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The Vietnam-U.S. Bilateral Trade Agreement

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The Vietnam-U.S. Bilateral Trade Agreement

Summary

On July 13, 2000, U.S. and Vietnamese negotiators signed a sweeping bilateral trade agreement (BTA). Following affirmative votes in Congress and the Vietnamese National Assembly, the BTA entered in into force on December 10, 2001, when the two countries formally exchanged letters implementing the agreement. Under the deal, the U.S. will extend temporary most-favored nation (MFN, also known as normal trade relations [NTR] status) status to Vietnam, a step that will significantly reduce U.S. tariffs on most imports from Vietnam. The World Bank has estimated that Vietnam's exports to the U.S. will rise to $1.3 billion – 60% higher than 2000 levels – in the first year of MFN status, as U.S. tariff rates on Vietnamese exports will fall from their non-MFN average of 40% to less than 3%. In particular, Vietnamese garment exports are expected to record a tenfold increase in the first year after receiving MFN treatment.

In return, Hanoi agreed to undertake a wide range of market-liberalization measures, including extending MFN treatment to U.S. exports, reducing tariffs on goods, easing barriers to U.S. services (such as banking and telecommunications), committing to protect certain intellectual property rights, and providing additional inducements and protections for inward foreign direct investment. Vietnam is the world's 13th most populous country, with 78 million inhabitants, roughly equal to the population of Germany. The U.S. and Vietnam reached an agreement in principle in July 1999, but for nearly a year Vietnam delayed finalizing the deal because of intense divisions among the Vietnamese Communist Party (VCP) leadership.

Under the requirements of Title IV of the Trade Act of 1974 – Section 402 of which is commonly referred to as the "Jackson-Vanik amendment" – signing a bilateral trade agreement is a necessary step for the U.S. to restore MFN treatment to certain socialist countries, including Vietnam. Congressional approval of the BTA will allow the President to extend MFN treatment to Vietnam. Such MFN status will be conditional because – as with all Title IV BTAs – it will require annual Presidential extensions, which Congress could disapprove.

This report outlines the terms of the BTA, identifies U.S. and Vietnamese motivations for entering into the deal, analyzes the reasons for Vietnam's delay in signing the agreement, and explains Congress' role in the process of restoring normal trade relations treatment to Vietnam. This report will be updated periodically. Further information on U.S.-Vietnam relations is available in CRS Issue Brief IB98033, *Vietnam-U.S. Relations*. Further information on the legislative and legal procedures for handling the BTA is available in CRS Report RS20717, *Vietnam Trade Agreement: Approval and Implementing Procedure*.

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The Vietnam-U.S. Bilateral Trade Agreement

Background

On July 13, 2000, after nearly five years of bargaining, the U.S. and Vietnam announced they had signed a bilateral trade agreement (BTA).[1] On June 8, 2001, President Bush submitted the agreement, which requires congressional approval, to Congress. Following President Bush's transmission, joint resolutions (H.J.Res. 51 and S.J.Res. 16) were introduced in both chambers, and referred to the House Ways and Means Committee and the Senate Finance Committee. On September 6, 2001, the House approved the agreement by voice vote. The Senate passed the agreement, by a vote of 88-12, on October 3, 2001 (Roll Call 291). On October 16, 2001, President Bush signed the agreement into law (P.L. 107-52). Vietnam's National Assembly ratified the BTA on November 28, 2001, by a vote of 278-85, and Vietnamese President Tran Duc Luong signed the agreement into law on December 7. It entered into force on December 10, 2001 when the two countries formally exchanged notices of acceptance.

The BTA is a major step toward fully normalizing U.S.-Vietnam commercial relations, as it restores reciprocal most-favored-nation (MFN, also known as normal trade relations [NTR]) treatment between the two countries, and commits Vietnam to undertake a wide range of market-oriented economic reforms.[2] Extending MFN treatment to Vietnam will significantly reduce U.S. tariffs on most imports from Vietnam.

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[1] The text of the agreement – along with a separate Annex on Services and two separate letters on investment – may be found on the home page of the United States Trade Representative [http://www.ustr.gov] and on the home page of the United States-Vietnam Trade Council [http://www.usvtc.org].

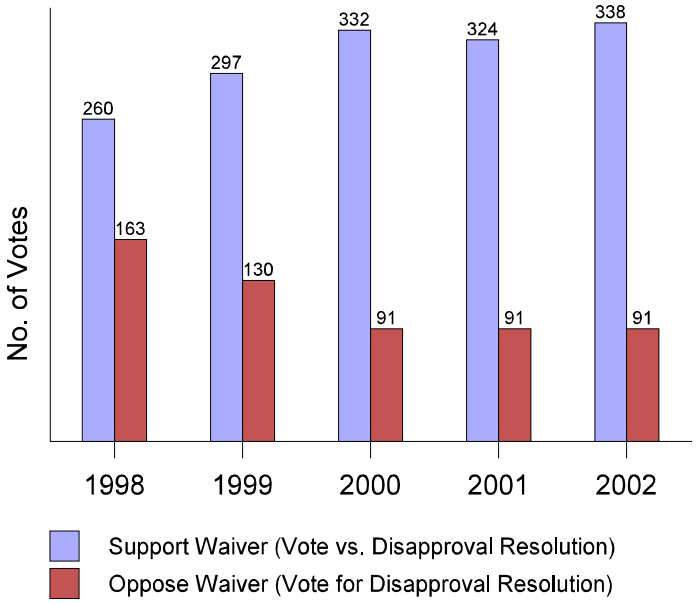
[2] In 1998, legislation was enacted to replace the term "most-favored-nation" treatment in existing and future legislation with the term "normal trade relations" (NTR). The former term is used in this report for reasons of historical continuity and because of its continued use in international trade relations, including in U.S. bilateral trade agreements. See CRS Report RL31558, *Most-Favored-Nation (Normal-Trade-Relations) Policy of the United States*, by (name redacted).

Congress' Role in the Normalization of U.S.-Vietnam Trade Relations[3]

Following the victory of communist North Vietnam over U.S.-backed South Vietnam in 1975, the United States ended virtually all economic interchange with unified Vietnam. The commercial restrictions included not only those that previously had been imposed only on North Vietnam (see the following section), but also a halt to bilateral humanitarian aid, opposition to financial aid from international financial institutions (such as the World Bank), a ban on U.S. travel to Vietnam, and an embargo on bilateral trade.

Washington and Hanoi gradually began to normalize relations in the early 1990s, following improvements on the issues of Vietnam's activities in Cambodia and American prisoners of war (POWs) and missing-in-action (MIA) personnel in Vietnam.[4] In 1994, President Clinton ordered the lifting of the trade embargo against Vietnam. The following year, the two countries established ambassadorial-level diplomatic relations. In 1998, President Clinton granted Vietnam its first waiver from the requirements of the so-called **Jackson-Vanik amendment** (contained in the Trade Act of 1974, Title IV, section 402), which prohibit the President from normalizing commercial relations with selected socialist and formerly socialist countries if they do not meet certain requirements regarding freedom of emigration. Presidential waivers were also granted to Vietnam in 1999, 2000, 2001, and 2002. Congress may reject the annual waiver by passing a joint disapproval resolution. Each time waivers have been granted to Vietnam, the House has defeated disapproval resolutions. (See **Figure 1**), most recently on July 23, 2002, by a vote of 338-91 (roll call #329). As explained below, after the BTA went into effect in December 2001, the Jackson-Vanik waiver granted Vietnam MFN status and allowed the U.S. Overseas Private Investment Corporation (OPIC) and the U.S.

Figure 1. House Votes on Vietnam's Jackson-Vanik Waiver, 1998-2002



[3] Vladimir Pregelj, CRS Specialist in International Trade and Finance, provided extensive assistance with this section.

[4] For a more detailed account of the history of U.S.-Vietnam normalization, see CRS Issue Brief IB98033, *The Vietnam-U.S. Normalization Process*, by Mark Manyin.

Export-Import Bank to support U.S. businesses exporting to and/or operating in Vietnam.

Restoration of Temporary MFN Status to Vietnam. The U.S. denied MFN treatment to communist-controlled areas of Vietnam in August of 1951. At that time, under Section 5 of the Trade Agreements Extension Act of 1951, MFN tariff rates were suspended for all countries of the Sino-Soviet bloc.[5] When communist North Vietnamese forces unified the country in 1975, MFN status was suspended for the entire country.

In 1974, the U.S. issued strict conditions for restoring MFN status to those non-market economies (NMEs) subject to Section 5 suspension (in practice, the new conditions applied to all countries of the former Sino-Soviet bloc). Under Title IV of the Trade Act of 1974, MFN treatment may be restored to NME countries after two requirements have been met:

a) The President issues a determination that the country is not in violation of the freedom-of-emigration requirements of the Jackson-Vanik amendment.[6] To date, Vietnam has not been found to be in full compliance with Jackson-Vanik requirements. Alternatively, subject to certain conditions, the President may waive full compliance with these requirements, as Presidents Clinton and Bush have done since 1998. Jackson-Vanik waivers must be renewed annually, and Congress may reject them by passing a joint disapproval resolution.

b) The completion of a bilateral trade agreement that contains certain required provisions, including a reciprocal MFN clause.[7] Such an agreement requires approval by the Congress (and by the Vietnamese National Assembly). The approval of the BTA allows the President to extend *temporary* MFN tariff treatment to Vietnam. The MFN treatment is temporary because it is contingent upon Vietnam meeting the requirements described in

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[5] Section 5 of the Trade Agreements Extension Act of 1951 (65 Stat. 73), which Congress passed in response to the outbreak of the Korean War, required the President to suspend the application of MFN tariff rates to the Soviet Union and all countries or areas under the control of international communism. Yugoslavia, a non-Soviet bloc country, was the one exception. For more on the history of the U.S.'s MFN policy, see CRS Issue Brief IB93107, *Normal-Trade-Relations (Most-Favored-Nation) Policy of the United States*, by Vladimir Pregelj. Currently, the U.S. denies MFN treatment to only six countries – Afghanistan, Cuba, Laos, North Korea, Vietnam, and Yugoslavia (Serbia and Montenegro).

[6] After the issuance of a determination of full compliance with the Jackson-Vanik amendment's freedom-of-emigration requirements, the President must issue semiannual reports to Congress arguing that the relevant country is not in violation of the freedom-of-emigration requirements. The President's end-of-year report is subject to congressional disapproval by joint resolution.

[7] As explained below, the U.S.-Vietnam BTA, like other BTAs before it, is much more comprehensive than required by Title IV.

the previous paragraphs – *i.e.* either obtaining a Presidential determination or a Presidential waiver, both of which are subject to annual congressional review and disapproval.[8]

Congressional Procedures for Considering a U.S.-Vietnam BTA.[9] To go into effect, Title IV bilateral trade agreements must be approved by a joint resolution of Congress. Once the President transmits the agreement to Congress, a joint resolution must be introduced in both Houses. The resolutions are subject to special expedited procedures, under which amendments are not permitted in either chamber.

Additionally, there are deadlines of 45 session-days for committee consideration (by the House Ways and Means and the Senate Finance Committees), and 15 session-days for floor debate in both chambers. Because the approval resolutions are revenue measures, the Senate must vote on a House-passed resolution, and Congress would have a *maximum* of 90 session-days to act on the resolution: 45 days for consideration by the House Ways and Means Committee; followed by 15 days for floor debate in the House; followed by 15 days for consideration of the House-passed resolution in the Senate Finance Committee; followed by 15 days for floor debate in the Senate.

As with most trade agreements with non-market economies, the U.S.-Vietnam BTA will remain in effect for a 3-year period and will be extended automatically unless renounced by either party. Additionally, each extension will require a presidential determination that Vietnam is satisfactorily extending reciprocal MFN treatment to U.S. exports.

After the BTA: Extending Permanent MFN Treatment to Vietnam. Following the BTA, the next step toward normalizing U.S.-Vietnam commercial ties is restoring permanent MFN status (also known as permanent NTR or PNTR status) to Vietnam. This process that will require Congress to terminate the application of the relevant Title IV provisions to Vietnam, as has been done for several countries, including China, Albania, and Georgia.

Vietnam and the World Trade Organization (WTO). Vietnam applied to join the WTO in 1995. Many observers believe that Vietnam is a number of years away from meeting the requirements for WTO membership. In March 2001, Vietnam's Trade Minister expressed his government's goal of acceding to the WTO by 2004. Countries seeking to enter the WTO must negotiate bilateral agreements with current WTO members. Provisions of such agreements are then consolidated into the acceding country's protocol of accession and, because of the WTO's

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[8] Note that Vietnam's MFN treatment would be temporary regardless of whether it received a Jackson-Vanik waiver or a Presidential report that Vietnam is in full compliance with the Jackson-Vanik amendment. In the case of the latter, the President's annual year-end report would be subject to congressional review, and therefore could be rejected by a joint disapproval resolution.

[9] For more on this topic, see CRS Report RS20717, *Vietnam Trade Agreement: Approval and Implementing Procedure*, by Vladimir Pregelj.

mandatory MFN requirement, apply to all WTO members. In other words, any concessions obtained by one country in a bilateral accession agreement would be enjoyed by all WTO members. Typically, the bilateral accession negotiations focus on tariff concessions and other market access issues that will govern bilateral trade relations after the applicant becomes a member. Thus, at some point in the future, Vietnam and the U.S. are likely to engage in another set of negotiations about the changes Vietnam must make to its trade regime before the U.S. will support Vietnam's application for WTO membership. Upon completion of this agreement, it is likely that the U.S. president will ask Congress to extend permanent MFN treatment to Vietnam, much as President Clinton did after completing WTO accession negotiations with China in November 1999.[10]

Table 1. Vietnam's Path to Commercial Normalization with the United States

Step		Action
Step 1.	Removing the U.S. trade embargo.	In February 1994, President Clinton ordered the embargo on Vietnam lifted.
Step 2.	Granting an annual waiver of Jackson-Vanik restrictions on OPIC and Ex-Im Bank operations in the country.[11]	President Clinton issued waivers for Vietnam in 1998, 1999, and 2000, as did President Bush in 2001. Each time, disapproval resolutions were defeated in the House.
Step 3.	Signing a bilateral trade agreement, subject to Congressional approval, that includes an extension of temporary MFN treatment.	An agreement was signed in July 2000. In 2001, following approval by Congress and Vietnam's National Assembly, the agreement entered into force.

[10] If Vietnam acceded to the WTO before the U.S. extended to it permanent MFN status, its WTO membership could place the U.S. in violation of the WTO requirement that unconditional MFN treatment be applied to all WTO members. The U.S. could avoid this by invoking the WTO's non-application article (Article XIII) prior to Vietnam's accession to the WTO. Thus, if Vietnam were to join the WTO, Hanoi's accession would not in and of itself alter the status of U.S.-Vietnam trade relations, which would continue to be governed by Title IV of the Trade Act of 1974, as well as the U.S.-Vietnam BTA. However, the U.S. would not have any claim on Vietnam's concessions to other WTO members, nor could it use the WTO's dispute resolution mechanism to deal with U.S.-Vietnam trade disputes.

[11] Alternatively, as described earlier, this step could be taken through a Presidential determination that Vietnam is in full compliance with the Jackson-Vanik amendment's freedom-of-emigration requirements. Along with Belarus, Vietnam has not been determined to be in full compliance with the Jackson-Vanik requirements.

Step		Action
Step 4.	Restoring permanent MFN status by passing a law "graduating" Vietnam from its status as a non-market economy country.	Presumably, this step will be taken if and when Vietnam joins the World Trade Organization (WTO).

U.S. and Vietnamese Interests in a Bilateral Trade Agreement

U.S. Interests in a Bilateral BTA. U.S.-Vietnam trade and investment flows are extremely low. Although Vietnam is the world's 13th most populous country, with nearly 80 million people, for the past several years annual U.S. exports have hovered in the $200-$400 million range (see Table 2 below), a figure roughly equivalent to three days' worth of exports to Japan, and roughly one-fifth the amount the U.S. exported to South Vietnam in 1970.[12] Major U.S. exports to Vietnam include aircraft, fertilizer, telecommunications equipment, and general machinery. Cumulative foreign direct investment (FDI) by U.S. companies in Vietnam is also low, valued at about $1 billion, making the United States the ninth-largest source of investment in Vietnam.

To boost U.S. exports and investment, U.S. negotiators demanded that Vietnam provide more comprehensive and detailed concessions in the areas of services, investment, and market access than had been obtained in previous bilateral trade pacts with other Jackson-Vanik countries. As discussed in the following section, it appears the U.S. successfully obtained most of these negotiating objectives.

Following the signing of the agreement, Clinton Administration officials and business representatives were careful not to argue that the BTA will significantly boost U.S. exports and investment to Vietnam in the short term. Rather, they stressed that U.S. exporters and investors will benefit most in the medium to long-term, as Vietnam continues market-oriented reforms, becomes more developed and integrated into the global economy, and as Vietnam phases in more and more of the BTA's requirements. Moreover, exports to and investment in Vietnam are expected to increase as Hanoi and other members of the Association of Southeast Asian Nations (ASEAN) – a 10-country, 500-million person market – follow through on commitments to reduce trade barriers by 2006. Ultimately, U.S. trade and investment opportunities in the future will depend on a) Hanoi's implementation of the BTA; b) Vietnam's progress on moving toward a more market-oriented economy; and c) Vietnam's rate of economic growth.

[12] In 1970, the United States exported $342 million to South Vietnam. Adjusted for inflation, this amount equals approximately $1.5 billion today.

Table 2. U.S.-Vietnam Trade, 1994-2002
(millions of dollars)

	U.S. Imports from Vietnam	U.S. Exports to Vietnam	Total Trade	Trade Balance
1994	50.5	172.2	222.7	121.7
1995	199.0	252.9	451.9	53.9
1996	319.0	616.1	935.1	297.1
1997	388.2	277.8	666.0	-110.4
1998	553.4	274.2	827.6	-279.2
1999	601.9	277.3	879.2	-324.6
2000	827.4	330.5	1,157.9	-496.9
2001	1,026.4	393.8	1,420.2	-632.6
Jan-April 2001	254.7	107.7	362.4	-147.0
Jan-April 2002	411.8	144.0	555.8	-267.8
Major Imports from Vietnam	frozen shrimp, petroleum products, clothing, coffee, footwear			
Major Exports to Vietnam	industrial & electronic machinery, fertilizer, raw cotton			

Source: U.S. International Trade Commission. Data are for merchandise trade on a customs basis.

In the short- to medium-term, the BTA will require Vietnam to improve the climate for foreign investors. U.S. businesses in Vietnam will receive legal protections that are unavailable today. More sectors will be open to U.S. multinationals. Additionally, the BTA will help make the Vietnamese business environment more predictable and transparent. Currently, a frequent complaint from foreign executives in Vietnam is the lengthy delay in obtaining investment licenses from the government. To make matters more difficult, foreign investors often are not aware of all the regulatory requirements for obtaining licenses, leading to complaints of arbitrary treatment by local and central government authorities.

Many of the agreement's proponents also contended that the bilateral trade pact will nudge Vietnam toward a more democratic society by committing the government to enact market-oriented reforms, weakening the government's tight political controls, solidifying the rule of law, integrating Vietnamese enterprises more fully into the global economy, and economically empowering individuals. BTA proponents also pointed out that the agreement will help to bring Vietnam closer to compliance with WTO rules, facilitating Hanoi's eventual WTO accession. Once Vietnam joins the WTO, its trade policies will be subject to even greater international scrutiny and disciplines. Strategically, BTA backers argued that the U.S.-Vietnam BTA, together with BTAs recently completed with Cambodia and Laos, will promote regional stability by smoothing the integration of Indochina into the regional and global community.[13]

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[13] Testimony of Ambassador Charlene Barshevsky before the Senate Foreign Relations Subcommittees on International Economic Policy and Asia-Pacific Affairs, August 4, 1999. Note that Congress has approved the U.S.-Cambodia BTA, which is now in force, but has

(continued...)

Arguments Against the BTA. The agreement's critics argued that Vietnam's government is likely to fall short on implementing the agreement and/or is likely to erect new, hidden barriers to imports and foreign investment, while low-cost Vietnamese exports – particularly textiles – to the U.S. will increase. Some U.S. trade unions criticized the pact's lack of provisions on minimum labor standards and environmental protection. Vowing to fight the agreement in Congress, AFL-CIO President John Sweeney in July 2000 argued that "it [the BTA] is missing what we've been championing – core labor standards, human rights and environmental protection." Textile manufacturers and other groups said they would lobby Congress and the Administration for changes to safeguard their industries from low-priced Vietnamese imports.[14] Many observers, including labor groups, also opposed the pact on human rights grounds, arguing that human rights considerations should take priority over trade ties and/or that Hanoi's ruling elite would capture most of the gains from increased globalization. Indeed, on the same day the House approved the BTA, it also passed the Vietnam Human Rights Act, (H.R. 2833, by a vote of 410 - 1), which would ban increases (over FY2001 levels) in non-humanitarian aid to the Vietnamese government if the President does not certify that Vietnam is making "substantial progress" in human rights. The act allows the President to waive the cap on aid increases. In its most recent annual review of Vietnam's human rights situation, the U.S. State Department reported that Hanoi continues "to repress basic political and some religious freedoms and to commit numerous abuses," notably "not tolerating most types of public dissent."[15]

Vietnam's Interests in a BTA. After recording impressive growth for much of the 1990s following Hanoi's launch of the *doi moi* (economic renovation) reforms, Vietnam's economy has slowed since the 1997-99 Asian financial crisis, which originated in nearby Thailand. Annual economic growth declined from a peak of 9.5% in 1995 to 4.8% in 1999 and 6% in 2000. Foreign direct investment – a major stimulus for the country's growth – dwindled from over $8 billion in 1996 to $600 million in 1999, the lowest level since 1992.[16]

It is likely that the deterioration in Vietnam's economic fortunes played a major role in jump-starting the BTA talks with the U.S. in the spring of 1999, as a significant portion of Vietnam's leadership came to see increased U.S. investment and MFN access to the U.S. market as major ways for Vietnam to reverse its declining growth rates. As of December 2000, the United States was only the ninth largest source of foreign investment in Vietnam and absorbed less than 5% of

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[13] (...continued)
yet to approve the agreement with Laos.

[14] "U.S. Labor Vows Fight Against Vietnam Trade Pact," *ABCnews.com*, accessed July 17, 2000; see also "Clouds Part Over Vietnam's Bumpy Road to Reform," *Reuters*, July 18, 2000.

[15] U.S. Department of State *2000 Report on Human Rights Practices in Vietnam*, released February 26, 2000, available at [http://www.state.gov/g/drl/rls/hrrpt/2000/].

[16] For more on Vietnam's economic situation, see CRS Report 98-551, *Vietnam: Economic Reforms and Commercial Relations with the United States*, by (name redacted), and CRS Issue Brief IB98033, *Vietnam-U.S. Relations*, by Mark Manyin.

Vietnam's exports. The bilateral trade agreement presumably will increase these levels considerably by conferring to Vietnamese exporters the same tariff rates that are applied to other MFN-recipient countries. The World Bank has estimated that Vietnam's exports to the U.S. will rise to $1.3 billion – more than 60% over 2000 levels – in the first year of MFN status, as U.S. tariff rates on Vietnamese exports would fall from their non-MFN average of 40% to less than 3%.[17]

Obtaining MFN status is likely to dramatically transform the product mix of Vietnam's exports to the U.S. Since the trade embargo was lifted in 1994, most of Vietnam's exports to the U.S. have been in items that either receive duty-free treatment (zero tariffs) or that have identical tariffs for MFN and non-MFN countries. In the short term, the BTA is likely to increase Vietnam's exports of labor-intensive manufacturing with large differences between the MFN and non-MFN tariff rates. Judging by Vietnam's leading exports to the European Union and Japan (see **Figure 2** below), exports of the following items are likely to increase substantially: garments, leather products, footwear, household plastic products and processed foods.[18]

Vietnam's Clothing Exports. In particular, Vietnam's clothing exports are expected to increase dramatically. Vietnam currently exports few apparel products to the U.S. – less than $40 million in 1999 – because of the higher, non-MFN, tariff rates it faces. In contrast, Vietnamese garment exports to Japan and the 15 countries of the European Union in 1999 totaled more than $500 million and $640 million, respectively (see **Figure 2**). Based on the experience of Cambodia, which was granted MFN status by the United States in 1996, the World Bank estimates Vietnamese apparel exports will increase nearly tenfold – to $384 million – in the first year after receiving MFN status.[19]

The BTA agreement contains no provisions on Vietnamese textile exports to the U.S., but the safeguard provision would allow the U.S. to impose quotas on textile imports in the event of a surge of imports. In private, U.S. and Vietnamese officials have said they expect to begin negotiating a bilateral textile agreement, which presumably would set quotas for Vietnamese textile exports, soon after a Congressional vote on the BTA. Some Members of Congress have called for the Bush Administration to publicly commit to negotiating a textile agreement, and have

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[17] Fukase, Emiko, and Will Martin, *The Effects of the United States Granting Most-Favored-Nation (MFN) Status to Vietnam*, (Washington, DC: World Bank Development and Research Group, 1999). In a 1998 report, the World Bank estimated that half of the projected increase in exports to the U.S. will consist of clothing items. The rest is likely to consist of manufactures and processed agricultural goods. See World Bank Poverty Reduction and Economic Management Sector Unit, East Asia and Pacific Region, Vietnam: Rising to the Challenge. An Economic Report, Report No. 18632-VN, November 25, 1998.

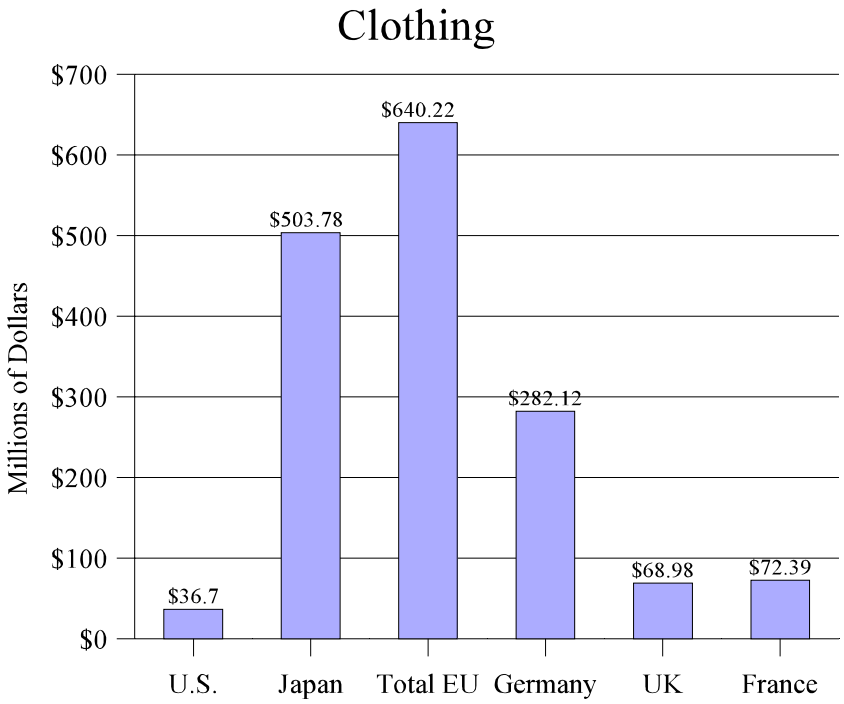
[18] EUROSTAT Internal and External Trade of the EU Database; *2000 Japan Statistical Yearbook*; *AsiaPulse*, [http://sg.dailynews.yahoo.com/headlines/asia/], accessed on August 18, 2000.

[19] Fukase and Martin, *The Effects of the United States Granting Most-Favored-Nation (MFN) Status to Vietnam*, p.12.

pressed for a commitment that such an agreement would include provisions that would link the size of Vietnam's quotas to progress in its labor rights.[20]

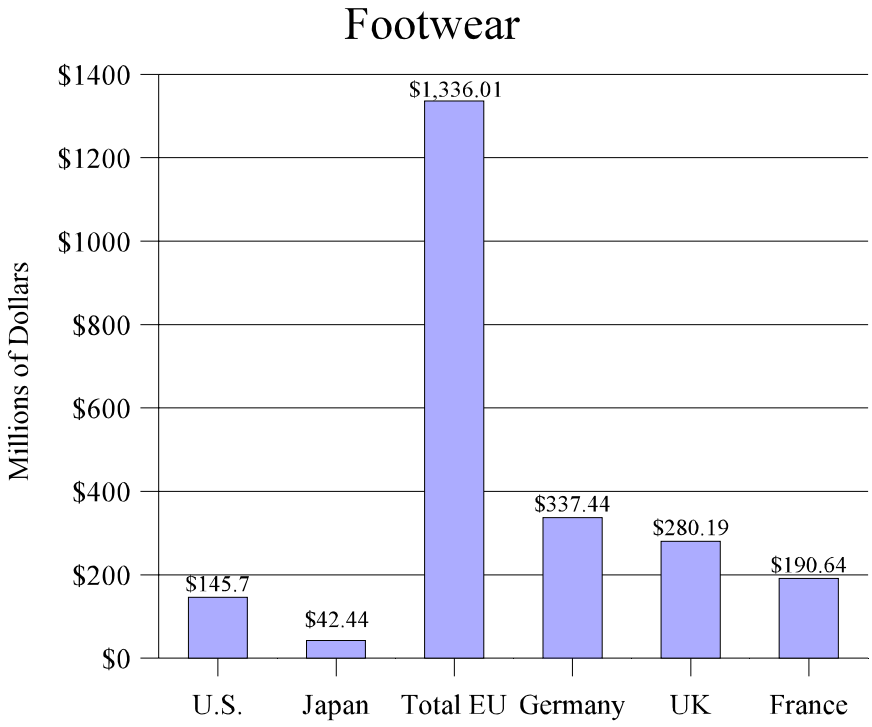
Passing a trade agreement would also bring Vietnam one step closer to receiving U.S. trade benefits under the generalized system of preferences (GSP), which allows many imports from less-developed countries to enter the U.S. market duty-free.[21] Furthermore, Vietnamese officials see the bilateral trade agreement as an important stepping stone to joining the WTO, providing them with non-discriminatory access to all WTO members. Not only do they regard the BTA as necessary to obtaining U.S. support for Vietnam's application for WTO membership, but they also see the processes of negotiating and implementing the agreement as useful for raising Vietnam's legal, regulatory, and economic systems to the WTO's standards.

Figure 2. Imports from Vietnam, Selected Countries & Products, 1999

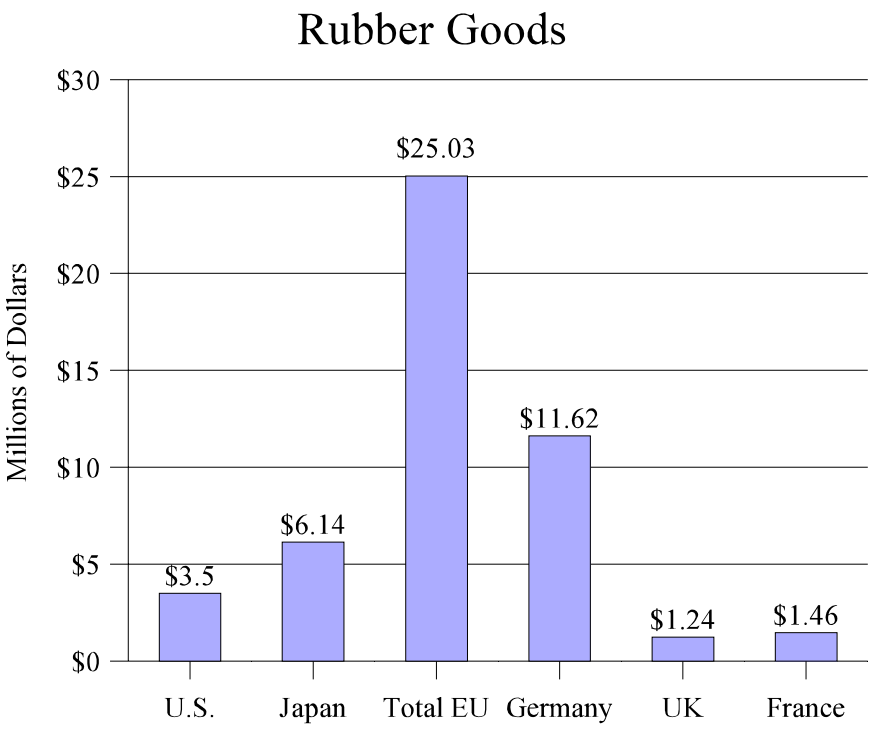


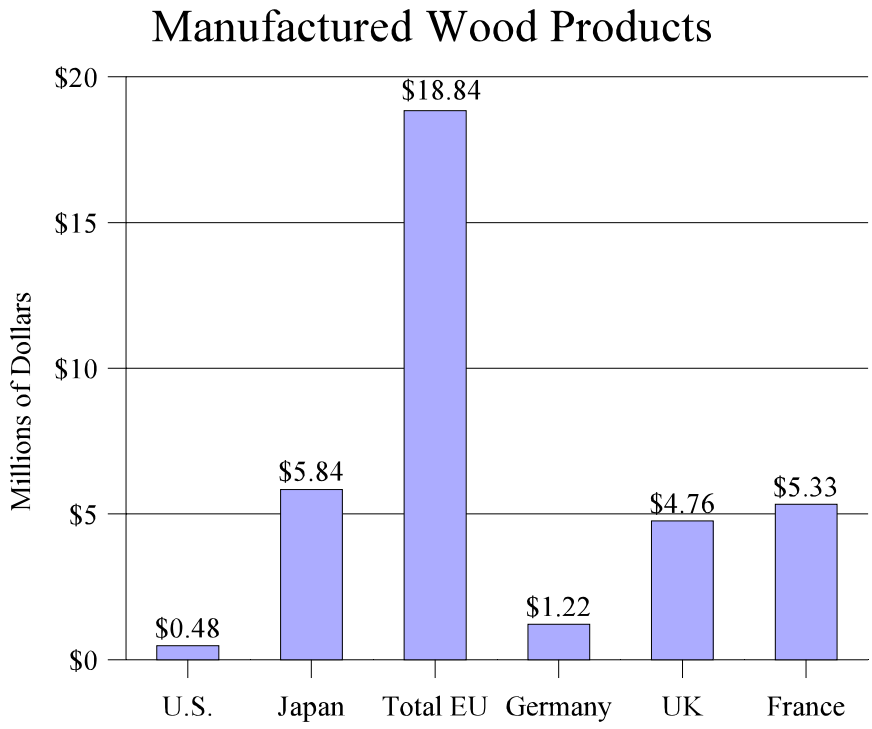
[20] *Inside U.S. Trade*, May 25, 2001.

[21] Under Section 502 of the Trade Act of 1974, to be eligible for GSP treatment, Communist countries, in addition to meeting other conditions required of recipient developing countries, must receive MFN treatment, and belong to the WTO and the IMF. Paragraph I:3:8 of the Vietnam-U.S. BTA states that "the United States shall consider Vietnam's eligibility for the Generalized System of Preferences."


Footwear
Millions of Dollars
$1400
$1200
$1000
$800
$600
$400
$200
$0
$145.7
$42.44
$1,336.01
$337.44
$280.19
$190.64
U.S.
Japan
Total EU
Germany
UK
France


Leather Goods
Millions of Dollars
$200
$150
$100
$50
$0
$2
$51.63
$169.61
$57.35
$15.5
$33.48
U.S.
Japan
Total EU
Germany
UK
France





(**Source:** U.S. International Trade Commission, EUROSTAT, and Japan Tariff Association)

Overview of the Vietnam-U.S. Bilateral Trade Agreement[22]

The trade agreement consists of four parts: market access, trade in services, intellectual property rights, and investment.

1) Market Access

Vietnam has agreed to take the following steps to open its markets:

- guarantee most-favored-nation (MFN) treatment to U.S. goods;
- treat imports the same as domestically produced products (also known as "national treatment");
- eliminate quotas on all imports over a period of 3 to 7 years;
- make its government procurement process more transparent;
- allow for the first time all Vietnamese enterprises to trade all products;
- allow for the first time U.S. companies and U.S.-invested companies to import and export most products (to be phased in 3-6 years). (Presently, foreign companies have to rely on licensed Vietnamese importers, most of which are state-owned enterprises.)
- ensure that state enterprises comply with WTO rules;
- adhere to WTO rules in applying customs, import licensing, technical standards, and sanitary and phytosanitary measures

Tariff Concessions. The U.S.-Vietnam BTA is unique in that, in contrast to previously negotiated Title IV bilateral trade agreements between the U.S. and Jackson-Vanik countries, it includes specific commitments by Vietnam to reduce tariffs on approximately 250 products, about four-fifths of which are agricultural goods. Typically, the cuts range from 33% to 50% and are to be phased in over a three-year period. Vietnam's tariffs are not considered to be extremely high for a developing country (the U.S. Foreign Commercial Service estimates that Vietnam's average tariff line is 15%-20%).

Also in the area of market access, the agreement includes a **safeguard** provision that will allow either side to raise tariffs temporarily if it encounters a surge of imports.

2) Intellectual Property Rights

Vietnam has pledged to phase in the World Trade Organization Agreement on Trade-Related Intellectual Property Rights (TRIPs) over 18 months. The bilateral TRIPs agreement goes above and beyond the WTO's TRIPs agreement by including Vietnamese commitments to protect satellite signals within 30 months.

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[22] In addition to the text of the agreement itself, this section borrows from "Vietnam Trade Agreement: Summary of Key Provisions," *Reuters*, July 13, 2000.

3) Trade in Services

In the area of services, Vietnam has committed to uphold WTO rules such as MFN, national treatment, and disciplines on domestic regulation. Additionally, Vietnam has agreed to allow U.S. companies and individuals to invest in markets in a wide range of service sectors, including accounting, advertising, banking, computer, distribution, education, insurance, legal and telecommunications. Most sector-specific commitments are phased in over three to five years. Vietnam's commitments in three of the largest U.S. service sectors – banking, insurance, and telecommunications – are highlighted below.

Banking Services. Vietnam agreed to the following liberalization measures: For the first nine years after the agreement goes into effect, U.S. banks may form joint ventures with Vietnamese partners, with U.S. equity between 30% and 49%. After nine years, 100% subsidiaries are permitted.

Insurance. Under the BTA, for "mandatory" insurance sectors (such as automobile and construction-related insurance), after three years Vietnam will allow U.S. companies to form joint ventures, with no limit on the U.S. equity share. After six years, 100% subsidiaries are permitted. For life insurance and other "non-mandatory" insurance sectors, after three years joint ventures are permitted, with a limit of 50% U.S. equity. After five years, 100% subsidiaries are allowed.

Telecommunications. Under the BTA, for higher-end telecommunications services (such as Internet, e-mail, and voice mail services), Vietnam will permit joint ventures after two years, with a 50% cap on U.S. equity participation. Internet services have a three-year phase in period. For basic telecommunications services (such as facsimile, cellular mobile, and satellite services), joint ventures are permitted after four years, with U.S. companies limited to a 49% stake. For local, long distance, and international voice telephone services, joint ventures are permitted after six years, with a 49% cap on U.S. ownership. Vietnam agreed that it will consider increasing the U.S. equity limits when the agreement is reviewed in three years.

4) Investment

Regarding **investment**, the U.S.-Vietnam trade agreement includes guarantees of MFN treatment, national treatment, transparency, and protection against expropriation. Additionally, Vietnam pledged to implement the following changes in its investment regime:

- Investment screening: Currently, foreign businesses must obtain government approval to invest in Vietnam. Under the BTA, investment screening will be phased out for most sectors within two, six, or nine years, depending on the sector involved.

- Profit repatriation: Presently, Vietnamese enterprises have greater freedom than foreign multinationals to convert their Vietnam-earned profits into hard currency. The State Bank of Vietnam must approve the conversion of currency on behalf of foreign businesses, and the

Bank does not give permission to convert currency to foreign-invested companies.[23] Under the BTA, foreign multinationals will receive the same rights for profit repatriation as Vietnamese firms; however, Vietnam's currency is still not fully convertible.

- Capital contribution floors: Currently, the U.S. stake in a joint venture must be at least 30%. This requirement will be eliminated in three years.

- Personnel requirements for joint ventures: Presently, Vietnam requires that certain board members of joint ventures be Vietnamese and requires that certain types of decisions be made by consensus (thereby granting veto power to the Vietnamese board members). Under the BTA, within three years Vietnam will allow U.S. multinationals to select top executives without regard to nationality.

- Trade-related investment measures (TRIMs): Vietnam has agreed to eliminate within five years all TRIMs that are inconsistent with the WTO, such as local content requirements.

5) Transparency

Vietnam has agreed to adopt a fully transparent commercial regime by allowing comment on draft laws and regulations by ensuring that advance public notice is given for all such laws and regulations; by publishing these documents; and by allowing U.S. citizens and corporations the right to appeal rulings.

Vietnam's Implementation of the BTA

It is an open question whether the Vietnamese government has the will or the wherewithal to implement the pervasive reforms required by the U.S.-Vietnam bilateral trade agreement. Implementing the agreement will require cooperation at the local government level, where central control often is weak and corruption is rampant. An unprecedented level of cooperation among governmental ministries will also be required. Powerful vested interests – particularly the state-owned enterprises and the Vietnamese People's Army – undoubtedly will put pressure on local and central government officials to erect new barriers to foreign competition.

Most of Vietnam's concessions in the BTA are due to be phased in within three to five years. However, a number of reforms took effect upon the BTA's entry into force in December 2001. These include according national treatment (i.e. not discriminating between foreign and domestic enterprises) business activities, allowing all enterprises to import and export, eliminating most non-tariff barriers, streamlining the process for foreign investors to obtain licenses and approval, and publicizing laws, regulations and administrative procedures pertaining to any matter

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[23] United States Foreign Commercial Service, "Country Commercial Guide: Vietnam," July 15, 1999.

covered by the Trade Agreement. Thus far, according to one group monitoring the situation, Hanoi appears to have taken steps to implement nearly all of these initial commitments.[24] In May 2002, senior officials from Washington and Hanoi launched a Joint Committee on Development of Economic and Trade Relations, a consultative body called for in the BTA.

Comparison with the 1999 "Agreement in Principle"

In July 1999 the U.S. and Vietnam announced an "agreement in principle" on a BTA, but for nearly a year Vietnam delayed finalizing the deal because of intense divisions among the Vietnamese Communist Party (VCP) leadership (see the following section for an analysis of the reasons for Vietnam's hesitation). The Clinton Administration did not release the full terms of the July 1999 agreement in principle. According to one negotiator, the only significant differences between the final BTA and the 1999 agreement lie in the area of trade in services (Chapter III and Annex G), specifically in the area of telecommunications.[25]

Telecommunications. In general, the 1999 agreement in principle would have allowed U.S. companies the right to obtain a majority (51%) stake in certain Vietnamese telecommunications sectors after a certain number of years (often referred to as the "phase-in" period). Following the November 1999 U.S.-China agreement on China's WTO accession – which granted U.S. companies the right to a 49% maximum stake in Chinese telecommunications enterprises – the Vietnamese negotiators demanded that they receive similar equity caps. The U.S. agreed to this concession, but in exchange received significantly shorter phase-in periods. Vietnam also agreed to consider increasing the U.S. equity limits when the agreement is reviewed in three years.

Two telecommunications sectors, wireless and basic voice services, illustrate the differences between the 1999 and 2000 documents. In wireless telecommunications, under the 1999 agreement Vietnam would have allowed U.S. companies the right to set up joint ventures after three years, with a 51% maximum stake for U.S. companies. Under the 2000 BTA, Vietnam is to grant U.S. companies the right to set up wireless joint ventures after two years (three years for internet services), with a 50% cap on U.S. equity participation.

In the area of basic voice telecommunication services (local, long distance and international phone service), press reports indicate that the 1999 agreement would have phased-in a right to invest after 11 years, with a 51% maximum stake for U.S. companies. Under the 2000 BTA, Vietnam is to allow U.S. companies to set up joint ventures after six years, with a 49% cap on U.S. ownership.

Insurance. According to press reports, under the 1999 agreement Vietnam would have permitted U.S. companies to invest in its insurance sector in two to six years. The phase-in period varied by insurance sector. Details are unavailable on

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[24] See the web site of the U.S.-Vietnam Trade Council, [http://www.usvtc.org], "Roadmaps for BTA Implementation," and "Catalog of Legal Updates."

[25] July 2000 interview with U.S. government official.

foreign equity caps.[26] Under the July 2000 BTA, Vietnam is to grant U.S. companies the right to set up 50-50 joint ventures in its insurance sector after three years, and wholly owned (100% stake) ventures after five years.

Market Access. The final BTA includes commitments by Vietnam to reduce tariffs on approximately 250 products, about four-fifths of which are agricultural goods. 1999 press reports implied that the agreement in principle contained 330 tariff items scheduled for tariff reduction. A U.S. official involved in negotiating the agreement, however, has argued that this number is incorrect, stating that the tariff changes in Annex E of the final BTA are essentially the same as those agreed upon in 1999.

Comparison with Past BTAs

In negotiating bilateral trade deals with Jackson-Vanik countries, U.S. negotiators generally have tried to break new ground with each successive agreement. As one indication of that policy, the 1979 agreement China was less than 10 pages, while the far more comprehensive U.S.-Vietnam BTA is more than ten times that length. The Vietnam-U.S. BTA goes beyond past agreements in its more detailed commitments in the areas of services and investment. Furthermore, Vietnam's tariff concessions represent a new development. Previous Jackson-Vanik BTAs contained few or no market access commitments because in those negotiations the U.S. proposed to carry out tariff discussions at a future date, not as part of the final BTA itself.[27]

Vietnam's Ambivalence toward Economic Integration

Though the U.S. and Vietnam reached an agreement in principle on the BTA in July 1999, for nearly a year Vietnam delayed signing the deal. What were the reasons for Vietnam's hesitancy?

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[26] "USTR Lays Out Key Issues to be Resolved in U.S.-Vietnam Trade Deal," *Inside U.S. Trade*, July 30, 1999.

[27] November 1999 interview by the author with trade policy expert Craig VanGrasstek, President, VanGrasstek Communications.

Internal Factors

Consensus-Based Decision-Making. Vietnam's official reason for the delay was that it needed time to vet the agreement among decision-makers in Vietnam. Vietnam's consensus-style of decision-making and the weakness of the country's current leadership probably extended this vetting process: The BTA is the most extensive agreement Vietnam has ever negotiated, and the assent of virtually all officials involved in implementing the deal was required before Hanoi would take such a radical step. Furthermore, the weakness of the country's current top leaders – VCP General Secretary Le Kha Phieu, Prime Minister Phan Van Khai, and President Tran Duc Luong – made it difficult for them to forge a consensus on such a controversial issue.[28]

Questions from Vietnamese Conservatives. Ever since the Vietnamese Communist Party's (VCP) 8th Party Congress in 1996, disagreements between reformers and conservatives in Vietnam's 19-member Politburo – the country's supreme ruling body – have paralyzed economic decision-making. As the bilateral trade agreement with the U.S. requires Vietnam to jump-start its reforms and deepen its integration into the global economy, it is not surprising that the Politburo also has been divided over whether to finalize the deal.

The conservatives fear that economic reform will undermine the "socialist foundations" of the country's economic and political systems, and thereby erode the VCP's legitimacy and monopoly on power. They also fear that Vietnam's sovereignty will be eroded by increasing Vietnam's economic dependence on the West and by increasing Vietnam's vulnerability to regional economic downturns such as the 1997-99 Asian financial crisis. Among their specific concerns, conservatives worry that shifting to a more market-oriented economy will force the Politburo to curtail subsidies to the country's state-owned enterprises, the backbone of the socialist economic system. Many conservatives are understandably worried that further rationalization will raise unemployment rates, which already exceed 10%, according to some estimates. Social and political pressures on the Party have already been heightened in recent years by peasant uprisings and widespread accusations of government corruption. High level U.S. pressure on Vietnam for its human rights record, applied during Secretary of State Madeleine Albright's September 1999 trip to Vietnam, is said to have further rankled conservative forces opposed to the trade agreement.

In January 2000, a group of reform-minded leaders were transferred to key economic and political posts. These moves, combined with the BTA signing, the unveiling of a new Enterprise Law, the passage of new amendments to the Foreign Investment Law, and the opening of Vietnam's first stock market on July 20, 2000, may be signs that Hanoi's policy logjam is breaking up in the reformers' favor.

Opposition from Vested Interests. Parochial interests also may have played a role in Vietnam's deliberations. According to many sources, Vietnam's

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[28] Zachary Abuza, "Leadership Transition in Vietnam since the Eighth Party Congress: The Unfinished Congress," *Asian Survey*, (December 1998).

military leaders have been among the staunchest opponents of the BTA. Many argue that the military – known as the People's Army of Vietnam – is worried that the trade deal will threaten its vast commercial interests. According to one estimate, the business enterprises of the People's Army of Vietnam generated over $600 million in revenue in 1998, a figure equivalent to nearly 60% of the entire military budget.[29] Evidence of the military's influence can be seen in Vietnam's bargaining position on telecommunications liberalization during the BTA negotiations. Hanoi demanded an eleven-year phase-in period for FDI liberalization in cable communications, a sector in which the People's Army has invested heavily since 1995. In contrast, Vietnam's negotiators were willing to accept a four-year phase in for cellular communications, an area in which the Ministry of Defense has few investments.[30]

External Factors – Balancing China and the U.S.

Yet another hypothesis is that Hanoi was concerned that a trade deal with the United States would antagonize China. Beijing and Hanoi recently have strengthened their ties, and conservative elements in Hanoi may be wary of upsetting Beijing by appearing too closely aligned with the U.S. In particular, the Vietnamese leadership may have wished to avoid jeopardizing negotiations with China over a land-border treaty, negotiations that were not concluded until December 1999. There are also reports that Chinese leaders warned the Vietnamese not to conclude the BTA before Beijing had finalized its own WTO accession negotiations with the U.S., talks that were concluded in November 1999. However, some analysts and Administration officials reject this reasoning as a stalling tactic by the Vietnamese, who are said to often use the Chinese as an excuse for delaying foreign policy moves about which they are uncertain. As one observer has pointed out, Chinese opposition did not prevent Vietnam from joining the Association of Southeast Asian Nations (ASEAN) in 1995.[31]

Most observers agree that, apart from the issue of unsubstantiated Chinese pressure, the China factor played a positive role in spurring the Vietnamese to move forward, due to Hanoi's fears of increased economic competition with Beijing following China's accession to the WTO.

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[29] Huw Watkin, "Proud Military Slips into Decline as Aid Dries Up," *South China Morning Post*, July 7, 1999, and Huw Watkin, "Military Puts Boot in as Treaty with US Seen Growing Threat to Business Empire," *South China Morning Post*, September 14, 1999.

[30] Zachary Abuza, "The Politics of Globalization: Explaining Vietnam's Rejection of the U.S. Trade Deal," (Boston, MA: Simmons College, 2000), p.20.

[31] Abuza, "The Politics of Globalization," p.21-22.