

MONTHLY REPORT FROM THE USAID SUPPORT FOR TRADE ACCELERATION PLUS PROJECT

JUNE 2012

Legislative Function and Processes

National Assembly Booklet on FTAs: The National Assembly transcribed the proceedings of the workshop held in April with former USTR Susan Schwab and plan to publish the material in a new booklet. The booklet will cover the basics of free trade agreements with the United States and highlight the potential benefits and challenges of the TPP. It will be printed by the end of June and distributed to every member of the National Assembly. Preparatory work is also underway for three workshops on US free trade agreements for the National Assembly to be held in August.

Law on Laws Workshop with the MOJ: On June 15, the Ministry of Justice, with assistance from USAID STAR Plus, held the first in a series of workshops to explore the idea of combining the Law on Laws and the Local Law on Laws. This would help ensure that laws at all levels are subject to the same terms of issuance. This is a critical step to improve the effectiveness of laws and regulations at the central and local levels. The workshop was attended by 50 people from the Office of the Government, the National Assembly, issuing agencies and the Ministry of Justice. Virtually all of the participants agreed that the concept of legal normative documents (LNDs) needs to change, but there was no agreement on what should be done. The current practice of issuing Official Letters without notification is a violation of Vietnam's commitments under the WTO. Furthermore, it is almost certain that the Trans Pacific Partnership Free Trade Agreement will have new requirements for regulatory coherence, regulation impact analysis, public consultation and publication. The Ministry of Justice requested additional information on the US approach to the formulation of rules and the law making process. They were given a preliminary response, but they indicated that they may want Dr. Randy Lutter, a former senior official in the Office of Management and Budget to return to Vietnam to work with them on these issues.

Trade and Investment Enabling Environment

TPP Related Technical Barriers to Trade Training: USAID STAR Plus and Ministry of Science and Technology's Directorate for Standards and Quality (STAMEQ) held a 2-day training programs on transparency and rulemaking procedures for TBT regulations in Hanoi from June 18 to 19 and Ho Chi Minh City from June 21 to 22. The speakers were from STAMEQ and USAID STAR Plus. The training covered: (1) an explanation of TBT chapters in recent FTAs and new TBT issues; (2) transparency requirements; (3) the TBT master plan recently approved by the Prime Minister; (4) good regulatory practice. In Hanoi, there were approximately 80 participants from provincial TBT Network Offices, ministries and private businesses. The participants actively participated in case study and group exercises to improve analytical and soft skills in commenting on draft regulations. The case studies involved current issues in U.S. product safety for apparel and furniture, and a draft Vietnamese regulation on the importation of alcohol. The program in HCMC

was attended by about 85 members of the TBT Network from southern provinces and private companies. We are planning a follow-on training activity near Hanoi in July with the participation of USTR, the Department of Commerce, NIST and OMB. The provincial staff from An Giang Province and Ca Mau Province appreciated the training so much that they are offering to pay the local costs for continued training by USAID STAR Plus in their provinces in the fall of 2012.

Ministerial Effectiveness Index: USAID STAR Plus met with the Vietnam Chamber of Commerce and Industry (VCCI) to discuss their request for support in conducting the 2012 Ministerial Effectiveness Index (MEI). As the request of USAID STAR Plus, VCCI increased their contribution to over one third of the total estimated cost. A number of technical issues related to the survey design and questionnaire were discussed and, as a result, the credibility of the report as a measure of the business community will be much greater. The target date for release of the third edition of the MEI is November 2012.

Franchising Workshop: At the request of the Ministry of Industry and Trade, USAID STAR Plus, in coordination with the US Foreign Commercial Service, held a workshop titled “Franchising: Challenges and Opportunities, on 12 June in HCMC. Approximately 100 people, including regulators and businesses, attended the event. The workshop covered: (1) laws/regulations in franchising, comparison of Vietnam laws/regulations to international laws/regulations and international best practices; (2) comments from franchisors/franchisees on why they participate in franchising, challenges and opportunities; (3) a case study on good and bad franchising; (4) a check list on things to consider when you do the franchising. The FCS of the US Embassy led roundtable discussions between franchisors and franchisees in the afternoon.

Training for Ministry of Foreign Affairs: The training program for personnel from the Ministry of Foreign Affairs and staff of the Central Committee of the Communist Party began the second phase of their training on the campus of Connecticut College on June 11. The US portion of the training will last three weeks and will include field trips to New York City and Boston. The schedule for the first few days includes intensive training in writing in English, a lecture on the US Presidential election in 2012, a lecture on Economic Problems of European Unity, a discussion of Political Problems Facing A United Europe and a lecture on International Environmental Challenges. This is the third year this training has been held. MOFA is covering approximately 90% of the cost.

Government Procurement: USAID STAR Plus conducted a teleconference on Government Procurement with Jean Grier of USTR to get her suggestions on persons we could engage to work on these issues who would be acceptable to USTR. She initially indicated that the basic problem was the refusal on the part of the Vietnamese side to negotiate at all on the issue so there is nothing that can be done. After further discussion, she indicated that their principal objective was to have the laws relating to Government Procurement revised to reflect TPP requirements. She could not reveal what those requirements are, but she suggested that the revised WTO GPA and the US-Peru Free Trade Agreement are much closer to the TPP text than the US-Korea Free Trade Agreement that we have been using as a proxy for the TPP. At the end of the call, we agreed on four possible next steps:

- Prepare a gap analysis on Government Procurement using the Peru FTA and the revised WTO agreement on government procurement as benchmarks.
- Organize visits by OMB and others to explain the concepts of Government Procurement, including best value, to a broad range of GVN officials.
- Bring a consultant to Hanoi who is an expert on USG procurement to educate Vietnamese officials on topics that are relevant to the TPP commitments.

Financial Sector Enabling Environment and Fiscal and Monetary Policy

Roundtable Discussion of Macro Economic Issues: Professor Jim Riedel and Professor Pham Tra presented a paper titled “Growth Slowdown and What to Do About It: Myths and Realities” on June 22 at the Ministry of Planning and Investment. The attendees included Former Minister of Trade Mr. Truong Dinh Tuyen, Pham Quy Tho, Dean of the Academy of Policy and Development and Dr. Nguyen Dinh Cung, Vice President of the Central Institute for Economic Management (CIEM). Dr. Tra and Dr. Riedel’s research finding elicited a lively discussion, especially the issue of dynamic comparative advantage, the discussion on whether or not Vietnam needs a new growth model and reform of SOEs. Several participants, including two that advise the Prime Minister on economic issues, said they now had a new way of thinking about the economic challenges facing Vietnam. There was strong support for the points made by Professor Riedel and Dr. Tra. MPI expressed a strong desire to more support from Professor Riedel and Professor Tra in order to further their efforts to spread the findings to wider audience.

State Bank of Vietnam Release of Macroeconomic Data: The State Bank of Vietnam, for the first time, officially released a set of current financial data on the macro economy. USAID STAR has encouraged this move through various activities, including a study mission to New Zealand and Malaysia in 2009, various papers by Peter Nicholl to the State Bank and numerous research papers calling for greater financial transparency. The World Bank, the IMF and a number of other donors and the representatives of the financial sector have also been making the same plea.

Rule of Law

Plant Protection Law: At the request of the Ministry of Agriculture and Rural Development (MARD), USAID STAR Plus has begun to review and comment on the draft Law on Plant Protection. The law is of major importance to US agricultural exporters who exported \$1.7 billion of agricultural products to Vietnam in 2011. The Food and Agriculture Export Alliance, a consortium of the largest US agricultural exporters and a USAID STAR Plus partner, will also provide comments.

State-State and Investor-State dispute resolution: Professor David Gantz of the University of Arizona Law School submitted two reports on Effective Techniques for Resolving (i) State-to State Disputes, and (ii) Investor-State Disputes to the Ministry of Justice. These will be the subject of workshops in July 2012.

MOF Initiative to Improve Law Implementation: USAID STAR Plus was invited to comment on a project proposal to improve law implementation in areas where the MOF has jurisdiction, following the requirement of Decree 24 and as prompted by MEI.

Investor-State Disputes: Professor David Gantz of the University of Arizona Law School submitted a draft report on “Effective Techniques for Avoiding and Resolving Investor-State Disputes.” This report has been requested by the Ministry of Justice to help them advise the Government on this issue as it pertains to the Trans Pacific Partnership Free Trade Agreement (TPP). The first part of the report focuses on the key administrative aspects of defending investor-state disputes, including the empowerment of a lead agency with responsibility within the host government for management of all investor-state disputes and coordination with other government agencies and stakeholders; policies and practices for avoiding disputes or resolving them short of full arbitration; the use of outside legal or other advisors at various stages of the proceedings; issues relating to the wise choice of the state-party appointed arbitrator; the lead agency’s functions in managing arbitrations; and the post-arbitration review process. The second part discusses relevant administrative experiences in several countries, the Dominican Republic, Mexico, Ecuador, Malaysia, Thailand, Canada and the United States. In the third chapter, Professor Gantz addresses a series of specific considerations relating to BITs and investment provisions of FTAs and general considerations relating to improving the functioning of the lead agency. Selected arbitral decisions are used to illustrate various issues facing host governments, but this is not intended to be a comprehensive review of even a small number of the hundreds of investor-state arbitral decisions that have been issued.

Vienna Convention/CISG: USAID STAR Plus completed a survey of 127 businesses and legal professionals on whether or not Vietnam should join the United Nations Convention on Contracts for the International Sale of Goods (CISG), also known as the Vienna Convention. The CISG is a treaty offering a uniform international sales law. It was signed in Vienna in 1980 and, as of 2010 it had been ratified by 77 countries. The CISG has proven to be very popular because it makes sales of goods disputes less expensive and reduces the risk of being forced to use a legal system that may be completely alien to one party. The survey respondents were overwhelmingly in favor of Vietnam joining the Convention. The results have been conveyed to the Ministry of Justice, which will work with the Ministry of Industry and Trade to prepare a recommendation to the Prime Minister on the subject. The survey was the last requirement before a recommendation could be made to the Prime Minister to join the Vienna Convention.

Supreme People’s Court Portal: USAID STAR Plus translated and edited a publication titled "A New Judge's Introduction to Federal Judicial Administration" by Russell Wheeler. It was originally published by the Federal Judicial Center in Washington, D.C. in 2003. Although it focuses on the organization of the judicial branch in the United States, it deals with many issues facing Vietnam as it seeks to make the judiciary more independent and more professional. Once it has undergone an internal review process, the SPC will post it on their web portal so that it can be read by all judges in Vietnam.