

US–VN Plan for Enhancement of Trade and Labor Relations

November [-], 2015

The Honorable Vu Huy Hoang

Minister of Trade and Industry

Ministry of Trade and Industry

Hanoi, Vietnam

Dear Minister Vu Huy Hoang:

I have the honor to confirm that the United States of America and Viet Nam have reached agreement with respect to the “United States – Viet Nam Plan for the Enhancement of Trade and Labour Relations”, a bilateral instrument in accordance with Chapter 19 of the TPP Agreement attached to this letter.

I have the honor to propose that this letter and your letter in reply confirming that your Government shares this understanding shall constitute an agreement between our two Governments. This

agreement shall enter into force on the date of entry into force of the TPP Agreement between our two governments.

Sincerely,

Ambassador Michael B. G. Froman

[-] November 2015

The Honorable Michael Froman

United States Trade Representative

600 17th Street, NW

Washington, DC 20508

Dear Ambassador Froman:

I am pleased to receive your letter of [insert date], which reads as follows:

I have the honor to confirm that the United States of America and Viet Nam have reached agreement with respect to the “United States – Viet Nam Plan for the Enhancement of Trade and Labour

Relations”, a bilateral instrument in accordance with Chapter 19 of the TPP Agreement attached to this letter.

I have the honor to propose that this letter and your letter in reply confirming that your Government shares this understanding shall constitute an agreement between our two Governments. This agreement shall enter into force on the date of entry into force of the TPP Agreement between our two governments.

I have the honor to confirm that the understanding referred to in your letter is shared by my Government, and that your letter and this letter in reply shall constitute an agreement between our two governments.

Sincerely,

VU HUY HOANG

Minister of Trade and Industry

United States-Viet Nam Plan for the Enhancement of Trade and Labour Relations

This Plan shall create rights and obligations only as between Viet Nam and the United States.

I. Preamble

The Governments of the Socialist Republic of Viet Nam and the United States:

ACKNOWLEDGING that each Party commits under Chapter 19 (Labour) to obligations concerning its labour law^[1] and practice, including with regard to its laws and regulations and the labour rights as stated in the ILO Declaration;

RECOGNIZING the importance of enforcement of and compliance with their respective law;

UNDERTAKE through this Plan the following commitments consistent with those obligations.

II. Legal Reforms

1. Viet Nam shall enact the following legal reforms, either by amending existing laws, decrees or regulations or by issuing new laws, decrees or regulations and shall enact any additional changes required to ensure consistency across the legal code.

2. Viet Nam shall ensure that its laws and regulations permit workers, without distinction, employed by an enterprise to form a grassroots labour union (in Vietnamese to chuc cua nguoi lao dong) of their own choosing without prior authorisation. To operate, a grassroots labour union shall register with its choice of either the Viet Nam General Confederation of Labour (VGCL) or the competent government body. A grassroots labour union registered with the competent government body shall have the right autonomously to elect its representatives, adopt its constitution and rules, organize its administration, including managing its finances and assets, bargain collectively, and organize and lead strikes and other collective actions related to the occupational and socio-economic interests of the workers at its enterprise. For greater certainty, a grassroots labour union registered with the competent government body shall have no lesser rights in law and practice with regard to the labour rights as stated in the ILO Declaration than a grassroots labour union under the VGCL.

A. Ensure the Right of Workers to Freely Form and Join a Labour Union of Their Choosing

1. Viet Nam shall provide in its law and practice that workers may choose to establish grassroots labour unions through the VGCL or the competent government body, and shall establish the necessary legal

procedures and registration mechanisms, through decrees or other means, for recognition of a grassroots labor union either by joining the VGCL or by registration with the competent government body. Viet Nam shall ensure that the procedures and mechanisms for registering grassroots labour unions are consistent with the labour rights as stated in the ILO Declaration, including with respect to transparency, the time periods for processing and membership requirements, and without prior authorisation or discretion.

2. Viet Nam shall provide in its law and practice that grassroots labour unions may, if they so choose, form or join organizations of workers, including across enterprises and at the levels above the enterprise, including the sectoral and regional levels, consistent with the labour rights as stated in the ILO Declaration and domestic procedures not inconsistent with those labour rights.

3. Viet Nam shall ensure in its law and practice that:

(a) workers and labour unions registered with the competent government body may request and receive technical assistance and training from any Vietnamese or international worker organization legally operating in Viet Nam; and

(b) on that request, such an organization or its representatives can provide the technical assistance and training for those workers and labour unions,

to understand Vietnamese labour law, meet the requirements and procedures for establishing a labour union, organize a labour union and undertake labour union activities once organized, including to bargain collectively, strike, and conduct labour-related collective activities under the ILO Declaration.

B. Ensure labour unions are able to administer their affairs with autonomy

1. Viet Nam shall ensure that its law does not mandate a labour union registered with the competent government body to operate according to the Statutes of Viet Nam General Confederation of Labour and that its law provides the authority to any labour union registered with the competent government body to adopt and operate according to that union's own statutes; and Viet Nam shall ensure that its law provides that a grassroots labour union registered with the competent government body is entitled to collect and manage its membership dues and to receive the grassroots union share of the two percent fee paid by the employer on a non-discriminatory basis. Relevant articles

in current law include TUL Article 4(8), Article 6(2), Article 26 and Article 27.

2. Viet Nam shall ensure that its law does not provide for the exclusive privilege of a single labour union to engage and consult with the relevant authorities and its law provides for such engagement and consultation without reference to a particular labour union. Relevant articles in current law include Trade Union Law (TUL) Article 10, Article 11, Article 12 and Article 13.

3. Viet Nam shall ensure that its law provides that labour unions registered with the competent government body have the right to ownership and management of their assets and property. Relevant articles in current law include TUL Article 28.

4. Noting that the Constitution of Viet Nam recognizes only labour unions affiliated with the VGCL as “socio-political organizations”, Viet Nam shall ensure that its law will not require labour unions registered with the competent government body to have mandatory political obligations and responsibilities that are inconsistent with the labour rights as stated in the ILO Declaration.

5. Viet Nam shall ensure that its law does not require that an upper-level labour union assist a grassroots labour union in its functions

and does specify that an upper-level labour union may do so only on the specific request of a grassroots labour union. Relevant articles in current law include Labor Code (LC) Article 188(1) and Article 188(2).

C. Worker representation in non-unionized workplaces

Viet Nam shall ensure that its law does not require that an upper-level labour union represent non-unionized workers and does provide that an upper-level labour union can represent non-unionized workers only upon the request of those non-unionized workers and only with respect to that worker or those workers who have specifically requested such assistance. Relevant articles in current law include LC Article 188(3) and Article 210(2).

D. Selection of union officials

Viet Nam shall ensure that its law provides that: (1) all labour union officials on an executive board are elected by that labour union's membership; and (2) the executive body can employ persons to assist with labour union activities. Relevant articles in current law include TUL Article 4(4) and Article 4(5).

E. Interference in organizational activity

1. Viet Nam shall ensure, for purposes of protecting the interests of the employees, including in collective bargaining, that, in its law and practice, it distinguishes between employees and those who have the interests of the employer, and prohibits employer interference with labour unions, consistent with the labour rights as stated in the ILO Declaration, while also respecting labour union rights of managerial and supervisory employees.

2. Viet Nam shall revise Article 24 of Decree 95/2013/ND-CP to expand protection against anti-union discrimination, including element of good faith bargaining, and sanctions sufficient to deter violations.

F. Consistency of other laws

Viet Nam shall ensure that no laws or legal instruments, or provisions therein, such as the law on association, are applied or amended in a manner to undermine labour union-related activity, including organizing labour unions, collective bargaining and strikes, or assisting with those activities, as provided in the LC, TUL and other Vietnamese labour-related laws.

G. Scope of strikes

1. Viet Nam shall ensure that its law allows for rights-based strikes, consistent with ILO guidance. Relevant articles in current law include LC Article 215(1).

2. Viet Nam shall ensure that its law provides for 50 percent plus one of the Executive Committee to be required to approve a strike. Relevant articles in current law include LC Article 212 and Article 213(1).

3. Acknowledging that collective bargaining at the sectoral level and for more than one enterprise is recognised under the LC Viet Nam shall ensure that strikes are permitted when organized for workers of different enterprises at the same levels at which collective bargaining is permitted under law, subject to compliance with domestic procedures that are not inconsistent with the labour rights as stated in the ILO Declaration. Relevant articles in current law include LC Article 215(2).

4. Viet Nam shall amend Decree 41/2013/ND-CP to delete Article 2.1.b of the Decree and the resultant list of affected entities to ensure that strikes are permitted in the exploration and exploitation of oil and gas and supply and production of gas.

5. Viet Nam shall amend Decree 46/2013/ND-CP to delete Article 8.1.

H. Forced Labour

1. Viet Nam shall provide by decree that forced labour as referred to in LC Article 3(10) includes “debt bondage”.
2. Viet Nam shall amend relevant Penal Code (PC) articles to apply appropriate criminal sanctions for the use of forced labour.
3. Viet Nam shall amend all relevant provisions, including the legal instruments implementing the law on drug control and law on administrative sanctions, to ensure that treatment in drug rehabilitation centers is medically appropriate and does not subject patients to conditions of forced or compulsory labour, consistent with international standards, and to require that drug abuser entry be voluntary or based on a court decision.

I. Discrimination

1. Viet Nam shall issue clarifying policy guidance explaining the application of LC Article 8 to make clear that the law prohibits discrimination based on color, race and national extraction.
2. Viet Nam shall amend its law to prohibit discrimination in “all aspects of employment.” Relevant articles include LC Article 8.

3. Viet Nam shall amend LC Article 160 to protect the occupational safety and health of women workers while removing prohibitions on women engaging in specified occupations.

III. Institutional Reforms and Capacity Building

Viet Nam shall undertake necessary institutional changes and capacity building to implement the amended laws and regulations, including: establish new administrative functions, procedures and mechanisms; expand and adequately training the labor inspectorate and relevant criminal system authorities to effectively enforce the amended laws and regulations; and provide the necessary resources, including hire additional staff as needed to implement these changes.

A. TPP National Contact Point

1. Viet Nam shall designate the appropriate office as its contact point under Article 19.10 (Contact Point) and ensure its adequate staffing.

2. Viet Nam shall establish and disseminate administrative procedures for the receipt and consideration of public submissions as provided for in Article 19.9 (Public Submissions).

B. Industrial Relations Activities

1. Viet Nam shall designate the competent government body and establish appropriate administrative processes within the competent government body, Ministry of Labour, Invalids and Social Affairs (MOLISA) and Departments of Labour, Invalids and Social Affairs (DOLISAs), as applicable, to apply legal reforms on and to ensure:

(a) registration of grassroots labour unions consistent with Section II.A. of this Plan;

(b) workers' right to strike; and

(c) effective recognition and protection of the right to bargain collectively.

2. Viet Nam shall establish industrial relations bodies and mechanisms, which shall provide mediation and conciliation services and develop and implement training programs for the resolution of disputes between workers and employers, consistent with LC Article 235(4), Article 72, Articles 195 through 198 and Articles 203 through 205.

3. Viet Nam shall designate and train an adequate number of personnel within MOLISA and DOLISAs and other appropriate bodies, as applicable, to implement the processes in paragraphs B.1

and 2.

C. Labor Inspection Capacity

1. Viet Nam shall revise internal inspection and other enforcement procedures for the labor inspectorate of MOLISA and DOLISAs to ensure effective enforcement of the new legal provisions and train all relevant MOLISA and DOLISAs personnel on the new provisions and procedures.

2. Viet Nam shall establish and implement an effective complaint mechanism in MOLISA and DOLISAs for workers to inform those authorities confidentially and anonymously of violations of the new legal provisions that includes, at a minimum, procedures for referring complaints to labor inspectors for follow up and for documenting and tracking the follow-up inspections and investigations conducted, including status, violations identified, fines and sanctions levied and remediation.

3. Viet Nam shall allocate sufficient resources necessary for MOLISA's and DOLISAs' enforcement of labor law, including 750–800 permanent labor inspectors for MOLISA by the end of 2016 and 1200 by the end of 2020, up from the existing 500.

D. Implementation of Procedures

Viet Nam shall develop and implement procedures, as needed, and train relevant local and national personnel responsible for criminal and civil law enforcement, both on the new legal reforms and procedures to ensure the exercise of labour union-related activity provided in the LC, TUL and other Vietnamese labour-related laws, as well as on the criminal prosecution of the use of forced labour.

E. Forced and Child Labour

1. Recognising that Viet Nam publicly released the National Child Labour Survey, including the findings and methodology, Viet Nam shall:

(a) Develop and implement a strategy for targeting inspection and other enforcement activities to sectors where forced labour or child labour has been identified through the National Child Labour Survey or otherwise, including at informal work sites and sub-contractors in the garment industry.

(b) Allow independent experts legally operating in Viet Nam to carry out research studies in sectors where forced labour or child labour has been identified and to publicly release their findings, source data

and methodology.

2. Viet Nam shall take action, through MOLISA and other relevant ministries and departments, to ensure that treatment in drug rehabilitation centers is medically appropriate consistent with international standards, requires that drug abuser entry be voluntary or based on a court decision, and does not subject patients to conditions of forced or compulsory labour, including by establishing and implementing a mechanism for regular monitoring and public reporting by technical experts.

IV. Transparency and Sharing of Information

A. Budget Information

Viet Nam shall publicly disclose the annual MOLISA budget, including to the extent practicable disaggregated information on resource allocations and staffing related to the implementation of commitments made in this Plan.

B. Public Comment

1. Viet Nam shall provide for public comment, consistent with its existing procedures, the draft laws and regulations that result from

the commitments in this Plan.

2. Viet Nam shall, consistent with its existing procedures, publicly post on the MOLISA or other applicable agency website the final legal instruments after their issuance.

3. Viet Nam shall make publicly available every six months for 10 years after the date of entry into force of the Trans-Pacific Partnership (TPP) Agreement between the United States and Viet Nam, the following:

(a) Detailed information on the status and final outcomes of applications for labour union registration, including the time taken to process the applications and the basis for denial, if applicable, as well as detailed information on collective bargaining agreements concluded and strikes declared.

(b) Statistics on the number of inspections and investigations conducted by MOLISA and DOLISAs, disaggregated by region, sector and internationally recognised labour right listed in Article 19.1 (Definitions), as well as statistics on the outcomes of the inspections and investigations, including confirmed violations, fines and sanctions levied, and remediation.

C. Collaboration

Viet Nam and the United States intend to collaborate in good faith on the development of the relevant reforms and instruments prepared to implement this Plan.

D. Outreach and Education

Viet Nam shall launch an outreach program to inform and educate workers, employers and other stakeholders on their rights and responsibilities under the labour law, including the new laws and regulations amended under this Plan, and on the new administrative processes for their implementation, as well as related remedies and courses of action available to enforce those rights.

V. Review

The United States and Viet Nam shall regularly assess progress in implementing this Plan, including follow-up enforcement and application of the amended laws, decrees and regulations and institutional reforms, and, to this end, agree to the following actions:

A. Government-to-Government Mechanisms

Senior Officials Committee

1. The United States and Viet Nam hereby establish a standing bilateral Senior Officials Committee (SOC) composed of senior officials from the Office of the U.S. Trade Representative and the Department of Labor for the United States and from the Ministry of Industry and Trade and the Ministry of Labor, Invalids, and Social Affairs for Viet Nam to monitor, assess, and facilitate rapid response to any concerns about compliance with and implementation of the legal and institutional reforms under this Plan. The United States and Viet Nam shall designate the responsible senior officials prior to entry into force of the TPP Agreement for the United States and Viet Nam and promptly inform the other Party of any subsequent changes. The SOC shall meet, in person or by any technological means available, annually for 10 years after entry into force of the TPP Agreement between the United States and Viet Nam. SOC members shall be supported by technical-level officials, who shall meet semi-annually for 10 years. At the request of either Viet Nam or the United States, the SOC shall continue to meet annually thereafter or as Viet Nam and the United States otherwise agree. The SOC shall discuss and consider any reports or recommendations by the Technical Assistance Program (TAP) and the Labor Expert Committee (LEC) established below. At the request of either Viet Nam or the United States, the SOC

shall convene within 30 days to determine action necessary to address any concerns with regard to compliance with or implementation of the legal and institutional reforms under this Plan. Viet Nam and the United States together may request an ILO review and report on any such concern, in order to inform the discussions of the SOC and determinations of any actions necessary to address those concerns.

Bilateral Review

2. The United States and Viet Nam at the Ministerial level or their designees shall, in the third, fifth, and tenth year after entry into force of the TPP Agreement between the United States and Viet Nam, review and assess the implementation of this Plan, including the implementation of the legal and institutional reforms thereunder, in light of the obligations contained in Chapter 19 (Labour). In undertaking those reviews, the United States and Viet Nam shall consider the input of the SOC. If at the end of a review the United States continues to have concerns about Viet Nam's compliance, the United States and Viet Nam shall consider taking appropriate action under the TPP Agreement.

B. Supporting Mechanisms

1. To support the governmental review mechanisms established above, the United States and Viet Nam agree to the following actions.

Technical Assistance Program

2. Viet Nam, with support from the United States, shall seek the establishment of a Technical Assistance Program (TAP) by the ILO in Viet Nam to provide continuous and regular support to Viet Nam to facilitate the implementation of the legal and institutional reforms described in this Plan. The TAP shall produce a public report two years after entry into force of the TPP Agreement between the United States and Viet Nam and bi-annually thereafter for eight years containing information and data relevant to assessing such implementation, including on industrial relations practices in Viet Nam. The report may provide recommendations for improvement in implementation. Viet Nam shall take into account the recommendations of the TAP.

Labour Expert Committee

3. The United States and Viet Nam hereby establish a Labor Expert Committee (LEC) comprising three members. The United States and Viet Nam shall agree on the Chair, who may be a representative of the ILO or other individual with expertise in international labour

standards who shall be unbiased, objective and independent of either Party, within 30 days after entry into force of the TPP Agreement between the United States and Viet Nam. The United States and Viet Nam shall each appoint one member not affiliated with or taking instructions from either government, who shall have expertise in international labour standards, within 60 days after entry into force of the TPP Agreement between the United States and Viet Nam. The LEC shall produce a public report providing a factual review, including information and data on matters in Sections II, III, and IV, including subsection B.3, of this Plan relevant to Viet Nam's application and implementation of the legal and institutional reforms under this Plan, including any challenges or concerns. The reports shall be produced at two and one-half years, four and one-half years, six and one-half years, and eight and one-half years after entry into force of the TPP Agreement between the United States and Viet Nam. In its reports, the LEC also shall provide recommendations that are relevant to any identified concerns related to Viet Nam's implementation of the legal and institutional reforms under this Plan. After such time, these reviews and reports shall continue at five-year intervals at the request of Viet Nam or the United States. The LEC shall consider the TAP reports and recommendations, including whether Viet Nam has implemented its recommendations, in its reviews. The LEC may request information from Viet Nam to ensure

the timely development of its reports. Viet Nam shall cooperate with the LEC and provide any requested information to the extent practicable. The LEC shall solicit and consider the views of interested persons in the United States and Viet Nam, and consider information from any relevant public submissions made pursuant to Article 19.9 (Public Submissions).

VI. Technical Assistance

Viet Nam and the United States shall endeavor to secure funding for technical assistance programming to directly facilitate implementation of the legal and institutional reforms in this Plan. Viet Nam shall request the cooperation, advice, and technical assistance of the ILO to help in such implementation and endeavor to conclude the negotiation of an agreement with the ILO for this purpose. Viet Nam shall implement recommendations provided by the ILO as the result of this assistance. Viet Nam and the United States shall endeavor to work with other interested TPP Parties to support technical assistance programs relevant to implementation of the legal and institutional reforms in this Plan.

VII. Implementation

1. Viet Nam shall enact the legal and institutional reforms in Sections II and III of this Plan prior to the date of entry into force of the TPP Agreement between the United States and Viet Nam, except as otherwise noted in this Plan.
2. Viet Nam shall comply with paragraph II.A.2 of this Plan no later than five years from the date of entry into force of the TPP Agreement between the United States and Viet Nam.
3. This Plan shall be subject to consultations under Article 19.15 (Labour Consultations) of the Labour Chapter, except that with respect to paragraphs 2 and 3, the requirement to circulate the request and reply, respectively, to the other TPP Parties, shall not apply; and paragraph 4 shall not apply.
4. This Plan shall be subject to dispute settlement under Chapter 28 (Dispute Settlement) of the TPP Agreement, except for Article 28.13 (Third Party Participation), which shall not apply.
5. Chapter 29 (General Exceptions) also shall apply to this Plan.

VIII. Review of Implementation

1. The United States shall review the operation of paragraph II.A.2 of this Plan after the fifth anniversary of the date of entry into force of this Agreement between the United States and Viet Nam.

2. If, following the review in paragraph 1 of this Section and before the seventh anniversary of the date of entry into force of this Agreement between the United States and Viet Nam, the United States considers that Viet Nam has failed to comply with paragraph II.A.2 of this Plan, the United States shall notify Viet Nam, in writing, of its determination. Viet Nam may, within 30 days after the date of the delivery of the notice, request, in writing, a meeting to discuss the matter.

3. The United States shall agree to meet with Vietnam to discuss the matter within 30 days of the receipt of Viet Nam's request. If Viet Nam does not make a request under paragraph 2 of this Section or, if the United States and Viet Nam do not agree that Viet Nam has complied with paragraph II.A.2 of this Plan within 60 days after the date of the receipt of a request under paragraph 2 of this Section, the United States may withhold or suspend any tariff reductions that are scheduled to come into effect thereafter.

4. If the United States withholds or suspends any tariff reductions under Paragraph 3 of this Section and Viet Nam considers that it is in compliance with paragraph II.A.2 of this Plan, Viet Nam may have recourse to dispute settlement under Chapter 28 (Dispute Settlement), except as otherwise specified in this Plan. Further, for purposes of this paragraph, Viet Nam's request for the establishment of a panel under Article 28.7 shall be limited to the matter of whether Viet Nam has complied with paragraph II.A.2.

5. If in its final report the panel determines that Viet Nam is in compliance with paragraph II.A.2 of this Plan, the United States shall promptly apply the rate of duty set out in the U.S. schedule that would have applied had the United States not taken action under Paragraph 3 of this Section.

6. If the United States withholds or suspends any tariff reductions under Paragraph 3 of this Section and thereafter the United States and Viet Nam agree that Viet Nam has complied with paragraph II.A.2 of this Plan, the United States shall promptly apply the rate of duty set out in the U.S. schedule that would have applied had the United States not taken action under Paragraph 3 of this Section.

[1] For purposes of this Plan, “labour law” means all legally binding measures of a Party related to labour, including “labour laws” as defined in Article 19.1.