietnamese solution will have to be developed