Vietnam in the TPP Negotiations: Opportunities, Priorities and Challenges for U.S. Business

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Outline

I. Overview of the TPP Negotiations
II. U.S. Negotiating Objectives
III. Market Access (goods and services)
IV. Intellectual Property Rights
V. Pharmaceuticals
VI. Trade Facilitation
VII. Challenges Confronting U.S. Business
VIII. Conclusions
Trans-Pacific Partnership Negotiations

I. Overview of the TPP Negotiations

• 2009: Start of TPP negotiations delayed due to change in administration
• December 2009: USTR notified Congress of intention to enter into the TPP negotiations
• March 2010: Round 1 in Australia (AUS, Chile, Peru, Singapore, Vietnam, U.S., Brunei, and NZ).
  • June 2010: Round 2 in U.S.
  • October 2010: Round 3 in Brunei (MYL joins)
• December 2010: Round 4 in New Zealand (Vietnam becomes full member)
• January 2011: Exchange of goods offers
• February 2011: Round 5 in Chile
• March/April 2011: Round 6 in Singapore/exchange of services offers
• June 2011: Round 7 in Vietnam
• September 2011: Round 8 in U.S.
• October 2011: Round 9 in Peru
• Notional conclusion Q4 2011; but mid-2012 more likely
Trans-Pacific Partnership Negotiations

I. Overview of the TPP Negotiations

• Other countries that may join the TPP negotiations in the future
  ▪ Japan
  ▪ Canada
  ▪ Thailand
  ▪ Philippines
  ▪ Indonesia
II. U.S. Negotiating Objectives

• High-standard, high-ambition, comprehensive, “next generation” free trade agreement

• Cross-cutting, horizontal commitments
  - Regulatory coherence
  - Competitiveness
  - SMEs
  - Supply Chain
  - Development, but not Special & Differential treatment

• Broad-based, flexible and expandable regional agreement
II. U.S. Negotiating Objectives

- Platform for broader economic integration in the Asia-Pacific Region.
- Advance U.S. economic and foreign policy interests throughout SE Asia.
- Expand U.S. export markets
- Avoid being locked out of fastest growing region because of proliferation of regional FTAs that exclude the U.S.
- Counter China’s growing regional and global influence
Vietnam in the TPP Negotiations: Opportunities, Priorities and Challenges and for U.S. Business

III. Market Access

A. Goods
i. Imports
ii. Exports

B. Services
i. Outbound
ii. Inbound (very limited)
III. Market Access

A. Goods

- The Big Picture: Bilateral Trade
  - 2001 $1.5 billion
  - 2007 $12.5 billion
  - 2010 $17.5 billion

- U.S. Imports from Vietnam
  - 2001 $1 billion
  - 2007 $10.5 billion
  - 2010 $14 billion

- U.S. Exports to Vietnam
  - 2001 $461 million
  - 2007 $2 billion
  - 2010 $3.5 billion
Aggregate Two-Way Trade
Opportunities for U.S. Business: goods

Bilateral Trade Between U.S. & Vietnam

In Actual Dollar:

- US Imports for Consumption
- US Total Exports

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U.S. Imports from Vietnam
Opportunities for U.S. Business: goods (inbound)

III. Market Access

A. Goods

i. Key Imports from Vietnam (inbound)
   - Textiles and Apparel
   - Footwear
   - Wooden furniture
   - Aquaculture products
   - Consumer electronics

Near-term import benefits/opportunities for U.S. business in goods sector likely to remain in these categories of goods.
U.S. Imports from Vietnam
Opportunities for U.S. Business: goods (inbound)

U.S. Imports [HTS 2]

In Actual Dollars

2005 2006 2007 2008 2009 2009 YTD 2010 YTD

HTS 3: FISH AND CRUSTACEANS, MOLLUSCS AND OTHER AQUATIC INVERTEBRATES
HTS 61: ARTICLES OF APPAREL AND CLOTHING ACCESSORIES, KNITTED OR CROCHETED
HTS 62: ARTICLES OF APPAREL AND CLOTHING ACCESSORIES, NOT KNITTED OR CROCHETED
HTS 94: FURNITURE; BEDDING, CUSHIONS ETC.; LAMPS AND LIGHTING FITTINGS NESOI; ILLUMINATED SIGNS, NAMEPLATES AND THE LIKE; PREFABRICATED BUILDINGS
HTS 64: FOOTWEAR, GAITERS AND THE LIKE; PARTS OF SUCH ARTICLES
HTS 85: ELECTRICAL MACHINERY AND EQUIPMENT AND PARTS THEREOF; SOUND RECORDERS AND REPRODUCERS, TELEVISION RECORDERS AND REPRODUCERS, PARTS AND ACCESSORIES
U.S. Imports from Vietnam
Opportunities for U.S. Business: Goods (inbound)
III. Market Access

• What do the trade data mean for U.S. Business

➤ Apparel (Chs. 61 and 62)

❖ Exports from Vietnam: $5.2 billion in 2010
❖ Current U.S. tariffs: High tariffs, e.g. 37.5% *ad valorem*, and/or specific tariffs per kg.

❖ Significant potential tariff benefits/eventual tariff elimination (likely phased over 10 yrs or more. New market access checked by “yarn forward” rules, limited 3rd country fabric exceptions (TPLs), and onerous customs enforcement provisions)

❖ Imports likely to increase as tariffs phase-out
U.S. Imports from Vietnam
Opportunities for U.S. Business: goods (inbound)

III. Market Access

➢ **Apparel** (Chs. 61 and 62)
  ❖ U.S. Beneficiaries
    ➢ U.S. importers/retailers (*e.g.* Wal-Mart, Gap, Levi’s, Target, Federated)
    ➢ U.S. Consumers
  ❖ U.S. Opponents
    ➢ U.S.-based textile manufacturers (NCTO)
U.S. Imports from Vietnam
Opportunities for U.S. Business: goods (inbound)

III. Market Access

- **Footwear** (Chs. 64)
  - Exports from Vietnam: $1.5 billion in 2010
  - Current U.S. tariffs: Duty free to 37.5% *ad valorem*, and/or specific tariffs.
  - Significant tariff benefits/eventual tariff elimination (likely phased over 10 yrs or more)
  - Imports likely to increase significantly
  - U.S. Beneficiaries
    - U.S. importers and retailers (e.g. Nike, Reebok, Wal-Mart, Target)
    - U.S. Consumers
  - U.S. Opponents
    - U.S. manufacturers of protective footwear
III. Market Access

➤ Wooden Furniture (HTS 9403)
  ❖ Exports from Vietnam: $1.6 billion in 2010
  ❖ Current U.S. tariffs: MFN duty free
  ❖ No tariff benefits
  ❖ Imports likely to continue to increase because of China AD order on WBF. Possible AD/CVD case
  ❖ U.S. Beneficiaries
    ➢ U.S. importers, retailers (e.g. Ethan Allen, Ikea, furniture importers)
    ➢ U.S. Consumers
  ❖ U.S. Opponents
    ➢ U.S. furniture manufacturers
U.S. Imports from Vietnam
Opportunities for U.S. Business: goods (inbound)

III. Market Access

➢ **Aquaculture** (catfish fillets, shrimp and prawns, etc.)
  - Exports from Vietnam: $580 million in 2010
  - Current U.S. tariffs: Duty free to 6% *ad valorem*
  - TPP will provide minimal tariff benefits
  - Imports likely to increase
  - Growth in market access impacted by AD orders and USDA labeling regulations
  - U.S. beneficiaries
    - U.S. importers, processors and consumers
  - U.S. opponents
    - U.S. producers
U.S. Imports from Vietnam
Opportunities for U.S. Business: goods (inbound)

III. Market Access

➢ Consumer Electronics (Ch. 85)
  ▶ Exports from Vietnam: $720 million in 2010
  ▶ Current U.S. tariffs: Duty free to 15% ad valorem, most tariffs are between 2% to 5%
  ▶ TPP will provide modest tariff benefits
  ▶ Imports likely to increase significantly because of tariff advantage over China
  ▶ U.S. beneficiaries
    ✓ U.S. importers, retailers
    ✓ U.S. consumers
  ▶ U.S. opponents
    ✓ None
III. Market Access

A. Goods

ii. Key U.S. Exports to Vietnam

- Vehicles
- Heavy machinery
- Iron and steel
- Meat
- Cotton
U.S. Exports to Vietnam
Opportunities for U.S. Business: goods (outbound)

U.S. Total Exports [HTS2]

In Actual Dollars

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<thead>
<tr>
<th>Year</th>
<th>HTS 2: MEAT AND EDIBLE MEAT OFFAL</th>
<th>HTS 52: COTTON, INCLUDING YARNS AND WOVEN FABRICS THEREOF</th>
<th>HTS 72: IRON AND STEEL</th>
<th>HTS 84: NUCLEAR REACTORS, BOILERS, MACHINERY AND MECHANICAL APPLIANCES; PARTS THEREOF</th>
<th>HTS 87: VEHICLES, OTHER THAN RAILWAY OR TRAMWAY ROLLING STOCK, AND PARTS AND ACCESSORIES THEREOF</th>
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U.S. Exports to Vietnam
Opportunities for U.S. Business: goods (outbound)

III. Market Access

A. Goods

• What do the data mean for U.S. Business

➢ Vehicles (cars, motor bikes, motorcycles)
  ➢ Exports to Vietnam: $225 million in 2010
  ➢ Current U.S. tariffs: Mostly 100% \textit{ad valorem}
  ➢ Potentially significant tariff benefits
  ➢ Exports likely to increase
  ➢ U.S. Beneficiaries
    ➢ U.S. manufacturers (\textit{e.g. Big Three}; \textit{possibly Japanese and Korean companies assembling in the U.S.; Harley Davidson})
  ➢ Vietnamese Domestic Opponents
    ➢ Domestic motor bike manufacturers and used motorbike dealers
    ➢ Retailers of used motorbikes
U.S. Exports to Vietnam
Opportunities for U.S. Business: goods (outbound)

III. Market Access

➢ Heavy Machinery
  (generators, boilers, turbines, engines, construction machinery, earth movers, excavators)
  - Exports to Vietnam: $380 million in 2010
  - Current U.S. tariffs: duty free - 100% *ad valorem*
  - Potentially significant tariff benefits
  - Exports likely to increase
  - U.S. Beneficiaries
    ➢ U.S. manufactures and exporters (e.g. GE, CAT, John Deer)
  - Vietnamese Domestic Opponents
    ➢ No known
III. Market Access

Iron and Steel

- Exports to Vietnam: $235 million in 2010
- Current U.S. tariffs: MFN duty free to 40% ad valorem; mostly MFN duty free.
- Potentially significant tariff benefits
- Exports likely to increase
- U.S. Beneficiaries
  - U.S. steel manufacturers and exporters (e.g. U.S. Steel, Nucor, etc.)
- Vietnamese Domestic Opponents
  - Chinese transplants
U.S. Exports to Vietnam
Opportunities for U.S. Business: goods (outbound)

III. Market Access

➤ Meat (beef and pork)

- Exports to Vietnam: $225 million in 2010
- Current U.S. tariffs: 20% - 30% \textit{ad valorem}
- Potentially significant tariff benefits
- Exports likely to increase
- U.S. Beneficiaries
  ➢ U.S. exporters (\textit{e.g.} beef/pork producers and processors)
  ➢ Vietnamese Domestic Opponents
    ➢ Pork producers
    ➢ Local farmers
U.S. Exports to Vietnam
Opportunities for U.S. Business: goods (outbound)

III. Market Access

➢ Cotton (yarn)
  ❖ Exports to Vietnam: $200 million in 2010
  ❖ Current U.S. tariffs: 20% - 40% ad valorem
  ❖ Potentially significant tariff benefits
  ❖ Exports likely to increase
  ❖ U.S. Beneficiaries
    ➢ U.S. exporters (e.g. yarn extruders, NCTO members)
  ❖ Vietnamese Domestic Opponents
    ➢ Chinese transplants
  ❖ Benefits Vietnam’s apparel manufacturers
  ❖ U.S. insufficient supply to satisfy VN’s demand
U.S. Exports to Vietnam
Opportunities for U.S. Business: Goods (outbound)

III. Market Access

➢ Other potential beneficiaries

➢ Agriculture  (VN tariffs: Dairy 20-30%; vegetables, citrus, fruits, coffee, tea 40-50%; rice 40%; prepared meats 50%; sugar 30-100%; dairy-containing preparations 15-50%, fruit juices 40%; wine and spirits 80%; tobacco 30-100%)

➢ Chemicals, polymers and plastics  (relatively low tariffs, most are duty free, but some as high as 30%)

➢ Pharmaceuticals  (relatively low tariffs, most are duty free, none higher than 10%)

➢ Cosmetics and personal care  (tariffs between 10% and 30%)
Opportunities for U.S. Business: Services

III. Market Access

B. Services: Generally

- 80% of U.S. GDP and 80% of U.S. employment are in services.
- U.S. export of services in 2009 in excess of $450 billion.
- Export of U.S. services key to maximizing benefit of TPP for U.S. business sector and specifically Vietnam.
- TPP already an important market for U.S. exports of services.
- Important opportunity to achieve additional market access for U.S. services sector in Vietnam.
- Vietnam’s likely positions, negotiating strategy
III. Market Access

B. Services: Generally

- TPP covers all traditional aspects of trade in services in past FTAs:
  - Services
  - Investment
  - Financial Services
  - Telecommunications
  - E-commerce

- Horizontal disciplines
  - Regulatory coherence
Opportunities for U.S. Business: Services

III. Market Access

B. Services: Generally

- TPP should provide comprehensive market access in all aspects of trade in services:
  - Cross-border supply
  - Portfolio investment
  - NCMs based on a negative list approach

- TPP will build on Vietnam’s WTO Services schedules, high level of liberalization on financial services, telecom, express delivery, professional services, distribution services.

- Further services disciplines and commitments needed across-the-board in order for U.S. services industry to see meaningful benefits from Vietnam’s participation in TPP
Opportunities for U.S. Business: Services

III. Market Access

B. Services: Generally

- Investor Protections:
  - Crucial for investor confidence
  - Creating a climate to attract high-quality, long-term U.S. investment in Vietnam
  - Keys to investor protection
    - Investor-state dispute settlement
    - Broad definition of investment, including portfolio investment and cross-border investments
    - Protections against expropriation
    - Liberal transfers provisions
Opportunities for U.S. Business: Services (outbound)

III. Market Access

B. Services

i. Outbound

➢ Chapter-specific issues:
  ❖ Investment
  ❖ Financial Services
  ❖ Services
  ❖ Telecommunications
  ❖ E-commerce
Opportunities for U.S. Business: Services (outbound)

III. Market Access

➢ Investment Chapter Priorities
  ❖ Eliminate sections in Vietnam’s Investment Law which prohibit or condition foreign investment
  ❖ Liberalize list of conditioned investments
  ❖ MFN/NT
  ❖ Minimum standard
  ❖ Expropriation
  ❖ Free transfers of capital
  ❖ Performance requirements
Opportunities for U.S. Business: Services (outbound)

III. Market Access

- Investment Chapter Priorities
  - Negative list of non-conforming measures
  - Investor-state dispute settlement
  - Minimal or no local content requirement
Oppunities for U.S. Business: Services (outbound)

III. Market Access

➢ Financial Services Chapter Priorities
  ❖ Good investor protections, regulatory transparency and good outcome on market access will create a climate that will encourage U.S. services investment
  ❖ What’s needed to boost financial services investment:
    ❖ High-standard text based on KORUS FTA and the Rwanda BIT texts.
    ❖ Extend the Investment Chapter and Rwanda BIT investor protections to financial services suppliers; subject NT and MFN to ISDS
    ❖ Provisions on portfolio management
    ❖ Right to establish and commercial presence
    ❖ 100% ownership and right to establish in corporate form of choice
III. Market Access

What’s needed to boost financial services investment:

- Right to branch (no limits)
- Right to obtain a license (no quotas)
- Negative list-based NCMs
- Cross-border services for financial services firms to qualified investors w/o establishment of commercial presence
  - Large-scale commercial risk insurance
  - Banking and brokerage (GATS plus)
- Greater regulatory transparency
- Allowance to perform trade and transaction processing abroad
Opportunities for U.S. Business: Services (outbound)

III. Market Access

➢ Services Chapter Priorities
  ❖ Based on KORUS FTA text
  ❖ GATS-plus market access
  ❖ Disciplines requiring SOEs to operate in commercial manner
  ❖ Narrow NCMs to boost market access
  ❖ Opportunities for U.S. services investment and additional market access
  ❖ Sector-Specific Issues
    ➢ Express Delivery Services
    ➢ Retail, Distribution and Audiovisual Services
    ➢ Professional Services
III. Market Access

- What’s needed to boost Services investment
  - Broad market access for all professional services (law, accounting, consulting, engineering, architectural, medical, express delivery, etc.)
Opportunities for U.S. Business: Services (outbound)

III. Market Access

➢ Telecommunications Chapter Priorities:
  ❖ Roll back the requirement that an ISP must have a joint venture with a local commercial supplier in Vietnam
  ❖ Prevent implementation of draft regulation requiring that the purchase and distribution of all foreign programming and foreign channels be sold to VN market through single govt. entity
  ❖ All VN telecoms are SOEs; open-up competition to non-SOE entities in the telecom market
  ❖ VN nervous about allowing unfiltered content and some internet services
III. Market Access

What’s needed to boost telecom opportunities for U.S. Business:

- Resist govt. control over the flow of information
- Narrow NCMs to boost market access
- Elimination of equity limitations and caps on joint ventures or 100% foreign ownership in telecom sector
- Eliminate JV requirement for cinema construction; stop film censorship
- Eliminate foreign equity limits for facilities-based public telecom services (services provided by a supplier that does not own its own transmission capacity but contracts for it from a facilities-based supplier).
- Eliminate requirement that facilities-based operators must be majority state-owned; limiting pool of JV partners and reinforces state control over market entry.
Opportunities for U.S. Business: Services (outbound)

III. Market Access

➢ E-Commerce Chapter Priorities
  ❖ Template, KORUS FTA chapter
  ❖ Electronically delivered goods and services receive no less favorable treatment than like products delivered in physical form
  ❖ Duty free treatment for software, video, and other content on digital media (CDs, DVDs, etc.)
  ❖ Elimination of equity limitations and caps on joint ventures or 100% foreign ownership in telecom sector
  ❖ No content monitoring or censorship
  ❖ Eliminate GOV control over ISP portals
Opportunities for U.S. Business: Services (inbound)

III. Market Access

B. Services

ii. Inbound

- Vietnam lacks a developed, export-oriented services sector.
- The TPP services’ commitments will facilitate the eventual growth and development of an export-focused services industry in Vietnam.
- Years away.
Opportunities for U.S. Business: IPR

IV. Intellectual Property Rights

- Vietnam on Special 301 Watch List, work to do.
- Next generation IPR chapter, based on KORUS FTA text
- Piracy, infringement and lax IPR enforcement are disincentives for U.S. investment, addressing these will be key
- Increase in IP violations over the Internet
- Stepped-up enforcement will boost U.S. investment
- Key IPR Priorities and Elements:
  - Strong provisions protecting famous trademarks
  - Trademark license
  - Promote registration of GIs
  - Copyright Protections
  - Extended term of protection to match U.S. law (lifetime+70yrs)
  - Exclusive rights for sound recordings
  - Protection for encrypted signals
  - Enforcement authority to seize infringing intellectual property
Opportunities for U.S. Business: Pharmaceuticals

V. Pharmaceuticals

- U.S. FTA Pharmaceuticals chapters as building-block for TPP chapter to secure greater market access and regulatory transparency for U.S. pharmaceuticals
- Address concerns about Vietnam’s discriminatory treatment against foreign firms across a range of product registration requirements for imported pharmaceuticals
- Regulatory transparency on drug approval
- Break-down NTBs in Vietnam, especially those that restrict access to innovative medicines
- Strong protection and enforcement of IPR which is critical to pharmaceutical development
Opportunities for U.S. Business: Trade Facilitation

VI. Trade Facilitation

- Trade Facilitation
  - U.S. exporters and Vietnamese importers and Vietnamese gov. officials will benefit from the TPP TF provisions
  - TF provisions built on existing GATT commitments in Articles V (Transit), VIII (fees and formalities) and X (publication and administration of trade regulations)
  - Based on U.S. FTA template
  - Will help to address systemic concerns about inefficient customs clearance
Opportunities for U.S. Business: Trade Facilitation

VI. Trade Facilitation

➢ Trade Facilitation

➢ Key Provisions

– Regulatory transparency and publication
– Release of goods prior to assessment and payment of duties
– Use of automation
– Risk management
– Cooperation between customs authorities
– Expedited release for Express Shipments
– Independent administrative and judicial appeal
– Advance rulings
– Importer-focused, self-certification
VI. Challenges Confronting U.S. Business

- In Vietnam
  - Corruption
  - Bureaucratic inefficiency
  - Capacity constraints
  - Ineffective regulatory regime
  - Customs delays and customs procedures
  - Poor infrastructure
    - Ports
    - Rail
    - Roads
    - Distribution
    - Unreliable electrical grid
  - Internet connectivity
VI. Challenges Confronting U.S. Business

- In the United States
  - Challenge to get a well-balanced agreement that can pass in a Congress controlled by either party, and then sell it to Congress. Persuade Congress that Vietnam is a worthy FTA partner
  - Convincing Congressional skeptics of the importance of the agreement and Vietnam’s participation
    - Potential for bipartisan opposition
  - Allaying concerns that the TPP negotiations will dilute U.S. trade remedy tools
    - Title VII will remain fully available as it is in the KORUS FTA
  - Respond to concerns about granting permanent preferential market access to a Communist country, with one party rule and a centrally planned economy.
  - Confront concerns from organized labor/NGOs about Vietnam’s labor practices, lack of civil liberties and political pluralism (multiparty system, right to assembly, collective bargaining, free press, censorship)
  - Colombia FTA analogy.
VI. Challenges Confronting U.S. Business

- In the United States
  - In the end, if a well-balanced agreement is achieved, Congress will pass the implementing legislation for the TPP agreement
  - Vietnam-specific concerns won’t be the dominant narrative because the TPP is a multiparty agreement with ambitions to serve as a spring-board for broader U.S. trade engagement in APEC.
Opportunities for U.S. Business: Conclusion

VII. Conclusion

➢ Opportunities for U.S. Business (goods)
  ❖ Tariff reduction and eventual elimination on goods from Vietnam (e.g. apparel, footwear, consumer electronics; aquaculture and furniture already MFN duty free)
  ❖ Increase imports of aquaculture products, apparel, footwear, consumer electronics and furniture
  ❖ Boost U.S. exports of agriculture products, vehicles, heavy machinery, cotton, meat, chemicals, plastics.

➢ Opportunities for U.S. Business (services)
  ❖ Market access in Services, Fin. Services, Investment, Telecom and E-Commerce
  ❖ Investor protections
VII. Conclusion

- Opportunities for U.S. Business (services)
  - ISDS
  - Narrow NCMs
  - Elimination of Services-based NTBs
- IPR
- Pharmaceuticals
- Trade Facilitation
- Final thoughts on negotiating with an NME like Vietnam, dealing with SOEs, depth of GOV experience.
Thank You

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