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# PERFORMANCE EVALUATION OF THE SUPPORT FOR TRADE ACCELERATION (STAR) PROJECT IN VIETNAM

**FINAL REPORT**



May 2011

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## **FINAL REPORT**

**Authored by:**

**James Mudge, Principal Author and Team Leader  
James Walker, Senior Economist, USAID/ME/TS  
Wade Channell, Senior Legal Advisor, USAID/EG/TIF  
Paul Fekete, Senior Trade Advisor, USAID/EG/TIF  
Dany Khy, Economist, USAID/ME/TS**

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## Table of Contents

Table of Contents.....	1
Acronyms and Abbreviations.....	2
List of Tables, Charts and Figures.....	3
Preface .....	4
Acknowledgements.....	4
Executive Summary .....	5
What STAR Technical Assistance Did .....	8
STAR Support to the Government of Vietnam to Modernize Commercial Laws and the Legal System .....	8
Expansion of Trade between the United States and Vietnam and Foreign Direct Investment in Vietnam .....	10
How STAR Technical Assistance Worked: Effectiveness and Reach.....	15
Architecture of the STAR I and II TA Programs .....	15
The STAR Operational Approach to Technical Assistance .....	16
Effectiveness and Reach of STAR Technical Assistance.....	18
The effectiveness of STAR technical assistance.....	18
The reach of STAR technical assistance.....	19
Other donor activities related to STAR and STAR coordination with other donors .....	23
The STAR Approach to Conserving Budget Resources.....	23
Observations and Comments: Looking Forward.....	24
STAR's Key Asset and the Changed Circumstances of STAR+ .....	24
STAR+: Moving Toward a New Inflection Point .....	26
The Argument for a Broad Activity Span vs. Concentrating Technical Assistance .....	28
Accelerating transmission of the potential benefits from legal reform to the private sector.....	29
Findings .....	30
Recommendations .....	35
Conclusions .....	37
Annex 1: Excerpts from USAID-STAR I Final Report .....	38
Program Highlights—Successful Implementation of the BTA and Vietnam's Accession to the WTO .....	38
Annex 2: Summary of STAR II Accomplishments.....	41
Rule of Law .....	41
Good Governance .....	42
Liberalization of trade and investment .....	42
Strengthened financial sector .....	42
Macroeconomic foundation for growth.....	42
Annex 3: STAR Plus Objectives and Scope of Work.....	44
STAR Plus Objectives .....	44
Technical Assistance Areas and Approach .....	45
Agreements .....	47
References .....	49

## Acronyms and Abbreviations

AmCham	American Chamber of Commerce in Vietnam
BIT	Bilateral Investment Treaty
BTA	U.S.-Vietnam Bilateral Trade Agreement
CAFTA-DR	Dominican Republic-Central America Free Trade Agreement
CIEM	Central Institute for Economic Management
Eurocham	European Chamber of Commerce in Vietnam
FTA	Free Trade Agreement
GATT	General Agreement on Trade and Tariffs
IPR	Intellectual Property Rights
MOF	Ministry of Finance
MOFA	Ministry of Foreign Affairs
MOJ	Ministry of Justice
MOST	Ministry of Science and Technology
MOT	Ministry of Trade
NA	National Assembly
OOG	Office of the Government
PNTR	Permanent normal trade relations
Project 30	A campaign initiated by the GVN Office of the Prime Minister with conceptualization support from USAID/STAR and VNCI to amend, add or eliminate cumbersome administrative procedures
SC	Steering Committee (of the Office of the Government for STAR I and STAR II)
STAR	Support for Trade Acceleration (USAID technical assistance project)
TBT	Technical Barriers to Trade
TIFA	Trade and Investment Framework Agreement
TPP	Trans Pacific Partnership
TRIPS	Trade-Related Aspects of Intellectual Property Rights
USAID	U.S. Agency for International Development
WCO	World Customs Organization
VNCI	USAID-Vietnam Competitiveness Project
WTO	World Trade Organization

## List of Tables, Charts and Figures

Table 1:	Vietnamese, Asian and World Exports to the United States
Table 2:	United States Exports to Vietnam, Asia and the World
Figure 1	U.S. Goods Trade with Vietnam
Figure 2	Composition of Vietnamese Exports to the United States, 2000-2009
Figure 3	Foreign Direct Investment in Vietnam
Figure 4	Number of Central Official Gazette Issues

## **Preface**

The acronym STAR refers to Support for Trade Acceleration: a series of technical assistance activities funded by USAID in Vietnam between 2001 and 2010. STAR I began in late 2001 and continued for four years, followed immediately by STAR II and a one-year extension ending in late 2010.

STAR wrote a large set of reports: summary reports, special assessments, and quarterly, monthly, bi weekly and weekly reports. This evaluation draws on the major reports and has found no reason not to accept their content at face value. This performance evaluation draws heavily on the various STAR reports and supplements the core material with information gained in about 40 interviews conducted by the evaluation team in Washington DC, Hanoi and Ho Chi Minh City over a five-week period in February and March, 2011. The evaluation report also uses data and information from other sources such as the IMF, World Bank and the U.S. Department of Commerce.

## **Acknowledgements**

The evaluation team wishes to thank the many individuals who generously provided their time and valuable comments to the evaluation team. In particular, we thank the many Government of Vietnam Officials in Hanoi and in Ho Chi Minh City, the members of the Vietnamese business community and the representatives of the various donor and other institutions. Their insights and comments make up the heart of this report.

The team expresses its gratitude to Francis Donovan, USAID Mission Director, Vietnam for his support and thoughtful comments; to Jay Kryk, Economic Growth Office Director, for helping focus the evaluation; to Brian Wittnebel, Economic Growth Officer, who shepherded the evaluation team throughout its stay in Vietnam and for his assistance and guidance; and to Michael Foster, Program Office Director, for his comments and help in clarifying the Mission's interest.

Our very special thanks go to the one who made it work, to Thuy Nguyen, Economic Growth Program Management Specialist, for her guidance, for producing the list of interviews to be conducted and for arranging and scheduling some 40 interviews. She also made the extensive logistical arrangements for the evaluation team in Hanoi and Ho Chi Minh City. Many of the interviews were made possible thanks to the able translation services of Yen Nguyen. We thank her for her skill and diligence.

We would also like to recognize and thank the patient STAR staff for fielding questions and more questions, for their detailed explanations and for helping us in our efforts to improve our understanding of this lengthy and complex project.

## Executive Summary

This report evaluates the performance of the Trade Acceleration Projects (USAID/STAR I and STAR II) that were conducted in Vietnam between 2001 and 2010 and ventures a look forward, partially based on the scope of work for the follow-up to STAR II, known as STAR+.

The confluence of a unique set of circumstances created the initial demand for STAR in 2001 and gave it the impetus to propel it forward.

- The Government of Vietnam (GVN) adopted a new economic growth strategy in the 1990s to transition to a market-based economy and open the economy to international trade.
- The GVN used a bilateral trade agreement (BTA) with the United States and accession to the World Trade Organization (WTO) as instruments to accelerate the transition process.
- The GVN requested technical assistance to facilitate revision of its commercial laws, legal procedures, transparency and appeals processes to meet BTA and WTO requirements.
- The GVN established an effective command structure to coordinate and direct technical assistance, backed by GVN senior political authority.
- USAID management granted broad operational flexibility to the technical assistance providers.

**STAR Performance** Notwithstanding the advantage to STAR from the high priority the GVN placed on achieving legal and procedural reforms, STAR effectively delivered a large volume and variety of technical assistance typically using the same technical assistance tools employed by other USAID technical assistance projects (e.g., technical experts, workshops, study tours, discussions and seminars with clients), but with greater impact. The STAR programs accomplished their objective to help the GVN satisfy BTA and WTO accession requirements. STAR stands out among technical assistance programs because of the degree to which STAR demonstrated skill and resourcefulness by (1) adroitly managing to obtain the services of high quality advisers who could communicate effectively with their Vietnamese clients; (2) its flexibility and responsiveness to the GVN Steering Committee requests for technical assistance; (3) attracting and empowering a high quality and dedicated professional local staff; (4) delivering good value per budget dollar; and (5) prolific production of high quality technical assistance products that made a strong positive impression on the clients. STAR pushed the envelope of what technical assistance can accomplish. Because STAR made extensive use of experts and institutions external to the STAR project and systematically employed other cost-saving techniques, STAR generated excellent value relative to its program budget.

The STAR programs delivered value as well as results. Credits for the legal reform program go to the Government of Vietnam and its agencies; USAID and other U.S. Government stakeholders; STAR management and the STAR Vietnamese staff; and the team of consultants for producing assistance packages that raised the bar for performance.

The degree of change in the legal system could not have been greater: Vietnam moved from a hybrid legal framework based on Napoleonic Code and Russian law to a contemporary, rule-based, international best practice system. STAR supported the major revision or drafting of 166 laws, supported 555 workshops to introduce new laws and procedures, and produced 81 publications and references pertaining to the new legal regime. STAR's work on the

Commercial Code and the Procedure Code provided an indispensable core foundation for commercial development. STAR's work on the Law on Laws went beyond individual commercial laws to alter the foundation of the legal system. Interview respondents noted that the Law on Laws was a singularly important legislative accomplishment. The Law on Laws was characterized as one of the most transformational legal reforms ever done in Vietnam. STAR facilitated other systemic changes including the introduction of formal appeal procedures, web portals to publish laws and enable the public to participate in law formulation and improvements in the judicial system.

Although STAR concentrated on building the foundation for a new legal system, the new commercial laws, systemic improvements and liberalizing effects generated a flow of benefits to the Vietnamese business community. The shift in the business and investment climate opened new markets; foreign direct investment (FDI) created new firms and new opportunities for existing Vietnamese firms. The rapid growth in exports, FDI and diversification of export production are tangible evidence that private sector actors responded to and benefited from the new business and investment opportunities opened up by the BTA (wherein the United States cut the import tariffs on Vietnamese exports from 40 to four percent) and WTO accession that was facilitated with technical assistance from STAR.

The prime reasons for the increases in trade and FDI were the BTA, Vietnam's accession to the WTO, and the accommodating changes in commercial law, procedures and statutes in accord with the BTA and WTO that liberalized trade and investment rules. There was a strong positive response in trade and FDI to the rule changes ushered in under the BTA and the WTO. STAR facilitated the GVN mandated changes and therefore can rightfully claim indirect support for the expansion of Vietnamese trade and FDI in Vietnam. The causal reaction chain is much too long and complex, however, to permit a reasonable quantitative estimate of STAR's singular contribution.

**The effectiveness and reach of STAR** Taking time and resources into consideration, it is important to differentiate the new laws and procedures facilitated by STAR technical assistance from the translation of the new legal regime into everyday practice. STAR I's effectiveness and reach were about equal. That is, STAR I achieved numerous, significant reforms in the body of commercial law and in the workings of the legal system. STAR II expanded in the direction of implementation by increasing dissemination of new laws and regulations while continuing to facilitate the GVN legal reform program to meet BTA and WTO requirements. However, STAR II did not and could not reach deeply and broadly into Vietnam's administration of the new statutes and procedures to make a large impact on day-to-day operations. Bringing about full implementation is time consuming, absorbs large amounts of resources and is the primary responsibility of the GVN.

It is not surprising then that interviews turned up comments such as

- adherence to and enforcement of IPR rules is almost non-existent;
- the judicial system and the judiciary are not adequate to administer the new system; and
- Customs officials were not yet adequately trained or informed to do their jobs properly.

**Beyond STAR** STAR I and II readily met the demands of the time: the GVN wanted to make changes in a large number of laws and procedures quickly to meet BTA and WTO requirements. Some of the circumstances for STAR in 2011 and beyond (called STAR+ by USAID and "Support Legal Implementation for Economic Integration" by the GVN) are similar and some are new relative to those that STAR I and STAR II encountered.



- Similar, but different: The pressure to maintain the rapid pace of reform to conform to international trade agreements is less than it was in 2002-2009. Although the Trans Pacific Partnership (TPP) and (potentially) a Free Trade Agreement among the members of the TPP could be catalysts to continue economic reforms.
- Same: Vietnam is under unrelenting pressure to increase the livelihoods of its young and growing population and pressure to compete with the other economies in the region and the world.
- New: The GVN knows what STAR+ can do to help it accomplish the tasks that before might have seemed formidable.
- New: GVN decision makers' openness to change may be greater, especially among the younger generation and they now have the lessons learned between 2002 and 2010.

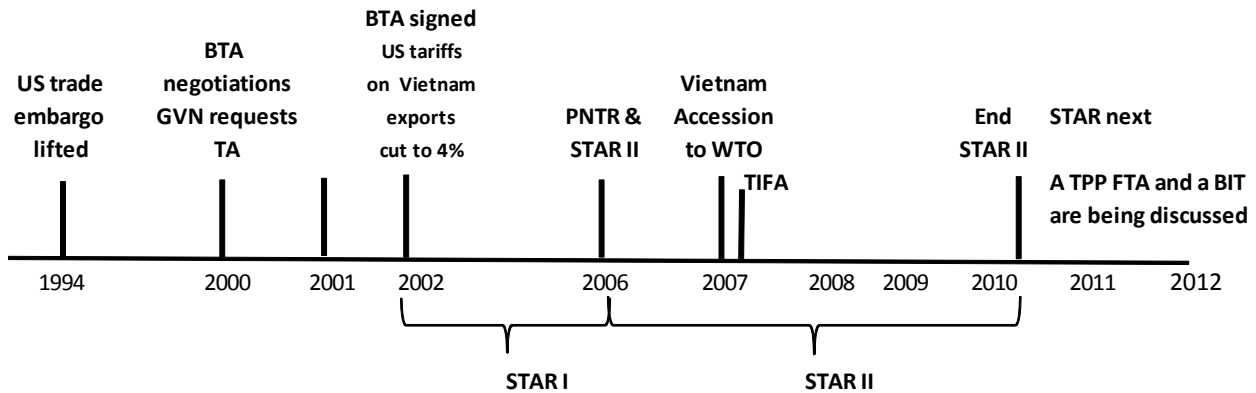
As Vietnam emerges from a controlled, relatively closed economy into a modern rule- and market-based economy, the transformation will require that Vietnam make additional systemic and institutional changes to underpin its emerging new structure. Two key areas, *inter alia*, where reform is critical to deepening Vietnam's economic transformation are the banking and financial system (in which State-owned-enterprises are a major player) and the fiscal system. Although a different issue, USAID and STAR+ should consider how to accelerate the transformation of potential benefits generated by the legal reform program into tangible benefits for the Vietnamese business community. STAR+ can apply its extraordinary assets to address the new demands that will require long-term concentration on one or two institutions.

Now, STAR+ is continuing to apply the broad activity span of previous STARS and because there is always the risk that STAR+ might encounter little potential for progress in one area, the STAR+ design maintains the advantage of being able to redirect its technical assistance resources to more promising activities. But the STAR+ activity portfolio is evolving to include more implementation activities and moving in the direction of facilitating systemic change and institution building. STAR+ is evolving in the right direction but the STAR+ project approach will have to evolve as well. The success of STAR should not become an anchor to the past. USAID and STAR+, in collaboration with the GVN, should start to more closely examine how Vietnam's long-run strategic objectives can continue by deepening the reforms.

## What STAR Technical Assistance Did<sup>1</sup>

STAR differed from trade projects typically undertaken by USAID because STAR technical assistance concentrated on legal systems rather than trade performance *per se*. The STAR program is more analogous to WTO accession projects that USAID has implemented in other countries.

### Timeline of Important Trade and STAR-Related Events



### STAR Support to the Government of Vietnam to Modernize Commercial Laws and the Legal System

*Evaluation SOW: Have the STAR programs accomplished their objectives, and to what extent have they contributed to the successful implementation of the GVN meeting its WTO & BTA requirements?*

Up to 2001 Vietnam's legal system was essentially based on Napoleonic Code and laws from the Russian system. In early 2002, the Government of Vietnam (GVN) using the U.S.-Vietnam Bilateral Trade Agreement (BTA) and accession to the World Trade Organization (WTO) as near-term objectives started the process of introducing a new rule-based legal system. Using technical assistance provided by USAID/STAR, the GVN raised the importance of the rule of law in the minds of its officials, business leaders, and citizens. Vietnamese leaders emphasized that for Vietnam to integrate successfully into the global economy, it had to adjust and modernize its laws and administrative procedures to conform to international standards. STAR approached legal system reform in Vietnam in a comprehensive and methodical way, recognizing the interrelations within the legal framework. STAR worked at every stage of the legislative development process, and with all of the major institutions responsible for legal and trade topics. (A more detailed listing of reforms supported by STAR between 2002 and 2006 can be found in Annex 1. Annex 2 summarizes outputs from STAR II.)

The following is a broad overview and description of the main categories of the GVN-BTA-WTO guided changes that STAR facilitated. Of core significance is that the changes go far beyond specific laws to include systemic change and introduction of modern legal precepts.<sup>2</sup> The GVN introduced measures to:

<sup>1</sup> Unless specifically noted, STAR refers to the entire series of STAR I, II and STAR II Extension technical assistance activities.

<sup>2</sup> Adapted from USAID/STAR, 2008, *Supporting Vietnam's Legal and Governance Transformation*

Increase judicial independence -- This precept calls on courts to solve disputes and the right to an “objective and impartial review” of administrative decisions implicitly require that Vietnam’s courts become more independent. The GNV transferred responsibility for administering the local courts from the Government to the Supreme People’s Court. In the Civil Procedure Code, it removed state prosecutors from civil cases in most circumstances substantially enhancing the authority and responsibility of judges.

Introduce and increase transparency -- Transparency has been given much greater emphasis with the implementation of the BTA, led by major revisions to the Law on the Promulgation of Legal Normative Documents (the Law on Laws) in 2002 and the development of a new “Law on Local Laws” in 2004. There has been a dramatic increase in public consultation on draft legislative and regulatory documents since the BTA came into effect. Publication of laws has increased dramatically, starting with development of a website for the issuance of normative legal documents for the Ho Chi Minh City municipal government. Their website has received several million visits.

Significantly Strengthen Due Process -- The incorporation into Vietnamese laws of the Civil Procedure Code and the 2005 amendments to the Law on Complaints and Denunciations helped significantly deepen the concept of due process in Vietnam. The WTO Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement provisions have yielded major embedded procedural safeguards in Vietnamese legislation.

Strengthen the National Assembly -- The National Assembly (NA), upgraded its capacities to meet its responsibilities to review, approve and monitor the legal reforms to implement the BTA/WTO. Deputies indicated the legislative process operated more transparently and efficiently, substantially increasing the number of major revisions to existing laws and enhancing the development of new, often highly technical laws.

A Stronger System of Administrative Review and Appeal -- Technical assistance from STAR supported GVN changes to make it easier and safer to challenge government decisions. This involved substantial revisions to the Law on Complaints and Denunciations and the Ordinance on Procedures for Settling Administrative Cases.

The design of the technical assistance for such a broad span of large changes is critically important. The STAR team did not simplistically reduce the task to mechanical change of legislation. STAR employed a highly participatory, interactive and educational approach that brought about mindset changes as well as substantive changes in laws and the legal system. As one counterpart stated, “STAR has changed the *legislative culture* of Vietnam.” Vietnam was seeking change, and STAR assisted achieving the change.

By 2008, USAID/STAR had supported the drafting or major revision of 93 laws and regulations, supported almost 300 workshops and seminars for 20,400 stakeholders and government officials, published more than 58,000 copies of reference materials and sponsored 28 study missions for 180 officials. The table below sums up the numbers of specific STAR technical assistance activities completed by late 2010.

Activity	STAR I	STAR II	Total
Legal Normative Documents	91	75	166
Workshops and Seminars	290	265	555
References and Publications	40	41	81
Study Missions	28	28	56

The choice of laws addressed is more crucial than the number of laws. According to interviewees, STAR's work on the Commercial Code and the Procedure Code provided an indispensable core foundation for commercial development; some interview respondents suggested the Commercial Code is now one of the best in the world. Moreover, the legal community reports that the Commercial Code is generally being applied properly by the courts. Other laws, such as those pertaining to franchising and securities, are credited for their positive impact on investment and economic activity. Some however, such as the Retail Act are viewed by the foreign business community to have significant deficiencies, most notably the provision that requires an Economic Needs Test and government approval to be carried out for each and every envisioned retail outlet.

The Law on Laws is an example of the work STAR supported that went beyond individual commercial laws to alter the foundation of the legal system. Several interview respondents in the legal profession noted that the Law on Laws was the single most important legislative accomplishment. A major component of the Law on Laws was the requirement for publication of drafts with concomitant opportunity for public comment. Regular adherence to this provision, with the assistance of STAR, was instrumental in changing the legislative culture. Another critical initiative pertains to codification of laws. STAR II was instrumental in including the codification provision in the Law on Laws.

An interview respondent noted that:

In the last five years there has been unambiguous improvement in making the law process transparent and participatory. There has been a definite improvement. As far as I know STAR [has been] the most active in this area. (3/15)

### *Expansion of Trade between the United States and Vietnam and Foreign Direct Investment in Vietnam*

*Evaluation SOW: To what extent did STAR support and enhance GVN agencies, individuals, associations, sectors, the economy and firms to benefit from BTA compliance and WTO accession? How has [STAR support] produced measurable impacts on trade and investment in Vietnam?*

There were a multitude of changes in Vietnam's economy in the first decade of the 21<sup>st</sup> Century. This section looks at the changes in trade levels between the U.S. and Vietnam and foreign direct investment (FDI) into Vietnam. There is no readily measurable direct causal relationship between STAR assistance and trade and FDI but there is a pronounced correlation between the 2001-2010 period of STAR's operation and a sharp acceleration in Vietnamese international trade and FDI in Vietnam.<sup>3</sup>

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<sup>3</sup> To isolate and quantify the unique impact of STAR would require knowing the counterfactual case: what would have happened in the absence of STAR? This is not knowable. Vietnam adopted the strategic policy to shift to a modern, outward looking, rule- and market-based economic system prior to the start of STAR. Important changes

United States-Vietnam trade in goods: The Bilateral Trade Agreement (BTA) between the U.S. and Vietnam came into force on December 10, 2001. The United States immediately extended Normal Trade Relations/Most Favored Nation status to Vietnam, reducing U.S. average tariffs from around 40 percent to around four percent and opening the U.S. market to Vietnamese exports. The average annual growth rate of Vietnamese exports to the United States between 2001 and 2009 was 39 percent, significantly higher than Asian or World annual export growth rates to the United States for the same period.

**Table 1: Vietnamese, Asian, and World Exports to the United States**

**VIETNAM**

2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
<i>In 1,000,000 Dollars</i>										
822	1,053	2,395	4,555	5,276	6,630	8,566	10,633	12,901	12,290	14,868
% CHG	28%	127%	90%	16%	26%	29%	24%	21%	-5%	21%

**ASIA**

2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
<i>In 1,000,000 Dollars</i>										
445,866	401,473	421,839	451,026	529,267	596,420	671,449	705,487	714,292	585,645	721,514
% CHG	-10%	5%	7%	17%	13%	13%	5%	1%	-18%	23%

**WORLD**

2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
<i>In 1,000,000 Dollars</i>										
1,216,888	1,141,959	1,163,549	1,259,396	1,469,673	1,670,940	1,855,119	1,953,699	2,100,141	1,557,876	1,912,092
% CHG	-6%	2%	8%	17%	14%	11%	5%	7%	-26%	23%

SOURCE: U.S. International Trade Commission, online database, 3/11/11

The expansion of bilateral trade far exceeded expectations. The United States became Vietnam's largest market for exports and one of Vietnam's largest sources of imports. The rapid export growth raised the confidence of Vietnamese investors and encouraged the Vietnam government's efforts to speed accession to the WTO. Vietnam's export growth was deeply influenced by the U.S. import concession to Vietnam and not by regional or world export performance.

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were made by the GVN prior to STAR. For example, see WTO, 2006. *Working Party on the Accession of Viet Nam*, for measures Vietnam took to liberalize enterprises regulation. It is not unreasonable to speculate that Vietnam would have achieved a BTA and WTO accession without STAR, but that the transition would have taken longer and the full set of changes taken together as a cohesive system would have been of lower quality and possibly dysfunctional. Therefore, it can be further speculated the BTA and WTO reforms would have happened later and export and FDI growth would have been at a lower rate than that actually achieved. The gap between the actual and the hypothetical would be the quantitative impact of STAR. But as noted earlier such estimation requires knowing the counterfactual case and it is not knowable.

**Table 2: United States Exports to Vietnam, Asia, and the World**

**VIETNAM**

2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
<i>In 1,000,000 Dollars</i>										
368	461	580	1,324	1,163	1,192	1,100	1,903	2,790	3,108	3,710
% Chg.	25%	26%	128%	-12%	2%	-8%	73%	47%	11%	19%

**ASIA**

2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
<i>In 1,000,000 Dollars</i>										
200,492	180,043	174,552	187,266	209,576	223,032	258,777	290,751	310,269	263,354	338,730
	-10%	-3%	7%	12%	6%	16%	12%	7%	-15%	29%

**WORLD**

2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
<i>In 1,000,000 Dollars</i>										
780,419	731,026	693,257	723,743	816,548	904,380	1,037,143	1,162,708	1,300,136	1,056,932	1,277,504
% Chg.	-6%	-5%	4%	13%	11%	15%	12%	12%	-19%	21%

Source: U.S. International Trade Commission, online database 3/11/11

U.S. exports to Vietnam:

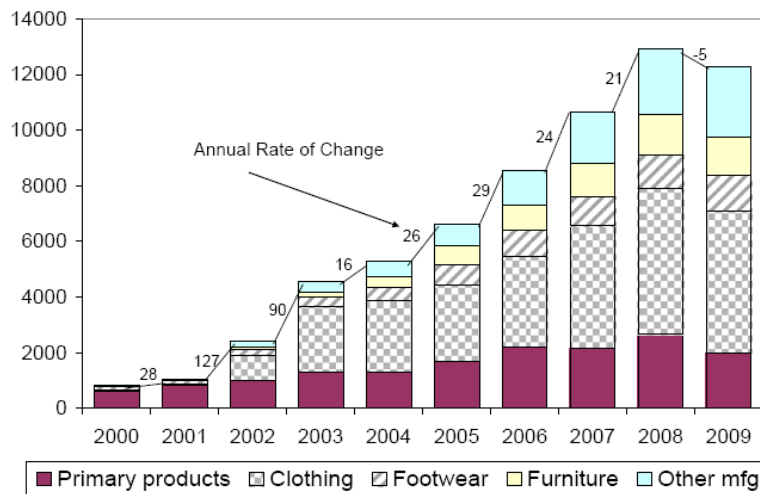
The BTA required that Vietnam concentrate on improving the domestic business enabling environment and opening its own economy to foreign competition. The reforms had a significant effect on U.S. exports to Vietnam. The 128 percent increase in 2003 is mostly attributable to Vietnam’s purchase of U.S. aircraft starting in 2003 and extending through 2005. U.S. exports to Vietnam increased 3.4 fold between 2006 and 2010. The growth of U.S exports to Vietnam from 2007 onward, relative to US exports to other Asian countries and the world, was primarily the result of the new trade rules under the BTA and Vietnam joining the WTO.

Figure 1 contrasts the dramatic change in U.S.-Vietnam goods trade between the 1990s and 2002-2010 and illustrates the large potential for economies that open their systems to international trade and FDI. The trend line is a two-year moving average of Vietnamese exports to the United States.



U. S. Census Bureau, Foreign Trade Statistics, Trade in Goods with Vietnam

**Figure 2: Composition of Vietnamese Exports to the United States**

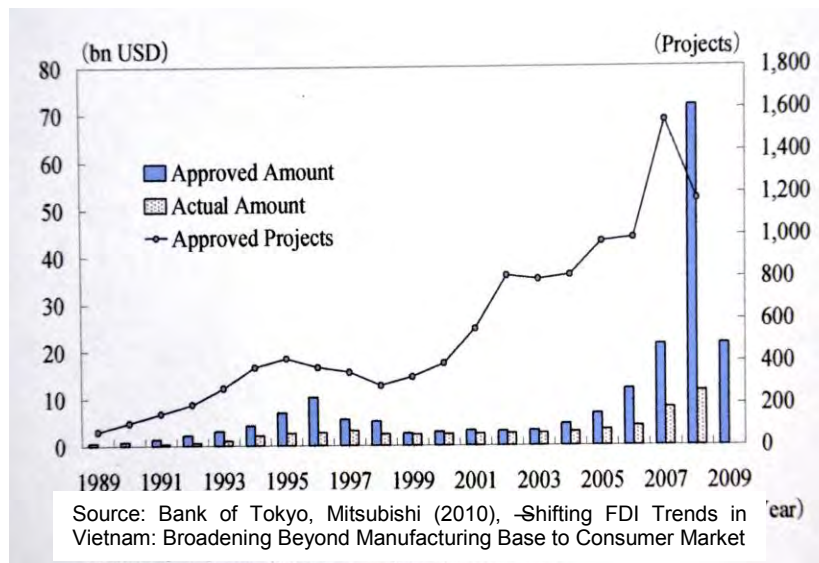


Source: U.S. International Trade Commission, online database

Figure 2 illustrates the change in composition of Vietnamese exports to the United States. Vietnam's export composition became much more diverse, first with significant increases in clothing and footwear, then expansion of furniture and light manufactured products. The share of primary exports fell from near 100 percent in 2000 to about 18 percent by 2008 while the combination of clothing, footwear and light manufactures increased their

share of total exports from near zero percent in 2000 to about 31 percent of total exports by 2008. The opening of the U.S. market caused the composition of Vietnamese exports to shift strongly toward Vietnam's comparative advantage in labor-intensive export production within one decade.

**Figure 3: Foreign Direct Investment in Vietnam**



Source: Bank of Tokyo, Mitsubishi (2010), -Shifting FDI Trends in Vietnam: Broadening Beyond Manufacturing Base to Consumer Market

Foreign Direct Investment (FDI) The World Bank Development Indicators show a major surge of FDI flows in 2007 and 2008 coincident with Vietnam's accession to the WTO. With the onset of the global recession, the flow of FDI fell to \$7.6 billion in 2009.<sup>4</sup> FDI that resulted in real physical investment increased by a factor of approximately 10 times between 2002 and 2010.

STAR Support for the Business Community in Vietnam

*Evaluation SOW: To what extent did STAR support and enhance GVN agencies, individuals, associations, sectors, the economy and firms to benefit from BTA compliance and WTO accession?*

<sup>4</sup>World Bank Development Indicators, online database, (3/8/2011). USAID/Star 2007, STAR II Final Report, Figure 6, U.S. Investment in Vietnam, Asia, and World from General Statistics Office of Vietnam, online database.

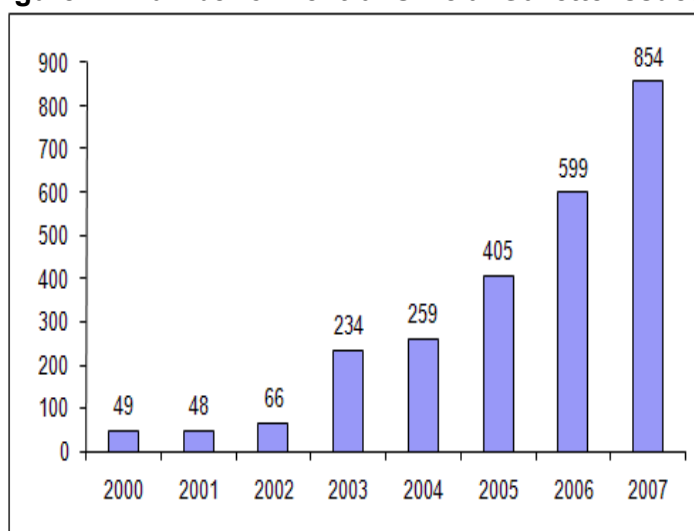


STAR's design objective was to assist the Government of Vietnam (GVN) overhaul its commercial, finance and banking laws to meet BTA and WTO requirements. *It was not a STAR objective to directly assist the private sector.*

However, substantial replacement of Vietnam's existing system of Napoleonic code and Russian laws with a modern legal system exerted a significant *indirect* effect on the business community and private investors in Vietnam. STAR supported large-scale changes that quickly opened new opportunities for foreign trade, improved the business and investment climate by increasing the rule of law and liberalized economic laws and regulations including those on foreign investment. The systemic change in the legal system increased transparency and government accountability in the legal process improved the Vietnamese business environment. The rapid growth in exports, foreign direct investment and diversification of exports (described in section 2.3) are tangible evidence that private sector actors responded to and benefited from

**Figure 4: Number of Central Official Gazette Issues<sup>5</sup>**

the new business and investment opportunities opened up by the BTA and WTO accession. Technical assistance from STAR facilitated the process. The effects of the reforms are still in their infancy and, barring retrogression, the beneficial effects of the reforms will compound over time.



Source: Official Gazette Department, Office of the Government.

STAR assistance to GVN agencies to create web pages and support for workshops enhanced the business community's ability to participate in decisions affecting it. Government ministries and the court system provided streams of information through their web portals about their activities, intended legal and statutory changes and provided a feedback channel from the business community to government agencies. The web portals increased transparency and government accountability to the benefit of the Vietnamese and international business sectors. STAR II reports that it supported the development of 17 websites and launched eight web-based e-government programs. STAR assisted the Vietnam Chamber of Commerce and Industry (VCCI) to create its website that has subsequently become an important tool for commenting on prospective regulatory changes and pursuing other pro-business efforts.

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Although the large majority of participants in workshops given to explain and provide guidance on the new laws were GVN officials, the STAR workshops included private sector leaders and associations such as VCCI and the American Chamber of Commerce in Vietnam (Amcham). Private sector participants were active participants in some workshops. The 2007 USAID/STAR Final Report states that ~~by~~ 2007 STAR I had supported almost 300 workshops and seminars for 20,400 stakeholders and government officials and published more than 58,000 copies of reference materials . . ."The 2010 USAID/STAR II Final Report lists support for 265 workshops and training courses for more than 19,000 participants on the impact of the WTO on Vietnam's

<sup>5</sup>USAID/STAR, Oct. 2010, *Support for Trade Acceleration II Project (STAR II): Final Report*.



economic and legal systems. STAR II published approximately 44,000 copies of reference materials.

In discussions with the evaluation team, STAR staff noted –At the beginning we worked with the GVN but understood the importance of the private sector in the process. We worked with businesses and created a channel between the GVN and private sector. We taught them how to do the Law on Laws comment process.” Perhaps one of the most important advances afforded by the web portals was accomplished through the print media. STAR staff pointed out that –Reporters watch these web sites and they write articles on what they see.” STAR pioneered the use of web sites as an efficient vehicle for two way communication between the GVN and the public.

## **How STAR Technical Assistance Worked: Effectiveness and Reach**

### *Architecture of the STAR I and II TA Programs<sup>6</sup>*

*Evaluation SOW: To what extent have the STAR programs contributed to the successful implementation of the GVN meeting its WTO and BTA requirements?*

*Evaluation SOW: To what extent was the demand driven methodology utilized by the program, and how was it, or was not, an important success factor in the program accomplishing its goals?*

The GVN recognized the urgent need to enhance their knowledge and capacity in order to meet the commitments under the BTA and prepare for WTO accession. Hence, the activities undertaken by STAR technical assistance were done in response to GVN directions aimed at meeting BTA and WTO requirements. The demand driven element was not a USAID or the consultant’s innovation: it was a part of the GVN design. Each activity undertaken by STAR was in response to requests from the GVN. At the start of STAR I the GVN established an inter-ministerial Steering Committee (SC), chaired by a Vice Minister in the Office of the Government (Prime Minister’s Office) to review all proposed activities. Only those activities jointly approved by USAID and the SC were undertaken. STAR undertook these activities in collaboration with counterparts that had been approved by the SC. The Steering Committee initially approved 17 counterparts, including ministries, four committees of the National Assembly, key committees of the Communist Party, the Supreme People’s Court, the Supreme People’s Procuracy, provincial People’s Committees, and private industry (through the Vietnam Chamber of Commerce and Industry [VCCI]). The SC gradually expanded to include 52 counterparts.

*Because the GNV designed and implemented the STAR command structure, buy-in by the government was not an issue, it was already a fact.* STAR acted on behalf of the GVN and creatively responded to specific GVN requests for technical assistance. The GVN Steering Committee structure was innovative, highly effective and was a key element enabling STAR to work quickly and effectively. The design and management of STAR technical assistance matched the GVN’s need for speed and flexibility and STAR responded to the opportunity with its own highly responsive system to deliver high quality technical assistance.

The demand driven approach involved other advantages that helped STAR to move forward. One STAR staffer noted that:

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<sup>6</sup> This section uses material adapted from the 2010, *STAR II Final Report*.

STAR I was under day-to-day management of the OOG, so it was not captured by a group with more narrow interests. We had a lot of support and worked across a wide range of ministries. . . .The SC members could see across [Government Ministry and agency] boundaries. We had many different partners and counterparts. . . . If we ran into a problem we could go to the National Assembly.

It is evident to the evaluation team *that the demand driven methodology was an integral part of the GVN design* and was a vital element contributing to STAR's ability to perform well.

### *The STAR Operational Approach to Technical Assistance*

The GVN core economic strategy to (1) integrate the Vietnamese economy with the international economy; (2) use the BTA and WTO accession as instruments to push toward their strategic goal; and (3) the GVN design of the command structure to manage the STAR TA through the Steering Committee was vital in the causal chain to adopt international standards and best practices. The last link in the chain, however, was also critical: technical support for creation of the new legal system. This is what STAR did and, based on the evidence from reports, tangible results and clients' responses, STAR turned in an impressive performance. Some key elements in the STAR approach are summarized below.

Highly qualified and empowered local staff STAR had a minimum number of foreigners on its staff: STAR II never had more than three resident expatriate staff, one with 15 years' experience in Vietnam. The Vietnamese staff was highly skilled, had major substantive responsibilities and participated in the design and operation of the project. The Vietnamese staff used their knowledge and understanding of Vietnam to translate recommendations from international best practice into recommendations and approaches that made sense in the Vietnamese context. The fact that most of the staff was Vietnamese also greatly increased the confidence of the clients that STAR was responding to them and not a foreign agenda.<sup>7</sup>

The STAR-client relationship Experienced development practitioners know that personal relationships between advisers and their counterparts are the single most critical ingredient in successful delivery of technical assistance. This is certainly true in the case of STAR in Vietnam where a sound working relationship was absolutely essential. Over its nine-year life, STAR created a strong foundation of mutual trust and respect that paid large dividends and enabled the legal and other policy advisers to have candid exchanges with their clients. Several GVN interview respondents remarked on the impressive quality of STAR local staff, their responsiveness, ability to produce Vietnamese products and that the clients liked being able to have informal discussions with the experts.

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<sup>7</sup>: Adapted from 2010, USAID-STAR II Final Report.

A critical element in the relationship that enabled STAR staff and experts to build confidence among counterparts and react to requests quickly, was the operational freedom afforded them by USAID and other interested USG agencies. STAR consultants could react quickly and make rapid course changes while all the time assuring their counterparts that the consultant-client relationship was being respected. This reduced the inherent tension in the intermediate stage when perhaps dozens of changes were being made – or undone – in the course of producing a final product.

Resourcefulness in providing highly qualified short-term expertise with its small local staff of U.S. and Vietnamese nationals, STAR management used numerous highly qualified experts to work on a broad range of laws and other issues. The complexity of the specific tasks often required highly specialized expertise. The experts were frequently drawn from USG and some local government agencies in the United States. (See Box 1) many of these experts provided long-term assistance through follow-up engagements to ensure consistency and completion of the endeavors they supported. To a large degree the task dictated the approach. The STAR approach was not unique relative to other USAID technical assistance projects. Other USAID Missions around the world and consulting firms routinely call upon experts from U.S. Government departments, agencies, private institutions, local governments in the United States, and foreign experts to render technical assistance. However, in comparison to typical USAID technical assistance projects, STAR management employed the technique on an exponential scale and in so doing STAR was unique and STAR management and staff demonstrated noteworthy resourcefulness and expertise.

STAR performance was unique in another aspect. Based on their experience, many USAID technical personnel will agree that even highly qualified advisors may not necessarily be well suited or successful in working with counterparts from a different culture. However in the STAR activity, the Vietnamese respondents often remarked to the evaluation team how well the visiting experts communicated and related to their clients. (One advisor even sang Vietnamese songs with passion.)<sup>8</sup>

#### **Box 1: Examples of Collaborations**

- STAR II arranged co operations with
- The U.S. Patent and Trademark Office, Danida, AUSAID, and private enterprises to organize training for judges and judicial officers in Vietnam and capacity building for courts.
  - The U.S. Department of Justice, Danida, and the UNDP to support the Supreme People's Procuracy regarding the organizational model of the Procuracy and the role of the Procuracy in intellectual property protection.
  - The SEC in capacity building for the staff of the SSC. The SEC provided experts and the project paid for the operations in Vietnam and for some foreign experts.
  - The U.S. Federal Register, UNDP, Vietnam Competitiveness Initiative Project (VNCI), the European Commission, and the Canadian International Development Agency in supporting Vietnam in developing the Law on Promulgation of Legal Normative Documents.
  - The VNCI and the Korean Economic Research Institute in supporting the Office of the Government in implementing Project 30 on reform of administrative procedures.
  - The U.S. Department of the Treasury and other donors on supporting SBV in developing the laws on banking.
  - The National Archives of the U.S., the U.S. Federal Register, the General Electric Foundation, the U.S.-Vietnam Trade Council, and VNCI to develop on the process of getting comments and assessment of impacts during the lawmaking and rulemaking process.
  - The U.S. Federal Register and the General Electric Foundation to implement pilot E-Official Gazettes and develop case studies for use in law universities.
  - USDA to support the Ministry of Agriculture and Rural Development (MARD) in SPS and International Union for the Protection of New Varieties of Plants standards.

Source: USAID-STAR, 2010, *STAR II Project: Final Report*

<sup>8</sup> The interview comments are, by definition, anecdotal and therefore warrant caution. Nevertheless, the comments provide perspective on the reach of STAR-supported changes.

Interview respondents noted:

STAR was one of the best, there are very few [technical assistance providers] that are very satisfactory. (2/25)

The BTA required that Vietnam establish many laws. The STAR legal adviser helped to analyze for new laws. . . . STAR played a very important role in the National Assembly to pass laws for the BTA and WTO. It was easier to reach agreements with STAR help. (2/25)

### *Effectiveness and Reach of STAR Technical Assistance*

Up to this point the picture of STAR technical assistance is reasonably clear: the GVN Steering Committee mechanism was highly effective. Once it had an activity to work on, STAR had a clear mandate and responded with high quality technical assistance products that met, and according to evaluation interview respondents, exceeded many clients' expectations. STAR clients were impressed with the agility of STAR and the technical ability of STAR experts to communicate and adapt international best practices solutions to Vietnam. There is ample evidence on record and corroborated by respondents' remarks to the evaluation team that STAR was highly effective in supporting creation of a large, new body of commercial law, numerous laws essential to the working of the legal system and in communicating the changes to stakeholders. STAR also began to shift its emphasis to start introducing the implementing rules and regulations that would put the new laws in to practice.

Although STAR was operating under the direction and authority of the OOG, STAR did not necessarily have a friction-free path. The introduction of a rule-of-law and more participatory legal system into a bureaucratic command system required skill and ingenuity to move ahead. As one expert observer understated, "Vietnam tends to take a more regulatory view [as opposed to a minimize regulation principle]." (2/24)

#### **The effectiveness of STAR technical assistance**

The evaluation encountered a consistent pattern in responses to questions about GVN clients' impressions of the effectiveness of technical assistance from STAR. The following is a sampling from interviews.

The impression of one long-time observer about change in Vietnam was that "There has been a big change in the banking and finance laws and the management law. It is obvious that trade, commerce and banking have changed dramatically in the last five years. [3/7] A respondent from the U.S. Embassy said "STAR's reputation is quite strong and the Government of Vietnam is quite pleased . . . Vietnam required extensive changes. They liked having a reference source and that was STAR. STAR could always resolve issues. (2/24)

The respondent's views were echoed by STAR GVN clients. A Vietnamese spokesman noted that

STAR was one of the best technical programs for us. STAR had a limited budget and staff . . . They helped us on GATT valuation and enforcement of IPR.

STAR worked hand-in-hand with us giving legal advice; we were impressed by their knowledge. They were highly efficient in working with our staff. We have to learn from this technical assistance being so efficient.

[When we moved on to STAR II], the STAR staff considered Customs more capable and there was less emphasis [on providing assistance to Customs than in STAR I]. . . . STAR works in a professional and transparent way.

We enjoy technical assistance from other donors, but most is not practical and feasible. We're not asking for lots of money, we need institutional improvement. We met with STAR last week to work out the most beneficial tasks. They are demand driven. They get 9 or 10 points out of a possible 10 points.

The WCO (World Customs Organization) has provided little assistance because of questions of how to combine their input with Vietnam specifics. STAR did that very well. The STAR staff did it well.

STAR helped us create and update websites. At first we didn't think much of it but now we think they are useful and good. (2/25)

At one point in an interview, Customs noted they had been assisted by a project from another donor but had discontinued the project because of lots of complicated things, for example, concerning the selection of experts. STAR was good at selection of experts." (2/25)

A member of the National Assembly Economic Committee observed

STAR has very good consultants based in Vietnam. They respond quickly, good quality, world wide experience and professional. During the 2009-10 crisis their workshops were very helpful. The STAR specialists were very helpful. (2/25)

In response to a question on STAR helping the National Assembly to upgrade and become more independent, the response was that

STAR made a big contribution. They did a good job because our workload is huge, we have a small staff. . . . When we organized a workshop STAR supported it and sent experts. This allowed us to come up with recommendations to the National Assembly. (2/25)

### **The reach of STAR technical assistance**

In the process of conducting some 40 interviews with the GVN, private associations and donor organizations, the evaluation team heard comments from several respondents suggesting the legal and statutory changes facilitated by STAR's efforts to introduce and explain the new legal regime had not fully filtered through the system into common practice. Considering the scope, breadth and complexity of the undertaking, carried out in a developing and transitional country context, it would be surprising to hear that the reach of STAR-facilitated reforms was anywhere near total and complete.<sup>9</sup> One respondent offered several comments suggesting the new legal framework has some distance to go to become common practice.

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<sup>9</sup> STAR reports recognize the implementation issue, for example: —Key challenge for Vietnam over the next five to ten years will be to implement these many reforms more effectively in practice. Specifically, Vietnam must overcome a widely perceived —implementation gap” between the greatly improved letter of the law and the realities on the ground of continuing administrative red tape, bureaucratic ennui, regulatory burden, and rent seeking.” 2007, USAID/STAR, *Assessment of the Five-Year Impact of the U.S.-Vietnam Bilateral Trade Agreement*.

There is a need to train the people to understand the new laws and to do this in the provinces as well. They do not understand a lot of the technical aspects of the law and international corporate functioning.

We have a clear legal framework on ownership but it is not used, for example, the law to acquire a local firm by a foreign investor. There is a tendency in the legal system to use the letter of the law and if it is not clear they don't do anything. There is no interpretation of law here. They take no risks but wait for guidance from Hanoi. So you need well trained people [local officials].

Government officials [at the provincial level] wait for an official letter from their Ministry which may or may not reflect the [new] law before they are willing to change how they make decisions.

The MOJ is drafting laws but by the time the drafts are posted on line they are already far developed and set. [The public] needs to get inputs further upstream. (3/15)

In response to the question of whether the GVN had implemented all the changes in law, a U.S. Embassy representative noted “legally yes, but interpretations may differ. The GVN is still working on many regulations and reducing red tape. It is going slowly. . . . They have done well on gazetting the [new] laws and regulations” (2/24)

Customs STAR has a long-standing and close professional relationship with Vietnam Customs. STAR assisted Customs with new data management software (at an approximate cost of \$5,000). The new system will go on line in 2011 providing new circulars, guidelines and tariff schedules for Customs offices throughout Vietnam. Prior to this tariffs were a ‘state secret’ and there are thousands of tariffs. The 2010 STAR Final Report states that STAR trained approximately 1,000 Customs officials, provided training materials on CD for self-study, and provided tariff reference materials to every Customs office in Vietnam. In discussions with the evaluation team, STAR staff expressed confidence that they can readily work with Customs and believe Customs leadership is committed to improving procedures and performance. STAR staff noted that “leadership is saying the right thing. Customs has issued a code of conduct including treating the importer as a customer. They did this on their own and published it.”

The evaluation team was told in other interviews that Vietnam Customs still has a long way to go. Customs is reported to be inspecting 100 percent of incoming containers currently although the official Customs website states that they will reduce physical inspections to ten percent of containers by 2020.<sup>10</sup> When asked about their plans to use risk management techniques in container inspections, the Customs representative noted that goods inspection was an issue and that Customs intended to send a delegation to the United States to learn about its risk-based container inspection. There were also comments indicating that many Customs officials were not yet trained in the new rules and procedures and were unfamiliar with the Harmonized System and valuation procedures. These shortcomings especially applied to Customs officials in the provinces.

Intellectual Property Rights (IPR) STAR provided technical assistance that significantly advanced IPR in Vietnam. Specifically, in 2010, USAID STAR II completed a pilot codification exercise with the Ministry of Science and Technology in which all of the laws and regulations

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<sup>10</sup> Source: see IMAC downloads

pertaining to intellectual property rights were identified and organized in a single code. This makes enforcement of IPR much easier.<sup>11</sup>

The evaluation interviews turned up several broad comments indicating that compliance with and enforcement of IPR rules was scant. Some respondents noted that Vietnam was at a relatively early stage in the process of moving IPR regulations from the written rule to broad application and practice. STAR staff reported that they had trained IPR judges but the judges had not been assigned to IPR work. The general impression was that protecting intellectual property rights in Vietnam was not yet a common practice and that violations were rampant.

The judicial system STAR worked directly with the court system including technical assistance to establish a web portal to make ten years of court decisions available to the public. Prior to this court decisions were state secrets. Adequate and appropriate training of judges is a continuing problem. It was reported that most judges are retired military officers. A UNDP survey of public confidence in the courts found that confidence is low but slowly increasing. (3/15) One respondent commented that legal reform was making progress but change in the judicial system was not moving so well. One legal expert stated:

The court system needs reform. This is a huge need, it does not work. They lack expertise and are not trusted by people. The para legal system does work, e.g., arbitration and torts, and the laws are fine. It's implementation. Corruption is a problem. It is not viewed negatively here. It is a way of making things work. Salaries are low and this needs to be addressed.

Many of the commercial laws are technically beautiful. But there is a big gap between the written laws and their practice, for example, IPR enforcement is very difficult and violations are blatant. The judicial process is unpredictable. In our contracts we require arbitration in Singapore because we do not trust the local courts. (3/7)

Legal drafting The STAR projects involved extensive legal drafting by GVN legal staff typically working in close collaboration with technical support from STAR or STAR-affiliated experts. Legal drafting is a highly specialized skill that requires both specialized training and constant practice to build experience and maintain skills. Interview respondents observed that GVN legal drafting skills improved over time, but at the start, the technical quality of most GVN legal drafters was subpar. Respondents noted that the reasons were a combination of lack of experience, too little specialized training and the legal drafting specialists tended to be disbursed among GVN Ministries and local governments. The widespread distribution of legal drafting specialists in small packets among government agencies meant that some drafters did not have a steady demand for their drafting services thereby limiting their opportunities to gain experience. Although the combination of STAR experts working with GVN legal drafters performed reasonably well, weaknesses in the system are a concern for continuing to meet GVN demand for high quality legal drafting.

STAR workshops STAR workshops varied in purpose and level, but some were presenting complex legal/technical material. One respondent, with an American JD in law, noted that

The STAR workshops were presented at a very high level. For well-trained people they were very interesting but it is doubtful that most of the Vietnamese audience genuinely understood. The presentations, although of excellent quality, were at a very high level;

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<sup>11</sup> 2010, USAID/STAR II Final Report

they were too abstract for most of the audience. STAR had some excellent experts but their discussions were at a too high level.

The respondent noted that when he conducts workshops to explain technical material, he presents a simple message and repeats it three times. His organization usually contracts with a qualified Vietnamese firm such as Economica or other Vietnamese firms to convey information at the appropriate level. In a follow-up discussion with STAR staff, they said the workshop in question was a pilot. –We decided after that to lower the level. We use ministry people to present and now we think the level is OK.”(3/15)

Introduction of economic management and policy formulation skills to the Members and staff of the National Assembly (NA) Star staff noted that on several occasions Members of the National Assembly requested assistance to help them understand how to run an open economy, how to manage for stability and other macroeconomic policy subjects. STAR provided technical assistance to train permanent NA staff members in the use of analytical tools for financial forecasting and constructing early warning systems to alert law makers of potential macroeconomic problems that could require quick action. STAR staff observed that there is continuing demand by policy makers for training on economic subjects. The NA retains experts including analysts at the Centre for Economic and Policy Research at the University of Economics and Business.

Were opportunities missed because of the small size of the STAR budget? Given the broad span and quick pace of STAR technical assistance activities it would have been extremely useful to know if opportunities were being overlooked. Nevertheless, USAID and STAR may have missed some opportunities for more reforms or better implementation in the mid-2000s because of budget limits on STAR. One Government official noted –like the way they conducted business and worked with us, but it would have been better if they had more budget. . . . We discussed that if there is a bigger budget we would want more technical assistance, for example to review the Customs law, work on controlled items and capacity building.”(2/25) An official from the OOG stated that –STAR is one of the longest technical assistance projects in Vietnam. One of the reasons was STAR’s support of priority activities identified by the OOG. The OOG showed the inter-agency group the importance of STAR reforms. However, STAR didn’t have enough capacity to effectively assist so many GVN agencies. (3/2)

The evaluation team was told in interviews that there were missed opportunities, in following up on implementation of new laws and training for preparation of Regulatory Impact Assessments (RIA). (3/15) Ministries are now responsible for conducting RIAs of regulations pertaining to their ministries. This is causing discomfort. An official from the Department of Animal Health in the Ministry of Agriculture and Rural Development stated that line ministries have no technical capabilities to conduct RIAs. Another respondent noted that any capacity to conduct RIAs resides in the Ministry of Justice. (3/15)

The STAR performance evaluation chose not to delve into the regulation-RIA issue. In the early years, STAR priorities were concentrated at the top of the legal regime chain – facilitate drafting of new laws, changing selected procedures in the legal system, publication of new laws and creating a feedback mechanism between the public and the government. RIAs, although of vital importance to implementation, are near the end of the law creation – law application chain. In more recent years, Project 30 and technical assistance from the USAID Vietnam Competitiveness Initiative Project (VNCI) have been running simultaneously with STAR. Efficient, rational regulation and RIAs are core topics of Project 30 and the VNCI.



It is useful that GVN and other interview respondents pointed out technical ability to conduct RIAs as a critical missing element for interpreting and implementing the new commercial laws, however capacity building for RIAs was not on the earlier STAR activity menus and now can be addressed by VNCI and Project 30-related entities. There is the obvious observation that STAR and VNCI should closely coordinate on implementation, regulation and Ministries' technical capabilities to conduct RIAs with the VNCI taking the operational lead for RIA related issues.

### *Other donor activities related to STAR and STAR coordination with other donors*

Other international donors have projects assisting GVN agencies on issues related to economic governance and trade. Other donors have funded a number of projects to support Vietnam's accession to the WTO and the development of Vietnam's legal system. The UNDP, World Bank, and the EU are supporting networks and meetings to facilitate coordination among donor projects in these areas.

The STAR Project met regularly with key donors to exchange information and to explore opportunities for cooperation. The donors (DIFID, WB, MUTRAP) the team interviewed had positive perceptions of STAR. Although they did not collaborate with STAR directly, they noted that STAR provided demand driven technical assistance that has helped shape Vietnam's legal framework and increase transparency in the system. They noted that these changes benefited the overall legal and business environment in the country. In particular, the donors cited STAR's work on the Law on Laws.

Other donor representatives offered the following comments on STAR.

I have been here since 2005. STAR has been the point of reference for everyone [all the other donors]. They got good results because they worked with [the GVN] drafting committees. Sometimes we cooperated with them [STAR]. Their experts knew how to deal with the Vietnamese. (3/7)

We are more trade policy, STAR is more legal. They are the leaders here. They played a large role in the law on goods quality. I always contact them for reference. (3/7)

The World Bank has no project in legal and judicial reform or trade. (3/15)

Discussions in interviews did not indicate any other donor plans in the intermediate future for technical assistance in the core areas that STAR is working.

### *The STAR Approach to Conserving Budget Resources*

*Evaluation SOW: Verify all dollar savings amounts sited in previous STAR I & II reports.*

The 2010 STAR II Final Report states that STAR delivered technical assistance to its 57 counterpart clients in ways that significantly stretched its project budget. The various STAR reports use the terms savings' and leverage' to refer to this process. The STAR Evaluation interprets these terms to mean the cost difference between resident international and local experts who would be fully funded from the STAR budget vs. the STAR approach: extensive use of experts from USG agencies as well as U.S. corporations, associations and think tanks and some international sources. The short-term experts' salaries and overhead were typically funded by their own organizations rather than by the USAID/STAR budget. STAR obtained support from organizations such

as General Electric, the Food and Agriculture Export Alliance and the U.S. Court of International Trade. STAR II supplemented its resident staff with 37 volunteer, unpaid interns (many were Vietnamese and American law and economics students) and expects to continue to use intern services in the future.<sup>12</sup> STAR held down costs by holding workshops in government buildings or in two-star hotels. This low-cost approach conserved resources and signaled the local nature of STAR technical assistance to Vietnamese stakeholders.

The Hanoi law office of Baker & McKenzie provided their services to STAR at a rate 77 percent less than their normal billing rate. The savings from the start of STAR I up to February, 2011 totals \$3.6 million. The data are from a spreadsheet provided to the evaluation team by Baker & McKenzie.<sup>13</sup> It is not considered to be practical to verify all savings per the SOW, short of comparing, for example, the cost of venues actually used by STAR to the cost of say, five star hotel venues.

STAR management supplemented its staff of experts by using visiting experts as a “virtual” team and using email to continue to communicate with their Vietnamese counterparts after the experts had departed from Vietnam. This was typically done at minimal or no cost to the project. Several GVN respondents in the evaluation interviews thought it was admirable that STAR could do so much with such a small budget and that the STAR budget was small compared to other donors in Vietnam.

The evidence suggests that *STAR’s reported savings are correct if viewed as value delivered per dollar of expenditure*. The terms savings and leverage are essentially reporting terms of art. STAR delivered high value because STAR management systematically and resourcefully exercised careful stewardship of its budget resources and the project attracted the support from many organizations, institutions and skilled individuals who were willing to contribute their time and effort. The deeply discounted services of Baker-McKenzie are especially noteworthy.

## **Observations and Comments: Looking Forward**

### *STAR’s Key Asset and the Changed Circumstances of STAR+*

This section discusses the evolving Vietnam economy and adjusting technical assistance over time to address the institutional and policy challenges that will confront Vietnam. The discussion does not presume to make specific forecasts or set out hard and fast recommendations for technical assistance in the out years, but to open a discussion about anticipating future developments and directions in Vietnam and opportunities for technical assistance to support change. The discussion continues to use the term “STAR” but as a term of convenience, meaning one or perhaps more technical assistance activities to facilitate *deepening* of the economic transition in Vietnam.

The circumstances for STAR+ are far different from those of STAR I and STAR II. Two large differences are (1) that the pressure to create new laws and procedures to conform with BTA and WTO accession requirements no longer exists with the same urgency; and (2) the GVN has

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<sup>12</sup> The 37 interns included students from Cornell University, the University of San Francisco, the Foreign Trade University of Vietnam, and the Diplomatic Academy of Vietnam. Several of the volunteers had master’s degrees in international law or economics and worked on issues ranging from codification to shrimp exports. USAID/STAR II Final Report, 2010.

<sup>13</sup> Baker & McKenzie, FY02 - FY11 YTD Unbilled Time and Billed Fees Write-Off as at 28 February 2011.

moved the chairmanship of the STAR Steering Committee from the Office of the Government to the International Cooperation Department in the Ministry of Justice.

On the first point, the BTA and WTO were unique events; there are no equivalent events on Vietnam's horizon. But there are still elements that will (hopefully) motivate Vietnam's senior decision makers to continue to deepen the legal and economic reforms begun in the BTA-WTO era. (See Annex 3 for an excellent "to do" list.) Vietnam is under unrelenting pressure to increase the livelihoods of its young and growing population and pressure to compete with the other economies in the region and the world. Maintaining and strengthening its economy relative to the large and rapidly expanding Chinese economy is an issue that Vietnam can reasonably be expected to give close attention.<sup>14</sup>

Although the BTA and WTO accession are nominally completed, implementation of their provisions will require years of development to become fully operational. There are other international economic agreements being discussed where STAR+ can be helpful, perhaps the most prominent being the Trans Pacific Partnership (TPP) and, potentially, a Free Trade Agreement among the members of the TPP.<sup>15</sup> The STAR+ SOW includes assistance to the GVN to implement the pending U.S. Vietnam Trade and Investment Framework Agreement (TIFA) and a U.S. Vietnam Bilateral Investment Treaty to expand provisions in the BTA. The pending international trade agreements do not pack the same octane and urgency that the BTA and WTO did but times have changed since 2001, such that Vietnam's policy makers now know what benefits international trade and investment agreements can bring; they have experience with meeting international agreement requirements; and the GVN knows what STAR+ can do to help it accomplish the tasks that before might have seemed formidable. The externally generated pressure on the GVN to continue to make reforms may be less, but GVN decision makers' openness to change may be greater, especially among the younger generation.

The second point is the movement of the Chairmanship of the STAR Steering Committee from the OOG Deputy Chairman to the Vice Minister of the MOJ. The STAR+ Steering Committee (SC) will have seven members instead of 15, and 17 counterparts (as of this writing) instead of 60. The smaller numbers of SC members and counterparts appears to reduce STAR's span of operation which was formerly viewed as one of its advantages. But it is not clear whether the new arrangement will affect STAR's ability to provide technical assistance to the most promising activities. The new SC membership and counterparts extend to several key ministries and the Vice Chairman of the new SC will be the former SC Chair from the OOG. This arrangement has positive potential. And STAR+ has the assets, noted previously, of a rich stock of experience, an extensive personal-professional network, a strong record of creativity, and the reputation that STAR has built up over nine productive years. STAR's glass, appears to be one-half full and one-half empty. It is realistic to expect that STAR+ will not operate on the scale and yield the results that STAR I and II produced, but *comparisons to STAR I and II are neither important nor relevant to STAR+* and should not divert the thinking of USAID or STAR+ implementers.

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<sup>14</sup> The relationship could change over time. For example, it should not be surprising if, in a few years, substantial trade and FDI relations between China and Vietnam were to develop. But the core issue remains unchanged: the economy of Vietnam will have to become much more robust and resilient.

<sup>15</sup> The original TPP agreement among [Brunei](#), [Chile](#), [New Zealand](#) entered into force on May 28, 2006. [Australia](#), [Malaysia](#), [Peru](#), [United States](#), and [Vietnam](#), are currently negotiating to join.

## *STAR+: Moving Toward a New Inflection Point*

If one could visualize a chart plotting the timeline of the Vietnamese economy's economic transformation, the timeline would be nearly flat in the 1980s, rising only slightly in the 1990s then one would see it bend upwards, an inflection point, in the 2000s. The strategic objective now should be to achieve another upward inflection point in this decade.

The STAR+ Draft Scope of Work (See Annex 3) outlines the kinds of issues STAR+ proposes to address in the next few years. The SOW offers an excellent menu of activities to be undertaken to continue the process initiated in the 2001-2010 period and continue Vietnam's economic transformation. The SOW includes assisting the GVN to build capacity to continue legal and regulatory reforms and to introduce more legal and regulatory changes. Eleven laws or codes are listed for creation or revision. The general thrust of the SOW is a logical continuation of the work done in preceding STAR programs.

Two items selected from the STAR+ SOW are considered in the following discussion. They are (1) commercializing state enterprises; and (2) strengthening the capacity, *inter alia*, of the Ministry of Finance and State Bank of Vietnam to develop fiscal and tax policies, develop a macroeconomic database and banking sector reform. Of course other areas listed in the STAR+ SOW require attention and are not necessarily less important than the two areas. *The banking-financial system and SOEs are singled out for discussion simply to constrain the discussion and to illustrate the kind of undertakings that Vietnam must address in the not-too-distant future if it is to continue to make real progress in its economic transformation process.* Technical assistance would significantly facilitate GVN efforts in these areas.

A quick bit of background: Vietnam has made the opening moves to become a market-based, open economy, but Vietnam does not yet have the economic management institutions and structures in place that are needed to function well in the global economy. In a nutshell, to optimize growth, to employ national resources efficiently and to manage a balance between foreign and domestic savings, Vietnam will require a banking and financial system that will better mobilize domestic savings; allocate investment to the most productive uses; and maintain relative price stability in a variety of circumstances. On the fiscal side Vietnam requires a system that is better able to mobilize revenues through the tax system to fund investment in public infrastructure and other public goods. In addition, stronger monetary, financial, taxation and public investment systems are required to enhance the ability of policy makers to dampen negative and positive economic fluctuations. Senior Vietnamese economic policy makers have demonstrated their interest in learning about managing an open economy. Now, they require trusted and competent Vietnamese institutions they can draw on to formulate and exercise well-informed monetary and fiscal policies for long-term, stable economic growth.

In one interview a Vietnamese economic analyst noted that

There has been a big change in the banking and finance laws and the management law. It is obvious that trade, commerce and banking have changed dramatically in the last five years, but operations and how the State Bank works is still a problem. (3/7)

In response to a question about government and private sector capacity for trade policy formulation the Vietnamese economist responded

It is not good. There is little information or economic data available. More is needed for private research. It is not feasible to improve the quality of government policy research because the trained people move from the government to the private sector, banking and the international sectors. For sustainability we need civil society in the research sector. Now most research is from private sector groups, but they tend to be lobbying so they have narrow interests and are biased. (3/7)

One indicator of Vietnam's relative weakness in the monetary area is the two recent major inflation cycles and the ongoing struggle to deal with a relatively high level of ambient inflation. The inflationary pressure is nominally caused by foreign exchange inflows and subsequent rapid expansion in the money supply. Although not an indicator based on specific evidence, in other countries with similar histories and structures, state commercial banks and state owned enterprises interact and tend to distort the direction of lending to the least productive investments, while starving the private sector of credit. Politically powerful SOEs generally have privileged and excessive access to credit often for unproductive investments. A pernicious byproduct is a credit system that generates and becomes loaded with SOE nonperforming loans creating an additional drag on growth and diversification and a growing risk of financial system collapse. SOEs are also a major constraint to job growth, not only because they absorb excessive amounts of credit, but they are normally large capital intensive operations, generating relatively little employment compared to private sector small and medium enterprises that tend to be labor intensive.

On the fiscal side, there is excessive reliance on customs revenues (24 percent of total government revenues in 2010) and other direct taxes. For the time being, petroleum revenues can fund public capital investment but are unlikely to be able to keep pace with the growing demands for investment in transport infrastructure, education, health and a social safety net system. The ability to formulate and exercise fiscal policy also introduces a powerful policy instrument to help dampen economic boom and bust cycles or deal with external economic shocks. Although certainly not the only critical developments that need to occur in the coming decade, creation of sound monetary, financial and fiscal institutions and systems will significantly contribute to achieving the next upward inflection point in Vietnam's economic transformation.

Initiating the building of monetary and fiscal institutions and systems will require the understanding and support of senior Vietnamese political decision makers. It is a large task politically and technically and will require several years of consistent, concentrated effort even if the process is relatively smooth. STAR, with its performance track record and stock of trust is well positioned to initiate discussion of the issues with the GVN and respond to a Government request to map out an approach for technical assistance. Although not known, it is likely discussions on banking and fiscal topics have already taken place, given their listing in the SOW for STAR+.

What is the relevance of the preceding discussion to USAID and STAR+? The implication is that there is significant potential for USAID and STAR+ to continue to make major contributions outside of STAR's main areas of emphasis to support Vietnam's economic transition. Over the next two or three years USAID and STAR+ will have many options for directing technical assistance. STAR+ is well positioned to discuss informally and explain to senior decision makers the need for change and how to go about it. If Vietnamese policy makers agree and respond with a request, STAR+ can provide technical assistance to initiate the process. While still demand driven, the technical assistance to support institution and system building will

necessarily be more concentrated and begin to look more like a conventional technical assistance project, although a large, complex and strategic one.

There is little doubt about STAR's standing with the Government. As the Chairman of the Economic Committee of the National Assembly said

We hope to continue to use the STAR+ project. For this year we have a plan for STAR+ to work on laws, independent audit, land law, macroeconomics and more workshops and seminars with the National Assembly. Also work concerning the TPP. [We want their help to] continue training and capacity building

There is a close relationship between the [NA Economic] Committee and STAR+ and we want to continue. (2/25)

### *The Argument for a Broad Activity Span vs. Concentrating Technical Assistance*

The STAR+ SOW is large and some might say overly ambitious, but the collection of items is strategically on target, and may not be unrealistic given STAR's past accomplishments and current assets. It is too early to say if the SOW is too broad, and its many options provide a form of progress insurance.<sup>4</sup> One can look at it as a diversified portfolio.

The alternative to the STAR+ design is to concentrate technical assistance resources on a small number of areas or perhaps just one major area. The STAR+ SOW lists dozens of areas that, it can be argued, meaningful technical assistance would require a major stand alone project, e.g., judicial reform and capacity building; commercializing state enterprises; capacity building in the MOF and State Bank of Vietnam; and banking sector reform. The general argument against a large activity span design is that there is the danger that technical assistance will only touch the areas but not effect change sufficient to achieve thorough and lasting reform, i.e., a large activity span will yield superficial results.

However, an argument for a project design consisting of many discrete activities is that the design affords many potential opportunities for the project to choose and, if progress is not being achieved at a satisfactory rate, the option to move on to another more promising activity. This pro argument is clearly the approach used by previous STARS, and it worked well partly because of the GVN drive to get results rapidly, and *the particular nature of many of the tasks*, i.e., create new laws. STAR I and II met the demands of the time: the GVN wanted to make changes in a large number laws and procedures quickly to meet BTA and WTO requirements. The situation dictated that a broad span technical assistance design be used.

A large part of STAR I and STAR II activities was drafting new or revising existing laws. While far from easy or trivial, the nature of drafting a new law is significantly different from achieving deep reform in systems and institutions in say, the judicial system, the banking- financial sector or fiscal institutions. The former task is essentially production of a document. When the document is drafted and accepted the immediate task is completed. STAR II included more implementation-related work and some training and capacity building. Both STAR programs addressed core systemic aspects, e.g. the Law on Laws; however, neither STAR conducted long-term capacity building in a set of institutions nor facilitated the establishment of the rules and procedures governing their functions and relations to one another as would be required to create a contemporary monetary, banking, financial and fiscal system. Although not unique, the monetary-fiscal task is complex, involves thousands of parts including humans and multiple systems, and deeply entrenched interests that resist change. The undertakings may take years



to produce real results and there is seldom agreement when or if the task is fully completed. With luck, STAR+ may have the opportunity to support reform in the monetary-fiscal area in this decade.

STAR+ faces a dilemma, or will, if it achieves good progress in the next three or four years. Now, STAR+ is continuing to apply the broad activity span of previous STARS and because there is always the risk that STAR might encounter little potential for progress in one area, the STAR+ design maintains the advantage of being able to redirect its technical assistance resources to more promising activities. But the STAR+ activity portfolio is evolving to include more implementation activities and, significantly, to facilitate systemic change and institution building. STAR+ is evolving in the right direction; the STAR+ project approach will have to evolve as well.

As Vietnam emerges from a controlled, relatively closed economy into a modern, market-based, open economy, the process will require that Vietnam make deep systemic and institutional changes to underpin its emerging new structure. There are already and will continue to be demands on STAR+ to go deeper and take on activities that are intrinsically difficult, complex and require longer-term time commitment per specific activity. The STAR+ broad-span approach will gradually have to adjust to changing demand and become more focused.

### *Accelerating transmission of the potential benefits from legal reform to the private sector*

How can transmission of the potential benefits from the GVN-USAID-STAR program be accelerated to generate more tangible benefits for the private sector? Reasonably enough, the Scope of Work for STAR+ continues to concentrate on providing technical assistance to the GVN and government agencies and to press forward on implementation. It is understood that STAR+ concentration of technical assistance on government is the core STAR+ function. And implementation of the legal and regulatory changes will improve what is now a weak link between reforms and the private sector realizing gains from the reforms.

Now it is time to find ways to increase the payoff from the GVN-USAID-STAR legal reform program; to examine how the relative trickle of benefits reaching the private sector can be transformed into a stream of benefits to the private sector. Without a specific, directed effort it may be years before the private sector experiences the full impact of the legal reform program. There are several possible options for technical assistance to accomplish this and probably no single activity would be sufficient. Trade facilitation is one option that is flexible in that it incorporates a large array of sub activities.

STAR II provided substantial support for trade facilitation including building the capacity of Vietnam's Technical Barriers to Trade (TBT) Network. STAR II produced two editions of the world's first interactive *TBT Handbook*, a desktop reference about TBT issues. STAR II provided extensive training on trade remedies, anti-dumping measures, and countervailing duties to government officials and members of the business community. STAR II developed an online tariff database for the Customs Department, trained approximately 1,000 Customs officials, provided training materials and provided tariff reference materials to every Customs office in Vietnam.<sup>16</sup> Technical assistance for trade facilitation could be elevated in STAR+ with an emphasis on including the business community as an active partner. There are alternative approaches such as a separate trade facilitation assistance activity or trade facilitation could be wrapped into the VNCI project.

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<sup>16</sup> USAID-STAR 2010, *STAR II Final Report*.

Technical assistance to Vietnam Customs is a sub-set of trade facilitation and an activity that would help the private sector realize tangible benefits from the GVN-USAID-STAR legal reform program. STAR already has a good track record with Vietnam Customs and is well positioned to explore with Customs ways to increase the level of technical assistance to Customs.<sup>17</sup>

Whether or not trade facilitation is emphasized would depend on USAID and STAR staff evaluation of how and if enough can be done to warrant a greater emphasis and, if not, to consider what other approaches could best benefit the Vietnamese business community. Regardless of the choice of technical activity and delivery vehicle, USAID should examine ways to increase and accelerate the flow of potential benefits of the GVN-USAID-STAR program directly to the private sector.

Two critical areas not listed in the STAR+ SOW are establishing standards for corporate governance and business accounting standards. Both of these areas are integrally related to the private sector, albeit at a high level. One high ranking GVN official and a private sector respondent noted the prevailing weak state of corporate governance in Vietnam.

If STAR worked more directly with business it would be more effective. A common weakness among Vietnamese is poor corporate governance. . . . If [there were] support to improve corporate governance it would be useful. (2/25)

In private Vietnamese companies they have no concept of corporate governance, corporate social responsibility, [for example] what a board of directors is or a shareholder meeting. (3/4)

## Findings

**SOW Tasks and Questions: Have the STAR programs accomplished their objectives, and to what extent have they contributed to the successful implementation of GVN meeting its WTO & BTA requirements? and question 3. To what extent have the STAR programs contributed to the GVN's effective implementation of the BTA and WTO programs?**

**Finding 1** Yes, the STAR programs accomplished their objectives. The core objectives of STAR I and STAR II were to assist the GVN to meet the requirements the GVN accepted under the BTA and for WTO accession. STAR significantly contributed to the delivery of a broad array of new or revised laws, statutes, legal procedures and associated information that created a new body of commercial law and introduced several foundation laws that helped move Vietnam toward a more rule-based, open and market-oriented system and met the GVN's objective to satisfy BTA and WTO accession requirements.

**Finding 2** Notwithstanding the large advantage to STAR from the high priority the GVN placed on achieving legal and procedural changes prescribed by the BTA and those needed for WTO accession, STAR was extremely effective in the way it delivered technical assistance. STAR stands out among technical assistance programs because of the degree to which STAR management demonstrated skill and resourcefulness in (1) adroitly managing locating and obtaining the services of high quality advisers who could communicate effectively with their Vietnamese clients; (2) its flexibility and responsiveness to Steering Committee requests for technical assistance; (3) attracting and empowering a high quality and dedicated professional

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<sup>17</sup> Neither trade facilitation nor Customs capacity building are specifically listed in the SOW for STAR +.



local staff; (4) stretching budget resources, and (5) prolific production of high quality technical assistance products that made a strong positive impression on the clients.

**SOW Tasks and Questions: To what extent did STAR support and enhance GVN agencies, individuals, associations, sectors, economy and firms to benefit from BTA compliance and WTO accession?**

### **GVN agencies**

**Finding 3** STAR provided technical assistance and worked with GVN agencies starting with the National Assembly (NA), some NA subcommittees and virtually every line ministry in the GVN to accomplish specific tasks mandated by the Office of the Government through the GVN Steering Committee. It is noteworthy that in the process of delivering technical assistance STAR experts introduced new approaches and vital new information, e.g., assisting NA members to better understand international economics and special topics such as dealing with external economic shocks.

### **Individuals, associations**

**Finding 4** STAR did not assist individuals as a deliberate project objective but did include business associations in the technical assistance process, such as the VCCI, Amcham and Eurocham as well as some government academic institutions. Workshops, web portals and collaboration with the associations were the main assistance instruments. STAR assistance was aimed at helping introduce and explain the new rule-based legal system. The assistance was more foundation building than export action oriented.

### **Sectors, economy and firms**

**Finding 5** STAR technical assistance activities did not target specific sectors, but the trading sector and the export firms and their suppliers were major beneficiaries in terms of investment and new demand. This is supported by the fact that Vietnamese exports experienced a 39 percent average annual growth to the United States between 2002 and 2010 when STAR was providing support to the GVN effort to implement mandated BTA and WTO changes. The benefits flowing from the new commercial laws, systemic improvements and liberalizing effects were distributed across all sectors. Regarding firms, the shift in the business and investment climates opened new markets; FDI created new firms and new opportunities for existing firms. The rapid growth in exports, foreign direct investment and diversification of export production (described in section 2.3) are tangible evidence that private sector actors responded to and benefited from the new business and investment opportunities opened up by the BTA and WTO accession that was facilitated with technical assistance from STAR.

**SOW Tasks and Questions: How has [STAR support] produced measurable impacts on trade and investment in Vietnam (quantify in dollars if possible)?**

**Finding 6** It is not feasible to *isolate and quantify the unique impact* of STAR on trade and investment. STAR itself was not aimed at directly causing change in trade or FDI although there were large increases in trade and FDI during the time STAR operated. The prime reason trade and FDI increased were the BTA, which opened the U.S. market to Vietnam's exports, Vietnam's accession to the WTO, which opened Vietnam's economy to FDI, and the accommodating changes in commercial law, procedures and statutes in accord with the BTA and WTO that liberalized trade and investment rules. There was a positive response in trade and FDI to the rule changes ushered in under the BTA and the WTO. STAR facilitated the GVN mandated changes and therefore can rightfully claim indirect support for the expansion of

Vietnamese trade and FDI in Vietnam but the causal reaction chain is much too long and complex to allow a reasonable estimate of STAR's singular contribution.

**SOW Tasks and Questions: Verify all dollar savings amounts sited in previous STAR I & II reports.**

**Finding 7** The terms "savings" and "leverage" are essentially reporting terms of art. It is more correct to say, and it is valid, that STAR delivered high value per dollar of expenditure. Two main factors contributed to STAR's high-value performance. First, STAR management systematically and resourcefully exercised careful stewardship of its budget resources. Second, STAR and the nature of the project attracted the interest of many organizations, institutions and skilled individuals who were willing to contribute their time and effort. The deeply discounted billing rates of Baker-McKenzie are especially noteworthy.<sup>18</sup>

**SOW Tasks and Questions: What combinations of activities were more successful and sustainable than others, and what were the primary factors that contributed to that success, highlighting, but not limited to the four areas that STAR assisted the GVN on trade in goods and services, foreign direct investment (FDI), transparency and IPR?**

**Finding 8** STAR typically used the same technical assistance activities employed by other USAID technical assistance projects, e.g., technical experts who assisted in specific tasks, workshops, study tours, discussions and seminars with clients. The key elements in the STAR approach were the (1) high degree of flexibility and speed in responding to demands, including important demands that fell outside the core area of facilitating BTA and WTO-related changes; (2) the dedicated, high quality Vietnamese staff; (3) consistently high quality technical advisors who adapted best international practices to the Vietnamese setting; (4) provision of solutions in a style acceptable to the clients; (5) and cultivation of excellent client-advisor relationships. The key to STAR's achievements was the particular STAR approach to carrying out the technical assistance activities.

#### **Trade in Goods and Services and Foreign Direct Investment (FDI)**

**Finding 9** There is no explicit, direct link between STAR and the rise of exports from Vietnam or FDI in Vietnam, but STAR did influence the outcome. Vietnam's economic growth strategy was to open the economy to international trade using the BTA and WTO accession as instruments to realize the strategy. STAR's support of the GVN program to put in place the BTA-WTO legal and procedural changes created real change and gave credible evidence to the private sector that the GVN was committed to economic reform in deed, not just in word. During the time STAR operated in Vietnam, trade and FDI increased significantly. There is a clear link between the BTA-WTO reforms and Vietnamese trade and FDI growth. STAR contributed to the reform process: *STAR indirectly contributed to the rapid expansion of Vietnamese trade and level of FDI.*

#### **Transparency**

**Finding 10** Relative to the state of government transparency before STAR-BTA, there has been a huge increase in transparency. Pre STAR-BTA it was not a practice for the public to participate in formulation of laws and regulation; there has been a dramatic increase in public consultation and information available to the public. STAR supported major revisions in laws and creation of web portals that, for example, provided a 10-year record of legal decisions,

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<sup>18</sup> Verification of savings in an accounting sense would require estimation of the cost difference between the STAR major cost categories and some hypothetical project's costs categories.

customs regulations and tariffs. It is now a legal requirement that draft laws and regulations be publicized, and there is a period for public comment. However, the implementation of transparency practices is still a work-in-progress. Increasing transparency of government is primarily an implementation issue.

## **IPR**

**Finding 11** The foundation of written IPR rules and their codification has been established. Comments from interviews indicated compliance with and enforcement of IPR rules is scant. The general reasons cited were that Vietnam was at a relatively early stage in the process of moving IPR regulations from the written rule to practice; and the training and institutional development is not yet adequate to enforce IPR rules. There is still a long way to go to implement intellectual property rights.

## **What worked, did not work, and why**

**Finding 12** The GVN SC, STAR partnership worked well. (See findings under demand driven methodology below.) STAR flexibility and quickness of response to requests from the Steering Committee, STAR's high quality staff and experts were attuned to the Vietnamese context and made technical assistance activities work well. No particular technique or approach appeared to work poorly; however, the constraints of time and to a lesser degree, resources, limited the extent to which the STAR-supported changes could reach down into the system to become routine practice. Laws, statutes and procedures were put on the books, precedents were set, workshops introduced and training provided information on the new laws and procedures. A beginning was made to bring private sector representatives into the legal and policy formulation process. STAR made wide use of web portals significantly increase transparency and government-public communication. However, there remains a large gap between the written laws, statutes and procedures and their widespread, everyday application. This is not, in the opinion of the performance evaluation, a failure of STAR but a matter of having adequate time and investment of effort to effect the institutional changes, training and changing attitudes sufficient to achieve real change at the ground level. Deep and broad scale implementation is first and foremost a GVN responsibility, although technical assistance can help speed up the process. Obstacles to achieving wide-spread practice include entrenched interests, excessively low government salaries, small staffs in some cases, inadequate training, and a system in which informal payments are an integral part of the system.

**SOW Tasks and Questions: To what extent was the demand driven methodology utilized by the program, and how was it, or was not, an important success factor in the program accomplishing its goals?**

**Finding 13** The demand driven element was not a USAID or a STAR design feature. The demand driven methodology was an integral part of the GVN design and was immensely important to the success of STAR support for reform. The GVN-directed demand for technical assistance was crucial to STAR's work and performance.

**Finding 14** A related point is that because the GVN designed and implemented the STAR command structure, buy-in by the government was not an issue, it was already a fact. STAR acted on behalf of the GVN and creatively responded to specific GVN requests for technical assistance. The GVN Steering Committee structure was innovative, highly effective and a key element that enabled STAR technical assistance to work quickly and effectively. The design and management of STAR technical assistance matched the GVN's need for speed and flexibility, and STAR responded to the opportunity provided by the GVN with its own highly responsive system to provide high quality technical assistance.

**Finding 15** The Office of the Government Steering Committee mechanism gave STAR ample latitude to manage its operations within the guiding framework. USAID and other USG agencies essentially gave STAR broad operational freedom. The two elements together gave STAR the freedom it required to be agile and effective.

**Finding 16** It is a given that demand for technical assistance by a host government (or the host government allowing the technical assistance to assist private sector in response to demand by the private sector) is fundamental to any donor supported technical assistance in any country. Technical assistance will not occur if there is no demand for it from the host government. Demand in the STAR case was relatively unique because of the strength and certainty of the demand, and the GVN steering committee mechanism that coordinated and directed demand for technical assistance.

### **Other Findings**

**Finding 17** In coming years the degree of demand, definition and organization of direction of specific activities can be expected to be less than that experienced in 2001-2010. Demand can be expected to take on a more interactive nature (and conventional) in which the technical assistance works collaboratively with decision makers to identify problems, issues and approaches with government decision makers who then request technical assistance to facilitate production of solutions.

**Finding 18** The STAR approach offers a successful, applied model for assisting a host country that wants to become more integrated into the global economy as part of its economic growth strategy. Vietnam's recent trade performance may attract the attention of other countries wanting to accelerate their economic growth. There might be cases, in Africa for example, that would find a STAR *cum* trade-agreements-approach promising. The STAR model is already being applied in Laos; however, it is unlikely conditions will be found in other countries that duplicate Vietnam in 2000. Nevertheless, the idea of a trade agreement - technical assistance package using the STAR operational model has potential for application in some other countries. A similar approach has been used in Central America in the CAFTA-DR Trade Agreement. The approach also pertains to some trade integration activities in Africa

**Finding 19** STAR's effectiveness in delivering high quality technical assistance partially explains the GVN's interest and willingness to extend reform well beyond the letter of BTA and WTO requirements.

**Finding 20** The effectiveness and high quality of STAR technical assistance created credibility for USAID being capable of delivering high quality, objective and flexible support to Vietnam's economic transformation.

**Finding 21** It is not likely STAR, in its entirety, can be replicated elsewhere, not for any intrinsic reason but because Vietnam in 2001 was the right time and the right place for a STAR. The particular set of circumstances is not likely to occur again. For example, 'buy in,' usually a major challenge in TA programs was an accomplished fact in Vietnam when STAR started. The Government of Vietnam wanted the technical assistance and directed its agencies and STAR to get the outputs the GVN wanted. Powerful factors external to STAR influenced the outcome and were critical to STAR overcoming obstacles and producing products that facilitated large-scale change.

**Finding 22** One of the several elements contributing to STAR's productivity was the combination of demand for technical assistance from government agencies and the large number of partner agencies. It was a large market and STAR was the prime resource for legal technical assistance in the early 2000s. The large number of potential clients gave STAR choices in delivering technical assistance to the most promising clients. It may be worthwhile, in particular circumstances, to broaden the base of future USAID projects to a larger range of stakeholders to avoid potential operational bottlenecks.

**Finding 23** Small may be more effective when there is limited host country ability to absorb large changes. Although the GVN and its agencies moved quickly to organize and absorb the technical assistance provided by STAR, the project's relatively modest budget may have favored STAR's effectiveness in the early years by not overwhelming GVN agencies.

**Finding 24** STAR maintained continuous contact with its clients over several years. This helped establish trust and sound working relationships. STAR contact with clients included numerous exchanges and discussion that built professional trust and opened opportunities. Continuous contact over an extended period is an effective way to learn about *precisely* what technical assistance to deliver and how to deliver it.

**Finding 25** National Assembly Members and staff are interested in increasing their understanding of economics and specific issues such as economic stabilization techniques, how a small open economy works, monetary, banking and fiscal management techniques. Their openness and interest are a potential open door for future technical assistance.

**Finding 26** Because of the credibility assets STAR has built up over nine years it is well positioned to have informal discussions with the GVN about undertaking reforms in some critical economic management areas that require deep changes to enable Vietnam to substantiate gains and move ahead in the economic transformation process. There are several general references to capacity building in economic management institutions in USAID/STAR+, Proposed *Work Plan for 2011*.

**Finding 27** As the GVN-USAID-STAR legal reform progresses, the issue of transmitting the potential benefits to the Vietnamese private sector is becoming more urgent.

**Finding 28** Because Vietnam is early in the transition process, international corporate governance standards have not yet been introduced. Two knowledgeable interview respondents note corporate governance as a weakness in Vietnam. Although not discussed in the field work phase, it also unlikely that many private companies in Vietnam have adopted international standard corporate accounting standards.

## Recommendations

**Recommendation 1** The sum of the findings on STAR performance, as listed in the scope of work for the performance evaluation, is that STAR has performed well and that STAR delivered value for the money. The recommendation regarding the STAR overall approach and techniques for delivering technical assistance is that STAR+ should continue to use the approaches it has in the past to deliver high quality, Vietnam-specific technical assistance to the GVN. STAR + with USAID support should maintain the operational freedom to be flexible and rapid in responding to technical assistance demands from the GVN. The approach is effective and the STAR+ staff is good at it.

**Recommendation 2** It is time USAID start to examine ways to *translate more directly the potential benefits of the legal reforms into tangible benefits for the private sector*. For example, a trade facilitation program is a good candidate to realize the potential gains from the legal foundation work that has been done by the GVN-USAID-STAR program. Trade facilitation efforts focus on easing the constraints related to the movement of goods. Accordingly, trade facilitation can focus on a range of interventions that improve customs, transportation, and the commercial regulatory environment. In the Vietnamese context, focusing on trade facilitation might entail regulatory simplification which would positively impact the trading community as well as help the government implement and enforce some of the legal and regulatory reforms enacted during earlier stages of STAR I and II.

**Recommendation 3** Technical assistance to Vietnam Customs is a sub-set of trade facilitation and another option that would help the private sector realize tangible benefits from the GVN-USAID-STAR legal reform work. STAR already has a good track record with Vietnam Customs and is well positioned to explore ways with Customs to increase the level of technical assistance. In all countries, customs plays a crucial role in either facilitating or constraining trade. By continuing and supporting customs efficiency initiated under STAR, with additional support to other border control agencies that also carry out regulatory responsibilities, USAID can promote a trading environment that will benefit private sector entities and the economic performance of Vietnam.

**Recommendation 4** USAID and STAR+ should examine and discuss with the GVN the idea of STAR+ supporting the introduction of international-standard corporate governance and corporate accounting rules and practices.

**Recommendation 5** STAR+ should look into the prospect of providing technical assistance to the GVN to establish permanent legal drafting units in the National Assembly and the OOG. Currently, drafters are detailed or retained on an ad hoc basis, so that there is no core professional drafting office. USAID/STAR+ should also look at providing technical assistance to a law school or a government training academy to establish an institutional capacity to teach legal drafting as an academic specialty.

**Recommendation 6** USAID should look beyond the STAR+ horizon and discuss with the GVN what critical strategic initiatives the GVN should undertake to deepen its economic transformation and how USAID-funded technical assistance can support the GVN effort with a more focused in-depth technical assistance program.

**Recommendation 7** USAID and STAR should follow up on National Assembly Members' and staff interest to expand their understanding of the working of a small open economy in the international economy and selected macroeconomic management issues.

## Conclusions

USAID/STAR pushed the envelope of what technical assistance can accomplish. The STAR programs delivered value as well as results. Credits for the legal reform program go to The Government of Vietnam, to USAID, to the USG stakeholders, to STAR management and to the STAR Vietnamese staff, and team of consultants that raised the performance bar for technical assistance.

Taking time and resources into consideration, it is important to differentiate the new laws and procedures facilitated by STAR technical assistance from the translation of the new legal regime into everyday practice. STAR I's effectiveness and reach were about equal. That is, STAR I supported a large array of changes in the body of commercial law and in the workings of legal system. STAR II expanded in the direction of implementation by increasing dissemination of new laws and regulations while continuing to facilitate the GVN legal reform program to meet BTA and WTO requirements. STAR II did not and could not reach deeply and broadly into Vietnam's administration of the new statutes and procedures nor make a large impact on day-to-day operations of the private sector. Implementation is a national responsibility; technical assistance can only support the national effort. Application and enforcement of legal statutes, such as IPR rules or a well-functioning judiciary and court system, continue to be an objective rather than an accomplishment.

The success of the program should not become an anchor to the past.

- USAID and STAR+, in collaboration with the GVN, should start to examine how Vietnam's economic transformation can be deepened. There is a significant need for institutional capacity building for policy analysis and policy formulation.
- The GVN-USAID-STAR+ should start to devise ways to convert and quicken the flow of potential benefits from the legal reforms into direct, tangible benefits for the Vietnamese private sector.

## Annex 1: Excerpts from USAID-STAR I Final Report

### *Program Highlights—Successful Implementation of the BTA and Vietnam’s Accession to the WTO*

STAR support facilitated reforms in 93 laws and regulations, of which 69 had been enacted by the close of the project. The remaining 24 were still being developed and are expected to be passed in the next year or two. By working at literally every stage of the legislative development process (changing the letter of the law), and with almost every institution responsible for implementing the reforms (enforcing the law in practice), USAID/STAR—in practice—became an integral part of Vietnam’s legal reform efforts. USAID/STAR helped most directly by explaining the relevance of BTA and WTO requirements and, more generally, by providing perspectives on international “best practice” regarding domestic-oriented legal reform.

USAID/STAR helped to advance the reforms within the Vietnamese system by providing detailed legal comments on often multiple drafts of each of these laws and regulations and by supporting several hundred seminars to gain feedback from stakeholders and to encourage consensus among state officials. In collaboration with myriad public and private sector partners, USAID/STAR trained<sup>19</sup> thousands of government officials and businesses to improve their understanding of BTA and WTO requirements, and, once key new laws were promulgated, to build their capacities to enforce the new laws more effectively. Carefully selected study missions to the United States, to Vietnam’s Asian neighbors, and within Vietnam were used to help key government leaders gain firsthand knowledge of how other countries (or local provinces) were handling important issues related to BTA/WTO compliance. To encourage greater transparency and better governance, USAID/STAR supported the development of four websites—by the Vietnam Chamber of Commerce to post draft legislation for public comment; by the Office of the Government for a pilot *Electronic Official Gazette*; by the Investment and Trade Promotion Committee of the Ho Chi Minh City People’s Committee for a website on BTA and WTO issues; and by the Supreme People’s Court to create its first-ever website. In addition, USAID/STAR supported the first-ever publication of court decisions by the Supreme People’s Court’s Supreme Judicial Council.

USAID/STAR worked with counterparts to develop a number of research reports to assess the impact of the BTA on Vietnam’s trade, investment, economic structure, and legal system. These reports were highly publicized by our counterparts to help raise public understanding of the successful impact of the BTA on Vietnam’s economy, and to identify remaining challenges. Especially from 2002 to 2004, following the coming into force of the BTA, our reports documented the rapid growth of bilateral trade between the two countries, contributing importantly toward building public support for further reforms and eventual WTO accession. In

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<sup>19</sup>In 2001, there was considerable concern among many in Vietnam about the impact of the BTA. Many considered the huge number of reforms required to be made by Vietnam (and almost none by the United States, except for extending normal trade relations—most favored nation [NTR-MFN] trade status) to be one-sided, and many doubted that Vietnamese exporters would be able to penetrate the complicated and highly competitive U.S. market. These concerns, of course, were quickly relieved after Vietnamese exports to the United States boomed, and after Vietnam steadily made the serious legal reforms required to comply with the BTA. In addition, there was concern among many in Vietnam about what a USAID technical assistance team would do, since no major USAID program had yet been implemented in the Socialist Republic of Vietnam. The leadership provided by Vietnam’s Office of the Government and USAID at the beginning of the process opened the door for STAR to develop widespread credibility among Vietnamese counterparts that is now almost taken for granted. STAR was asked to support many of the most sensitive reforms in Vietnam, and was often the only donor team so trusted.



2005, just before the first-ever visit by Vietnam's Prime Minister to the United States, we cooperated with the Ministry of Planning and Investment to develop and release a seminal report documenting the strength of U.S. foreign direct investment into Vietnam. In addition to the reports developed with our assistance, USAID/STAR supported distribution throughout the country of more than 50,000 reference materials on important issues related to the BTA and WTO, including almost 10,000 copies of the Vietnamese version of the BTA published in Vietnam's *Official Gazette*.

USAID/STAR's overall outputs over five years and five months of operation can be summarized as follows:

**Laws Supported.** USAID/STAR provided tailored support, including detailed legal comments on often multiple drafts, to help rewrite or development anew 93 laws and regulations, of which 69 were adopted by project close-out on February 15, 2007. The remaining reforms still in development are expected to be approved over the next year or two.

**Seminars Supported.** USAID/STAR supported counterparts in the organization of around 290 seminars and workshops for approximately 20,400 state officials and business leaders to promote reforms, to enhance understanding of BTA and WTO requirements, and to provide training to improve enforcement of the new laws.

**Research Reports Published.** USAID/STAR worked with counterparts to produce a series of research reports that analyzed the impact of the BTA on Vietnam's trade, investment, economic structure, and legal system; enhanced public understanding of the BTA and its largely positive impact on the Vietnamese economy; and identified remaining challenges.

**Websites Supported.** USAID/STAR worked with four key counterparts to develop websites (and, with the courts, to publish court decisions for the first time) to increase transparency and encourage public feedback on legislative reforms.

**References Provided.** USAID/STAR worked with counterparts to develop and publish more than 58,000 copies of reference materials related to the BTA/WTO, distributed throughout Vietnam to government officials, National Assembly deputies and staff, judges, and prosecutors, as well as to Party and business leaders.

**Study Missions Conducted.** Working closely in most cases with the USVTC, USAID/STAR organized 28 study missions for 180 officials to the United States, to Vietnam's Asian neighbors, and within Vietnam. To enhance understanding and support for key BTA/WTO-related reforms, these were carefully targeted to help government leaders gain firsthand knowledge of how other countries (or local provinces) were handling key issues related to BTA/WTO compliance. Probably most fundamentally, beyond the raw output figures, USAID/STAR was a major contributor to what is widely viewed as Vietnam's successful implementation of the extensive technical obligations of the BTA and Vietnam's accession to the WTO on January 11, 2007.<sup>20</sup>

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<sup>20</sup> The United States approved permanent normal trade relations (PNTR) for Vietnam in December 2006, leading to the elimination of U.S. quotas on Vietnamese apparel exports upon its accession to the WTO and essentially fully normalized trade relations (except for the extension of non-market economy status for Vietnam for a number of years as negotiated in the WTO Accession Protocol). 3 For example, Vietnam's core law on civil society, the Civil Code, included key parts that affected intellectual property rights (IPR), secured transactions, contract law, and much more. The BTA specifically required amendments on IPR, but STAR was asked to intensively support reforms in many of the other elements of the Code that provide the legal framework for civil relations in Vietnam. In particular, STAR supported major improvements in the parts on contract law and secured transactions. Thus, again, as Vietnam was

Not only did Vietnam meet demanding requirements for BTA implementation and WTO accession, it also greatly strengthened its legal framework for domestic market activity—a critical requirement for facilitating the development of a more robust private sector. USAID/STAR was asked to support reforms on specific elements in laws and regulations required by the BTA or WTO, as well as to provide international best practice perspectives on the many other legal provisions needed to improve the domestic legal and commercial system.<sup>3</sup> With deep knowledge on Vietnamese law and institutions, USAID/STAR's expert team worked with Vietnamese counterparts on strengthening Vietnam's internal legal system by improving its clarity and consistency through more precise drafting language, the reduction of confusing overlap among legal instruments, and the enhancement of transparency throughout the system. In these ways, USAID/STAR supported not only trade and investment reform in Vietnam, but also fundamental improvements in the nation's overall rule of law, capacity and independence of the courts, economic governance, and legal framework for private sector development. USAID/STAR became the de facto lead donor assistance team to support compliance with international treaty commitments and broad-based legal development in Vietnam.

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meeting its international treaty obligations, it was also strengthening and deepening its legal framework for domestic market activity and economic governance. While STAR always gave priority to supporting the reforms needed to meet BTA and WTO requirements, the project team was typically heavily involved in many of the key reforms needed to build a stronger and more transparent domestic legal system.

## Annex 2: Summary of STAR II Accomplishments<sup>21</sup>

This Annex summarizes the performance of the Support for Trade Acceleration II Project (STAR II) from October 2006 to October 2010. STAR II supported the development of 75 laws and regulations, of which 46 had been approved [BY YEAR]. The others are awaiting action by the National Assembly. The project supported 265 workshops and training courses for more than 19,000 participants on the World Trade Organization (WTO) and its impact on Vietnam's economic and legal systems. USAID STAR II published approximately 44,000 copies of reference materials, supported the development of 17 web pages, launched eight web-based e-government programs, and conducted 26 study missions and overseas training programs for 247 people. The project provided general training programs to enhance understanding of the WTO, as well as specialized courses for particular disciplines in response to requests from counterparts.

To meet the targets set by the U.S. and Vietnamese Governments and contribute to implementation of the Bilateral Trade Agreement (BTA) and WTO commitments, STAR II focused on 1) building capacity and human resources of counterparts and Vietnamese agencies to support implementation of the BTA/WTO; 2) supporting legal and regulatory reforms to advance implementation of the BTA/WTO; and 3) providing policy advice and research on economic integration and macroeconomic management. In terms of USAID's standard performance indicators, STAR II made important contributions in:

- Rule of law and human rights<sup>22</sup>;
- Good governance;
- Trade and investment;
- Financial sector enabling environment; and
- Macroeconomic foundation for growth.

Highlights of the work undertaken at the request of the Steering Committee, with USAID approval, include:

### *Rule of Law*

- Enhanced judicial transparency through the publication of selected court decisions from 2002 to 2010 and establishment of an e-portal for the Supreme People's Court that is accessible to the public;
- Supported the conceptualization of regionalization of the judicial sector to increase the independence of the justice sector; and
- Trained judges and judicial sector personnel on intellectual property rights (IPR) and international trade as well as basic judicial system operations.

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<sup>21</sup> This Annex is a shortened version from *Support for Trade Acceleration II Project (USAID-STAR II) Final Report*, Oct. 2010.

### *Good Governance*

- Strengthened the capacity of the National Assembly to exercise its legislative powers and enhance its supervision of the government through series of training activities and workshops on economic integration issues; and
- Built a more transparent and effective system for law and rule making through support for the development and implementation of the Law on Laws, which applied WTO transparency standards to rule and law making.

### *Liberalization of trade and investment*

- Supported harmonization/reduction of tariff rates and streamlined customs procedures through training and workshops to meet BTA/WTO commitments;
- Supported the development and implementation of laws and regulations to liberalize investment in key service sectors such as distribution, telecommunications, and the financial sector;
- Reduced barriers to trade through targeted support in such key issues as sanitary and phytosanitary standards and technical barriers to trade, thus moving the Vietnamese regulatory system closer to international standards, which facilitates trade;
- Strengthened IPR enforcement by supporting stricter rules and penalties as well as training and education for enforcement bodies and right holders; and
- Strengthened rules and capacity relating to legislative transparency and dispute resolution.

### *Strengthened financial sector*

- Supported the development of laws and rules governing the financial sector, including banking laws, securities law, and securities regulations; and
- Strengthened the capacity of financial regulators and market participants through targeted training and capacity-building initiatives.

### *Macroeconomic foundation for growth*

- Increased the capacity to conduct macroeconomic management responsibilities through training and capacity-building measures at the State Bank of Vietnam, the Office of the Government, and the National Assembly;
- Supported the creation of an early warning system at the State Bank; and
- Advised on new tax policies.

To maximize the effectiveness of the STAR II budget funds, the project mobilized considerable additional resources. These included 37 volunteer interns working for periods ranging from two months to four years; non-appropriated funds from the U.S. Patent and Trademark Office; funding from the U.S. Department of State, the Food and Agriculture Export Alliance, the U.S. Department of Agriculture, the European Commission's Multilateral Trade Assistance Project, and the Danish International Development Agency (DANIDA); a grant from the General Electric

Foundation; discounted legal services from Baker & McKenzie worth approximately \$3.6 million; free technical assistance from the Governments of Singapore and Hong Kong, the Sheriff of San Francisco, the 9<sup>th</sup> U.S. Circuit Court, the Federal Judicial Center, the U.S. Court of International Trade, the U.S. Federal Register, the International Trade Center in Geneva, Microsoft, and the U.S. Chamber of Commerce; and free expertise from world-class experts such as Sally Harpole on arbitration, Dean Jeffery Brand of the University of San Francisco Law School, and Karon Armstrong of the American Chemical Society. Without their contributions and the active support of our Government of Vietnam counterparts, the project would have been far less successful.

Most laws related to WTO accession were completed during the first phase of STAR. Consequently, USAID STAR II concentrated on implementing regulations for WTO-related laws and laws related to new trade agreements, improving the effectiveness and transparency of the legal system, and ensuring full compliance with international commitments. The main direct beneficiaries of this assistance were government agencies, the National Assembly, the Supreme People's Court, and the Supreme People's Procuracy.

Despite all of these achievements, the challenges ahead are substantial. Vietnam is currently negotiating a bilateral investment treaty with the United States, and it is considering joining the Trans Pacific Partnership Agreement. In addition, there is still a gap between WTO-compliant laws and implementation of those laws. Until that gap is closed, the average citizen and local businesses will not reap the full benefits of trade liberalization. Closing the gap will require some additional changes in the legal system, as well as a major effort to enhance the capacity of many Vietnamese institutions.

## **Annex 3: STAR Plus Objectives and Scope of Work**

### *STAR Plus Objectives*

The purpose of this project is to support the Vietnamese Government's efforts to continue its high level of trade and investment reforms, including changes in economic governance and macroeconomic areas to ensure an environment attractive for investment, trade and private sector growth. To achieve this, the project must focus on the following objectives:

- Identify, select, and fully vet initiatives that support the Vietnamese Government's efforts to implement and ensure compliance with all obligations and commitments to Vietnam's trade and investment related agreements as they relate to the United States, in particular the U.S.-Vietnam Bilateral Trade Agreement (BTA), and the World Trade Organization (WTO) Agreement. The project should provide sufficient flexibility to support additional or future commitments Vietnam may undertake related to trade or investment agreements.
- Support the Vietnamese Government's efforts to develop Vietnam's private sector and continue its implementation of global trade rules to facilitate integration into the global economy. This may include but is not limited to supporting initiatives and work identified under the U.S.-Vietnam Trade and Investment Framework Agreement (TIFA) discussions and will involve close coordination with U.S. Government agencies on these initiatives;
- Undertake specific capacity building or technical assistance work, as appropriate, to support domestic legal and regulatory changes necessary to advance Vietnam's regional integration efforts;
- Assist the Vietnamese Government in the development of new laws, regulations, and procedures pertaining to trade and the development of a market oriented economy and a legal structure that encourages and supports growth of the private sector;
- Train and build capacity among Vietnamese ministry staff, the judiciary, and Vietnamese enforcement and regulatory agencies to improve the implementation/enforcement of existing laws and strengthen the legal framework in conjunction with economic reforms;
- Provide technical assistance to support the establishment and operation of trade related obligations consistent with international practice under international standards of economic governance, (intellectual property rights (IPR), transparency, accountability, fairness, etc.);
- Train staff, assist to develop institutions, and build the capacity of officials in Vietnamese Government line ministries and agencies to fully understand and implement international trade and investment obligations in the practice of using and enforcing existing laws and support the expansion of these concepts into future measures related to trade and investment.

Technical and capacity building support under the STAR Plus project must seamlessly build on the multi-faceted economic and legal reforms and technical assistance of the previous STAR projects, and further the cooperative working relationship of the U.S. and Vietnam fostered under STAR. The flexible, demand-driven nature of the previous STAR projects has been instrumental to their success. USAID's active coordination with the Vietnamese Government

and relevant U.S. Government agencies (such as FCS, Treasury, USTR, etc.) has also been critical to achieving the developmental goals under STAR. The new STAR follow-on project must replicate this working methodology and remain flexible enough to respond quickly to requests for assistance from the Vietnamese Government. As part of its role as the manager of the STAR follow-on project, USAID will ensure that new requests and work plans are vetted with relevant U.S. Government agencies to obtain input and technical guidance from stakeholders. Annual work plans will be vetted for approval with the Vietnamese Government and the interagency.

The contractor must, as appropriate, support USAID's efforts to coordinate with donors and providers of related technical assistance to the Vietnamese Government and its agencies in (a) completing essential legal reforms; (b) moving through the next critical stage of administrative decree and regulatory change; (c) advancing the vital follow-on processes of legal and regulatory implementation; (d) supporting the adoption of best practices; and (e) capacity building and skills development for effective promotion, application, oversight and enforcement capabilities of relevant Vietnamese Government line ministries, agencies, and the private sector.

### **Technical Assistance Areas and Approach**

The contractor must develop an assistance strategy and approach that responds to the needs articulated by the Vietnamese Government, provided those needs are appropriate to the project. The focus and agenda of the project must be demand driven, with the flexibility to evolve as progress continues, new commitments are agreed to under relevant trade agreements, and new challenges and priorities are faced. USAID, working in coordination with the Program inter-ministerial Steering Committee and relevant stakeholders, will direct interventions to priority technical areas, ministries, and other entities stemming from trade agreements or bilateral issues. Important factors at present in Vietnamese Government reform and international integration include but are not limited to:

- Rapidly changing economic environment, accelerating economic and industrial development;
- Opening of markets and escalating forces of international/domestic competition;
- Responding to the impacts of treaty requirements (BTA/WTO);
- Expanding role of the private sector, the need to further deepen/refine the legal system and its daily commercial implementation;
- Enforcement and compliance with new laws, regulations, reforms, and understanding of these reforms by relevant line ministries, agencies and the private sector;
- Building the institutional capacity of key Vietnamese Government entities;
- Commercializing state enterprises;
- Developing and deploying ICT and e-government mechanisms; and
- Expanding transparency, anti-corruption, and IPR enforcement.

Gender issues are central to the achievement of USAID programs, and USAID strives to promote gender equality, in which both men and women have equal opportunity to benefit from and contribute to economic, social, cultural and political development; enjoy socially valued resources and rewards; and realize their human rights potential. To the extent possible or as



applicable, the contractor must consider gender issues in the development of STAR Plus activities.

### 1. Capacity Building and Training for Legal and Regulatory Reform

In coordination with the Vietnamese Government through the Project inter-ministerial Steering Committee, USAID will agree on a demand-driven set of priorities focusing on those institutions and activities that yield the highest developmental return and communicate them to the contractor. These priorities will be agreed through USAID's discussions with relevant U.S. Government stakeholders, including USTR, State, Treasury, and Commerce, to ensure alignment and consistency.

Priorities are likely to change at a pace and direction consistent with the fast moving Vietnamese economy and export markets. Initially, the contractor may consider a focus on the following, illustrative areas:

**Key Government Ministries:** The STAR Plus project must continue the previous STAR projects' efforts to strengthen the capacity of selected ministries to enable them to meet new responsibilities arising from increased trade and market liberalization. These include:

- The Office of the Government in economic policy formulation and coordination, administrative and regulatory reforms, and transparency;
- Ministry of Industry and Trade in implementing trade agreement commitments, consumer protection and competition policy;
- Ministry of Finance and State Bank of Vietnam in developing fiscal and tax policies, developing a macroeconomic database, and banking sector reform;
- Ministry of Agriculture and Rural Development in liberalizing and developing the agricultural sector, strengthening sanitary and phytosanitary regimes; and
- Ministry of Justice in law-making, regulatory review and oversight, and capacity building.

The contractor may consider appropriate activities to build the capacity of these ministries.

**National Assembly:** The contractor may provide support to strengthen the National Assembly to upgrade its capacities in order to fulfill the responsibilities of reviewing, approving, and monitoring legal reforms required to implement the BTA, WTO, and commitments of future relevant agreements. The STAR Plus project should also aim to improve transparency and efficiency in the legislative process.

**Financial Sector:** The STAR Plus project must facilitate the growth of a vibrant, well-regulated financial sector that supports a growing private sector. The contractor may provide training and institutional development support to the State Bank of Vietnam and the State Securities Commission (SSC). This could reinforce earlier efforts that involved drafting new regulations covering all aspects of the securities market, training of SSC personnel and reform of the laws governing the State Bank of Vietnam, local banks, and other credit institutions.

**Judicial System:** The STAR Plus project must support the Vietnamese Government's efforts to increase the independence of courts, improve court procedures, enhance the authority and responsibility of judges, and improve institutional capacity and modern skills throughout the

judicial system. The project must also support the efforts of the Supreme People's Court and the Supreme People's Procuracy to restructure their organizations. This may include development of regional courts and prosecution offices to improve their independence and effectiveness.

## 2. Legal and Regulatory Changes

Along with capacity building and enforcement, the contractor must assist the Vietnamese Government in the development of new laws and regulations as appropriate through a demand driven approach. The list of laws that are important for programmatic involvement will change over time and will be subject to approval of the Project Steering Committee, the U.S. Government interagency process, and USAID. Initially, the contractor may consider a focus on the following illustrative areas:

- Law on Access to Information (equivalent to the Freedom of Information Act in the United States)
- Revision in the Labor Code
- Law on the State Bank of Viet Nam
- Law on Credit Institutions
- Revision in the Criminal Code
- Criminal Procedure Code
- Law on Arbitration
- Law on Metrology and the related Law on Quality and the Decree on Standards and Technical Regulations
- Law on Public Investment
- Revised Law on Securities
- Consumer Protection Law and Revised Competition Law

This list is subject to change / revision through the life of the project, with agreement of USAID and the Project Steering Committee.

## Agreements

In addition to assistance related to the BTA and WTO Agreements mentioned under Section A above, the contractor must provide assistance, where appropriate, to support and facilitate implementation of commitments made by the Vietnamese Government under the existing bilateral dialogue or other possible future agreement involving the United States.

### 1. Trade and Investment Framework Agreement (TIFA)

The United States and Vietnam concluded a Trade and Investment Framework Agreement (TIFA) in 2007 and have continued to meet regularly to review Vietnam's implementation of its WTO commitments, work to resolve bilateral issues of concern, and to consider additional initiatives to further enhance trade and investment opportunities between the two countries. The discussions under the TIFA dialogue have led to the identification of technical assistance needs and opportunities and the previous STAR projects participated in this process by supporting

Vietnam's requests for assistance and facilitating opportunities for closer cooperation between Vietnam and the United States. The TIFA chairs have coordinated closely with STAR throughout this process. The contractor must also support objectives mutually agreed upon in the TIFA dialogue, to the extent that they are consistent with the broader objectives of the program.

## 2. Bilateral Investment Treaty

In June 2008, the United States and Vietnam launched negotiations of a Bilateral Investment Treaty with the aim of expanding upon the existing investment provisions included in the BTA. Requests may arise from these negotiations as the Vietnamese look for assistance in implementing the provisions of any eventual agreement. The contractor must coordinate with relevant U.S. agencies to respond, as appropriate, to these requests.

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**U.S. Agency for International Development**

1300 Pennsylvania Avenue, NW

Washington, DC 20523

Tel: (202) 712-0000

Fax: (202) 216-3524

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