



# U.S.-Vietnam Economic and Trade Relations: Issues for the 112<sup>th</sup> Congress

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June 11, 2012

**Congressional Research Service**

7-5700

[www.crs.gov](http://www.crs.gov)

R41550

## Summary

Since the resumption of trade relations in the 1990s, Vietnam has rapidly risen to become a significant trading partner for the United States. Along with the growth of bilateral trade, a number of issues of common concern, and sometimes disagreement, have emerged between the two nations. Congress may play a direct role in the U.S. policy on some of these issues.

Bilateral trade has grown from about \$220 million in 1994 to \$21.86 billion in 2011, transforming Vietnam into the 30<sup>th</sup> largest trading partner for the United States. Vietnam is the second-largest source of U.S. clothing imports, and a major source for footwear, furniture, and electrical machinery. Much of this rapid growth in bilateral trade can be attributed to U.S. extension of normal trade relations (NTR) status to Vietnam. Another major contributing factor is over 20 years of rapid economic growth in Vietnam, ushered in by a 1986 shift to a more market-oriented economic system.

Bilateral trade may increase if both nations become members of the Trans-Pacific Strategic Economic Partnership Agreement (TPP). The United States and Vietnam are among the nine countries negotiating the terms of expansion of the trade association. Vietnam's incentive to join the TPP is largely contingent on greater market access in the United States, particularly for agricultural goods, aquacultural goods, clothing, and footwear. Vietnam is also a party to negotiations to form a larger pan-Asian regional trade association based on the Association of Southeast Asian Nations (ASEAN) that could exclude the United States and prove to be an alternative to the TPP.

The growth in bilateral trade has not been without its accompanying issues and problems. Vietnam has applied for acceptance into the U.S. Generalized System of Preferences (GSP) program and is participating in negotiations of a Bilateral Investment Treaty (BIT) with the United States. Vietnam also would like to be officially recognized as a market economy.

There have also been problems with U.S. imports of specific products from Vietnam, particularly catfish-like fish known as basa or tra. In 2008, the 110<sup>th</sup> Congress passed legislation that transferred the regulation of catfish from the Food and Drug Administration to the U.S. Department of Agriculture (USDA) and authorized the Secretary of Agriculture to determine if basa and tra are to be considered catfish. The Vietnamese government strongly protested the law as a protectionist measure. On February 24, 2011, the USDA released proposed new catfish regulations, which did not resolve the status of Vietnam's basa and tra exports.

An examination of recent trends in bilateral trade reveals that other product categories—such as footwear, furniture, and electrical machinery—could generate future tension between the United States and Vietnam. Observers of Vietnam's economic development have also been critical of Vietnam's protection of workers' rights, its enforcement of intellectual property rights laws and regulations, and the country's exchange rate policies.

The 112<sup>th</sup> Congress may play an important role in one or more of these issues, as have past Congresses. The 112<sup>th</sup> Congress would have to consider implementing legislation if a TPP agreement is concluded. Congressional action on key legislation, such as the Agriculture Reform, Food, and Jobs Act of 2012 (S. 3240), could have an impact on the TPP negotiations. This report will be updated as circumstances require.

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## Introduction

For over 20 years, economic and trade relations between the United States and the Socialist Republic of Vietnam (Vietnam) remained virtually frozen, in part a legacy of the extended military conflict of the 1960s and 1970s. On May 2, 1975, after North Vietnam defeated U.S. ally South Vietnam, President Gerald R. Ford extended President Richard M. Nixon's 1964 trade embargo on North Vietnam to cover the reunified nation.<sup>1</sup> Under the Ford embargo, bilateral trade and financial transactions were prohibited.

Economic and trade relations between the two nations began to thaw during the Clinton Administration, building on joint efforts during the Reagan and George H. W. Bush Administrations to resolve a sensitive issue in the United States—recovering the remains of U.S. military personnel declared “missing in action” (MIA) during the Vietnam War.<sup>2</sup> The shift in U.S. policy also was spurred by Vietnam's withdrawal from Cambodia. President Bill Clinton ordered an end to the U.S. trade embargo on Vietnam on February 3, 1994.<sup>3</sup> In 1997, President Clinton appointed the first U.S. ambassador to Vietnam since the end of the Vietnam War.

Bilateral relations also improved, due in part to Vietnam's 1986 decision to shift from a Soviet-style central planned economy to a form of market socialism. The new economic policy, known as *Doi Moi* (“change and newness”), ushered in a period of over 20 years of rapid growth in Vietnam. Since 1995, Vietnam's real GDP growth has averaged over 7% per year, second only to China. Much of that growth has been generated by foreign investment in Vietnam's manufacturing sector, particularly its clothing industry.

The United States and Vietnam signed a bilateral trade agreement (BTA) on July 13, 2000, which went into force on December 10, 2001.<sup>4</sup> As part of the BTA, the United States extended to Vietnam conditional most favored nation (MFN) trade status, now known as normal trade relations (NTR). Economic and trade relations further improved when the United States granted Vietnam permanent normal trade relations (PNTR) status on December 29, 2006, as part of Vietnam's accession to the World Trade Organization (WTO).<sup>5</sup> Over the last three years, the U.S. Congress has appropriated approximately \$10 million each year to support Vietnam's economic reforms.<sup>6</sup> In addition, the two nations have set up a ministerial-level Trade and Investment Agreement (TIFA) Council to discuss issues related to the implementation of the Bilateral

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<sup>1</sup> Office of Foreign Assets Control, Department of Treasury, “Foreign Assets Control Regulations,” 40 *Federal Register* 19202-3, May 2, 1975. For more information on the history of U.S. trade sanctions on North Vietnam and the Socialist Republic of Vietnam, see CRS Report 94-633, *Vietnam: Procedural and Jurisdictional Questions Regarding Possible Normalization of U.S. Diplomatic and Economic Relations*, by Vladimir N. Pregelj et al (out of print; available from the author upon request).

<sup>2</sup> For more information about the thaw in U.S.-Vietnam relations, see CRS Report R40208, *U.S.-Vietnam Relations in 2012: Current Issues and Implications for U.S. Policy*, by Mark E. Manyin.

<sup>3</sup> The action came after many months of high-level U.S. interaction with Vietnam in resolving MIA cases and a January 27, 1994 vote in the Senate urging that the embargo be lifted, language that was attached to broad authorizing legislation (H.R. 2333). The language was controversial in the House, but H.R. 2333 passed Congress; it was signed into law (P.L. 103-236) on April 30, 1994.

<sup>4</sup> For more information about the BTA, see CRS Report RL30416, *The Vietnam-U.S. Bilateral Trade Agreement*, by Mark E. Manyin.

<sup>5</sup> CRS Report RL33490, *Vietnam PNTR Status and WTO Accession: Issues and Implications for the United States*, by Mark E. Manyin, William H. Cooper, and Bernard A. Gelb.

<sup>6</sup> USAID correspondence with CRS.

Investment Treaty (BIT) and WTO agreements, as well as trade and investment policies in general.

In contrast to some other nations (for example, China), official U.S. and Vietnamese trade data are comparatively close and reflect a similar pattern in the growth of bilateral trade (see **Table 1**). For the first few years following the end of the U.S. embargo, trade between the two nations grew slowly, principally because of Vietnam's lack of NTR. However, following the granting of conditional NTR in December 2001, trade flows between the United States and Vietnam grew quickly. Merchandise trade nearly doubled between 2001 and 2002, regardless of which nation's figures one uses. Bilateral trade jumped again in 2007, following the United States granting PNTR status to Vietnam. Total trade declined slightly in 2009 as U.S. imports from Vietnam slid 4.7% because of the economic recession, but rebounded in 2010 and 2011.

**Table 1. Growth in Bilateral Merchandise Trade between United States and Vietnam**  
(in millions of U.S. dollars)

Year	U.S. Trade Data		Vietnamese Data	
	Exports to Vietnam	Imports from Vietnam	Exports to United States	Imports from United States
1994	173	50	NA	NA
1995	253	199	170	130
1996	616	319	204	246
1997	278	388	287	252
1998	274	553	469	325
1999	291	609	504	323
2000	368	822	733	363
2001	461	1,053	1,065	411
2002	580	2,395	2,453	458
2003	1,324	4,555	3,939	1,143
2004	1,163	5,276	5,025	1,134
2005	1,192	6,630	5,924	863
2006	1,100	8,566	7,845	987
2007	1,903	10,633	10,105	1,701
2008	2,790	12,901	11,869	2,635
2009	3,108	12,290	11,356	3,009
2010	3,710	14,868	14,238	3,767
2011	4,341	17,485	16,928	4,529

**Source:** U.S. data from International Trade Commission (ITC); Vietnamese data from General Statistics Office of Vietnam.

**Notes:** U.S. data valued at F.A.S. and customs value; Vietnam data valued at F.O.B. and C.I.F.

The growth in bilateral trade has not been without its accompanying issues and problems. Both nations are negotiating membership in the Trans-Pacific Strategic Economic Partnership Agreement (TPP), a multilateral trade group. For its part, Vietnam has indicated a desire to foster

closer trade relations by applying for acceptance into the U.S. Generalized System of Preferences (GSP) program and participating in negotiations of a bilateral investment treaty (BIT). The United States has also expressed an interest in closer economic relations, but has told Vietnam that it needs to make certain changes in its legal, regulatory, and operating environment of its economy to conclude either the TPP or the BIT agreement, as well as to qualify for the GSP program.

The growth in bilateral trade has also created sources of trade friction. A rapid increase in Vietnam's clothing exports to the United States led to the implementation of a controversial monitoring program from 2007 to 2009. The growth in Vietnam's export of basa and tra has also generated tensions between the two nations. Other economic issues have had an indirect effect on bilateral relations, such as claims of poor working conditions in factories in Vietnam, Vietnam's designation as a "non-market economy," allegations of inadequate intellectual property rights (IPR) protection in Vietnam, and Vietnam's exchange rate policy.

This report will examine each of these trade issues, discussing their main elements and exploring their potential implications for the 112<sup>th</sup> Congress. This will be followed by an analysis of key trends in bilateral trade to discern any potential sources of trade friction in the future.

## Trans-Pacific Strategic Economic Partnership Agreement (TPP)

The Bush Administration notified Congress of its intention to enter into negotiations with the members of the Trans-Pacific Strategic Economic Partnership Agreement (TPP) on September 22, 2008.<sup>7</sup> The TPP—previously known as the P4—is a multilateral free trade agreement between Brunei, Chile, New Zealand, and Singapore that came into force in 2006.<sup>8</sup> The U.S. announcement of interest in joining the TPP was quickly followed by similar expressions of interest by Australia, Malaysia, Peru, and Vietnam.<sup>9</sup>

In the President's 2010 Annual Report on the U.S. trade agreements program, the Obama Administration stated that U.S. participation in the TPP "is the strongest vehicle for achieving economic integration across the Asia-Pacific region and advancing U.S. economic interests with the fastest-growing economies in the world."<sup>10</sup> Vietnam's Deputy Prime Minister and Foreign Minister Pham Gai Khiem listed negotiations to join the TPP—along with the U.S. BIT talks and Partnership and Cooperative Agreement with the European Union—as among Vietnam's top trade

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<sup>7</sup> For more information on U.S. interest in the TPP Agreement, see CRS Report R40502, *The Trans-Pacific Partnership Agreement*, by Ian F. Fergusson and Bruce Vaughn.

<sup>8</sup> Because of differences in the timing of the agreement's approval, the TPP Agreement came into force on different dates in 2006 for the four current members—May 1 for New Zealand and Singapore, June 12 for Brunei Darussalam and November 8 for Chile.

<sup>9</sup> Since then, other nations – including Indonesia, Japan, the Philippines, South Korea, and Thailand – have expressed an interest in the TPP, but are not parties to the ongoing negotiations.

<sup>10</sup> Office of the U.S. Trade Representative, *2010 Trade Policy Agenda and 2009 Annual Report of the President of the United States on the Trade Agreements Program*, Washington, DC, March 2010.

priorities in 2009.<sup>11</sup> During an April 2010 speech in Washington, DC, Prime Minister Nguyễn Tấn Dũng made particular note of both countries' participation in the TPP negotiations.<sup>12</sup>

The first meeting of the nine negotiating parties was held in Melbourne, Australia, on March 15-19, 2010. Since then, 11 subsequent rounds have been held, with the latest talks occurring in May 2012 in Dallas, TX.

Vietnam's participation in the TPP negotiations could complicate the U.S. negotiation position. Whereas the other parties involved in the negotiations are generally viewed as having comparatively open trade policies, Vietnam remains a mixed economy with considerable government intervention. Given that the apparent U.S. goal is to create a more open and comprehensive free trade area in the Asia-Pacific, Vietnam's participation in the talks could constrain U.S. efforts to expand the scope and depth of the TPP. Backers of Vietnam's participation in the negotiations maintain that it further opens a sizeable market to U.S. exports and investments, and could accelerate economic reforms in Vietnam. According to U.S. trade statistics, Vietnam is the second largest U.S. trading partner (after Singapore) among the nations currently involved in the TPP negotiations.

According to an interview with key Vietnamese analysts, Vietnam is pressing for the following provisions in the TPP agreement:<sup>13</sup>

- Designation as a market economy prior to 2018;<sup>14</sup>
- Liberalization of trade in services (including certification and licensing);
- Relaxation of U.S. "yarn forward" rules;
- Prohibition on discrimination against state-owned enterprises; and
- Special consideration for developing economies.

Vietnam is also interested in greater market access for its agricultural and aquacultural exports, particularly in the United States. The United States, in turn, would like Vietnam to undertake the necessary economic and regulatory reforms necessary to fulfill its obligations under the TPP agreement, which the Obama Administration hopes will be a model trade agreement for the 21<sup>st</sup> Century. The United States is particularly concerned about Vietnam's ability to achieve the necessary TPP standards for such topics as sanitary and phytosanitary (SPS) measures, workers' rights, IPR enforcement, and state-owned enterprises (SOEs).

According to a Vietnamese official close to the TPP negotiations, the United States is pressing the other nations for concessions in many of the proposed 20 chapters in the trade agreement, but has not offered much in exchange. Access to the U.S. market is one of the most important potential benefits of the TPP for Vietnam, particularly for Vietnam's leading exports, such as clothing, footwear, agricultural goods, and aquacultural goods (see "Key Trends in Bilateral Trade"). Vietnam opposes the inclusion of "yarn-forward" conditions for clothing in the TPP agreement; it prefers the adoption of "cut and sew" rules. Vietnam is also concerned that provisions may be

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<sup>11</sup> "Vietnam to Pursue Foreign Policy of Peace in 2009," *Vietnam News Agency*, January 23, 2009.

<sup>12</sup> Prime Minister Dũng's speech at a breakfast held by the U.S.-ASEAN Business Council on April 14, 2010.

<sup>13</sup> "TPP - Vietnam's New Game in the Global Integration," *Vietnam Net*, December 6, 7, and 8, 2010.

<sup>14</sup> Vietnam will be granted market economy status as of 2018 under the provisions of its WTO accession agreement.

added to the Agriculture Reform, Food, and Jobs Act of 2012 (S. 3240) that would create non-tariff trade barriers to the import of basa and tra from Vietnam (see “Catfish”).

Another complicating factor is Vietnam’s support for ASEAN’s discussions with other nations to form a pan-Asian trade association that could exclude the United States.<sup>15</sup> Over the last several years, ASEAN has organized meetings with various configurations of Asian nations—such as the ASEAN + 3 (China, Japan, and South Korea), and ASEAN + 6 (Australia, China, India, Japan, New Zealand, and South Korea)—to discuss the formation of a free trade area that would include only Asian nations. However, in an April 2010 meeting with CRS, Vietnamese trade officials indicated that Vietnam would like to see the United States take a more active role in a possible ASEAN + 8 (Australia, China, India, Japan, New Zealand, Russia, South Korea, and the United States) forming the basis for a larger regional trade association. Some observers have speculated that the U.S. decision to formally join the East Asia Summit in 2011,<sup>16</sup> which includes all the ASEAN +8 nations, may indicate a willingness to consider modes for Asian economic integration other than the TPP.

If a TPP agreement is concluded, the 112<sup>th</sup> Congress would have to consider implementing legislation to revise current U.S. law to make it consistent with the terms of the agreement. Unlike the ratification of international treaties, the implementing legislation must be approved by both the House of Representative and the Senate.<sup>17</sup>

## Vietnam’s Generalized System of Preferences (GSP) Application<sup>18</sup>

In May 2008, Vietnam formally requested to be added to the U.S. Generalized System of Preferences (GSP) program as a “beneficiary developing country” (BDC). On June 20, 2008, the office of the U.S. Trade Representative (USTR) announced that it was initiating a formal review of Vietnam’s eligibility for GSP benefits and would accept public comments on the application until August 4, 2008. Since then, there has been no formal announcement from USTR regarding the status of Vietnam’s GSP application.

The U.S. GSP program authorizes the President to grant duty-free treatment for any eligible product from any beneficiary country.<sup>19</sup> Initially created by Title V of the Trade Act of 1974 (P.L.

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<sup>15</sup> For more about the complicated dynamics of regionalism in Asia, see CRS Report RL33653, *East Asian Regional Architecture: New Economic and Security Arrangements and U.S. Policy*, by Dick K. Nanto

<sup>16</sup> According to ASEAN’s official webpage, the East Asia Summit is “a forum for dialogue on broad strategic, political and economic issues of common interest and concern with the aim of promoting peace, stability and economic prosperity in East Asia.” The current EAS members are the 10 ASEAN members, plus Australia, People’s Republic of China, Republic of India, Japan, Republic of Korea, and New Zealand. Russia and the United States are set to become members in 2011.

<sup>17</sup> The proposed TPP agreement would be presented to Congress as a Congressional-Executive Agreement, not as a treaty. For more information on Congressional-Executive Agreements, see CRS Report 97-896, *Why Certain Trade Agreements Are Approved as Congressional-Executive Agreements Rather Than as Treaties*, by Jeanne J. Grimmer.

<sup>18</sup> For a more detailed examination of Vietnam’s GSP application, see CRS Report RL34702, *Potential Trade Effects of Adding Vietnam to the Generalized System of Preferences Program*, by Vivian C. Jones and Michael F. Martin.

<sup>19</sup> For background information on the U.S. GSP program, see CRS Report RL33663, *Generalized System of Preferences: Background and Renewal Debate*, by Vivian C. Jones.

93-618) for a 10-year period, the GSP program has been repeatedly renewed by Congress, most recently via P.L. 112-40, which extended the program until July 31, 2013. The statute also provides the President with specific political and economic criteria to use when designating eligible countries and products.

Inclusion in the U.S. GSP program is a major trade priority for the Vietnamese government. Vietnam has already been accepted into several other GSP programs, including those of Canada, the European Union (EU), and Japan. Vietnam has repeatedly asked about the status of its GSP application, including during Deputy Prime Minister Vu Van Ninh's official meetings with Secretary of Commerce John Bryson and U.S. Trade Representative Ron Kirk in February 2012. According to sources in Vietnam's Ministry of Foreign Affairs (MOFA), the Vietnamese government sees its acceptance into the GSP program as another step in the normalization of bilateral relations.

## Compliance with Eligibility Criteria

The United States has indicated to Vietnam that there are several problems with respect to its compliance with the program's eligibility criteria. In theory, there is a question whether Vietnam is a "Communist" country. Under the provisions of the Trade Act of 1974, a "Communist" country is ineligible for the GSP program unless it meets certain additional conditions. Another area of possible non-compliance with the GSP program's eligibility criteria is whether Vietnam has "taken steps to provide its workers with internationally recognized worker rights." There are also indications that Vietnam's IPR protection is not adequate to satisfy GSP eligibility. Current U.S. law allows the President to waive compliance with the worker rights and IPR protection criteria, but not the "Communist" country criterion.

## Is Vietnam a "Communist" Country?

In its present form, the GSP program excludes "Communist" countries unless the President determines three conditions have been met. First, the United States must have conferred NTR status to the country. Second, the country must be a member of both the International Monetary Fund (IMF) and the World Trade Organization (WTO). Third, the country must be "not dominated or controlled by international communism."

U.S. law does not provide any general definition of a "Communist" country. Some observers point to Vietnam's official name—the Socialist Republic of Vietnam—and the government's control by the Communist Party of Vietnam (Đảng Cộng sản Việt Nam) as *prima facie* evidence that Vietnam is a "Communist" country. Other observers counter that after over two decades of *doi moi*,<sup>20</sup> Vietnam no longer is a "Communist" country in terms of its economic system. In addition, even if Vietnam was a "Communist" country, according to these observers, it is "not dominated or controlled by international communism" because no such entity exists following the collapse of the Soviet Union.

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<sup>20</sup> *Doi Moi*, which literally means "change and newness" and is often translated as "renovation," is the Vietnamese Communist Party's term for reform and renovation in the economy. This term was coined in 1986 for Vietnam's transition from the centrally planned command economy to a "market economy with socialist direction."

## Workers' Rights

Among the GSP eligibility criteria, Vietnam's recognition of internationally accepted workers' rights has proven to be the most problematic. Prior to the 1986 advent of *doi moi*, there were many allegations about substandard working conditions in Vietnam, including "sweatshop" working conditions, the use of child labor, and severe restrictions on the right of association and collective bargaining.<sup>21</sup> Since then, the Vietnamese government is generally perceived to have made concerted efforts to comply with many internationally recognized labor standards.

In its application for GSP designation, the Vietnamese government focused on its partnership with the International Labor Organization (ILO) and its ratification of several of the ILO's conventions as demonstrating its commitment to comply with international labor rights standards. With the assistance of the ILO, Vietnam's National Assembly is working on a new labor law. Despite these efforts by the Vietnamese government, critics still maintain that working conditions remain below international standards. In particular, Vietnam has been criticized for its failure to allow independent labor unions and respect the right of association (see section on "Workers' Rights" below).

## IPR Protection

Vietnam remained on the U.S. Special 301 Watch List in 2012, with the official report noting that online piracy is a "growing concern."<sup>22</sup> The 2012 National Trade Estimate Report on Foreign Trade Barriers (NTE)<sup>23</sup> states that

While recognizing the strides Vietnam has made in intellectual property rights (IPR) protection and enforcement over the past several years, the United States noted that enforcement efforts have not kept pace with rising levels of IPR infringement and piracy in the country. Furthermore, administrative enforcement actions and penalties, the most commonly used means of enforcing IPR in Vietnam, have not served as a sufficient deterrent.

The NTE report also notes that in 2009 Vietnam revised its IPR Law, as well as IPR-related provisions in the Criminal Code, to provide criminal penalties for IPR infringement conducted on a commercial scale. In addition, the NTE noted that the Vietnamese government issued a new decree in September 2010 on administrative penalties for industrial property violations.

Statements by past U.S. officials indicated that Vietnam's IPR protection was playing a role in the decision on its GSP application. In an interview on March 9, 2009, Jay L. Eizenstat, ex-director for customs affairs for USTR in the Bush Administration, pointed out that "intellectual property rights violations are easily seen in Vietnam and this is the reason for the unlikelihood of gaining

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<sup>21</sup> For more information about pre-Doi Moi working conditions in Vietnam, see CRS Report RL30896, *Vietnam's Labor Rights Regime: An Assessment*, coordinated by Mark E. Manyin.

<sup>22</sup> For the complete text of the 2010 Special 301 Report, see <http://www.ustr.gov/about-us/press-office/reports-and-publications/2012-2>.

<sup>23</sup> Office of the U.S. Trade Representative, *The 2012 National Trade Estimate Report on Foreign Trade Barriers*, Washington, DC, March 2010.

GSP although Vietnam satisfies basic criteria.”<sup>24</sup> It is unclear to what extent this attitude is held in the Obama Administration.

Besides the specified eligibility criteria in the GSP law, the TPP negotiations are also a factor in U.S. consideration of Vietnam’s GSP application. Since the GSP program effectively eliminates tariffs for over 3,400 types of goods, USTR is concerned that accepting Vietnam into the GSP program will undermine U.S. effectiveness in the TPP negotiations.

## **Congressional Implications**

Under U.S. law, Congress has no direct role in the determination of whether Vietnam is to be accepted into the U.S. GSP program; the authority to make that decision has been delegated to the President of the United States. The President is required to notify Congress of his intention.

There are, however, several ways by which Congress could indicate its preferences on this issue. In addition to hearings and communications to the Administration from Members of Congress, Congress could authorize or instruct the President to designate—or not to designate—Vietnam as a beneficiary developing country (BDC), either as part of the legislation to extend the GSP program or in separate legislation. Alternatively, Congress could pass legislation stipulating additional eligibility criteria for the President to consider when deciding to confer BDC status to Vietnam. Both versions of the Vietnam Human Rights Act introduced during the 111<sup>th</sup> Congress (H.R. 1969 and S. 1159) would have prohibited the inclusion of Vietnam in the GSP program unless the President determines and certifies that Vietnam has met certain specified workers’ rights criteria. In the 112<sup>th</sup> Congress, H.R. 5157 would deny Vietnam being accepted into the GSP program unless the President certifies to Congress that Vietnam has met certain human rights conditions. Each chamber of Congress could also pass a resolution calling on the President to approve or deny Vietnam’s application for inclusion in the U.S. GSP program.

## **Bilateral Investment Treaty (BIT) Negotiations**

During their June 2008 meeting, President Bush and Prime Minister Dũng announced the launch of talks to establish a bilateral investment treaty (BIT).<sup>25</sup> BITs are designed to improve the climate for foreign investors by establishing dispute settlement procedures and protecting foreign investors from performance requirements, restrictions on transferring funds, and arbitrary expropriation. The United States is currently a party to 41 BITs in force; Vietnam has signed over 50 BITs.

## **Status of the Negotiations**

The first round of BIT negotiations was held in Washington, DC, from December 15-18, 2008. The Vietnamese delegation included representatives from the Ministry of Planning and Investment, the Ministry of Industry and Trade, the Ministry of Finance, the Ministry of Justice,

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<sup>24</sup> “Exporters Must be Good at Product Valuation, Seminar,” *Vietnam Business Forum*, March 9, 2009.

<sup>25</sup> For more information about BITs and the U.S. BIT program, see CRS Report RL33978, *The U.S. Bilateral Investment Treaty Program: An Overview*, by Martin A. Weiss.

and the State Bank of Vietnam. The U.S. delegation included representatives of the U.S. Trade Representative's Office, the Department of State, the Department of Commerce, and the Treasury Department. Since then, two more rounds of talks have been held—one on June 1-2, 2009, in Hanoi, and another on November 17-19, 2009, in Washington, DC. A proposed fourth round of talks that was to be held in early 2010 did not happen. According to the State Department, bilateral BIT talks have not been held since the two nations joined the TPP negotiations.

The Vietnamese government appears interested in concluding a BIT with the United States, both because it could foster greater inward FDI from the United States and because it could serve as a stepping-stone to a possible free trade agreement (FTA) with the United States. The U.S. government's interest in BIT negotiations appears primarily focused on providing better protection and access for U.S. investors in Vietnam, while avoiding compromising domestic economic priorities and needlessly relinquishing national sovereignty. Representatives of the business communities in both the United States and Vietnam have expressed interest in the successful conclusion of the BIT negotiations.

The United States has generally based its past BIT negotiations on a model BIT. In 2004, the Bush Administration revised the model BIT, partially in response to provisions in the Trade Act of 2002 (P.L. 107-210). In the Trade Act of 2002, Congress mandated several negotiating objectives to narrow the scope of investment protection. The act stated that the principal U.S. negotiating objective on foreign investment is to reduce or eliminate barriers to investment, "while ensuring that foreign investors in the United States are not accorded greater substantive rights with respect to investment protections than United States investors in the United States, and to secure for investors important rights comparable to those that would be available under United States legal principles and practice." The Obama Administration recently released a new model BIT, which presumably would be used in any future talks with Vietnam.<sup>26</sup>

In addition, the existing 2001 Bilateral Trade Agreement (BTA) between the United States and Vietnam included provisions in Chapter 4 governing investment and the future negotiation of a bilateral investment treaty.<sup>27</sup> Article 2 commits both nations to providing national and MFN (NTR) treatment to investments. Article 4 provides for a dispute settlement system for bilateral investments. Article 5 requires both nations to ensure that the laws, regulations, and administrative procedures governing investments are promptly published and publicly available. Article 11 pertains to compliance with the provisions of WTO Agreement on Trade-related Investment Measures (TRIMs). Article 13 states that both nations "will endeavor to negotiate a bilateral investment treaty in good faith within a reasonable period of time."

## **The Role of Congress**

If the United States and Vietnam successfully complete the negotiations of a BIT during the 112<sup>th</sup> Congress, the treaty will be subject to Senate ratification. Action on the part of Congress as a whole may be required if the terms of the BIT require changes in U.S. law.

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<sup>26</sup> A copy of the new model BIT is available online at <http://www.ustr.gov/sites/default/files/BIT%20text%20for%20ACIEP%20Meeting.pdf>.

<sup>27</sup> For the complete text of the 2001 BTA, go to <http://www.usvtc.org/trade/bta/text/>.

## Non-Market Economy Designation

Under U.S. trade law (19 U.S.C. 1677), the term “nonmarket economy country” means “any foreign country that the administering authority determines does not operate on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise.” In making such a determination, the administering authority of the executive branch is to consider such criteria as the extent of state ownership of the means of production, and government control of prices and wages.

For over 20 years, Vietnam has been transitioning from a centrally planned economy to a market economy. Under its *doi moi* policy, Vietnam has allowed the development and growth of private enterprise and competitive market allocation of most goods and services. Although most prices have been deregulated, the Vietnamese government still retains some formal and informal mechanisms to direct or manage the economy.

### State-Owned Enterprises

For the United States, one of the main concerns about Vietnam’s economy is the continued importance of state-owned enterprises (SOEs) in the nation’s industrial sector. Between 1995 and 2010, the portion of Vietnam’s real industrial output produced by SOEs declined from 50.3% to 22.1%.<sup>28</sup> However, SOEs continue to dominate key sectors of Vietnam’s economy, such as mining and energy. In addition, according to a study by the Vietnam Report Company, 46% of the 500 largest enterprises in Vietnam are SOEs. The five largest enterprises—Vietnam Oil and Gas Group, Vietnam National Petroleum Corporation, Vietnam Electricity, Vietnam Post and Telecommunications Group, and Vietnam National Coal and Mineral Industries Group—are all SOEs.

Many of Vietnam’s SOEs have been converted into quasi-private corporations through a process known as “equitization,” in which some shares are sold to the public on Vietnam’s stock

### Vietnam’s Economy at a Glance

In 1986, Vietnam started the transformation of its Soviet-style centrally planned economy into a market-oriented economy. Its agricultural sector, which was decollectivized in the 1990s, remains the main source of employment in the country, but provides about 20% of GDP. The industrial sector, which contributes about 40% of GDP, has also undergone a gradual shift from state-owned to privately owned production. Vietnam’s industrial output currently is produced by foreign-owned enterprises (about 45% of industrial output), privately owned domestic companies (about 35% of industrial output), and state-owned enterprises (about 20% of industrial output). Vietnam’s services sector (about 40% of GDP) has also transitioned from primarily government-run to primarily private providers. Most goods and services are now distributed using market mechanisms, but there remains significant government intervention via subsidies for key industries and selected consumer goods. Vietnam’s financial system is still dominated by state-owned banks, but some private banks have emerged.

Vietnam’s real GDP grew by 5.89% in 2010, fueled by industrial and service sector growth. Vietnam’s consumer price index (CPI) rose by 18.58%. The unemployment rate remained low, but Vietnam continues to suffer from significant underemployment. Vietnam’s total exports were \$96.3 billion; imports were \$105.8 billion.

Although the shift in economic policy has led to rapid growth, it has also brought many of the traditional problems of market-oriented economies. Vietnam has periodically struggled with inflation, fiscal deficits, trade imbalances, and other cyclical economic phenomena common to market economies. Vietnam has also seen a rising income and wealth disparity, that at times has fueled discontent among Vietnam’s poor and lower-income population. Vietnam’s economic priorities for 2012 are to stabilize economic growth and contain inflation.

**Source:** General Statistics Office of Vietnam.

<sup>28</sup> Based on data from Vietnam’s General Statistics Office.

exchange, and most of the shares remain owned by the Vietnamese government. Twenty years ago, there were about 12,000 SOEs in Vietnam. By the end of 2011, the number of SOEs had been reduced to 1,309 by either restructuring or equitization.<sup>29</sup> To some analysts, however, the retention of a controlling interest in the shares of the companies provides the Vietnamese government with the means to continue to manage the operations of the equitized SOEs.

In August 2010, Prime Minister Dũng announced a plan for the reorganization of the remaining SOEs.<sup>30</sup> Prime Minister Dũng has called on every government agency responsible for the administration of a SOE to submit a report on its economic performance by the end of 2010. Plans for the equitization of the SOEs were confirmed during the 11<sup>th</sup> National Party Congress in January 2011. The stated goal is to restructure and reorganize all the SOEs to increase their efficiency and reduce the number of wholly owned SOEs to 692 by the end of 2015.<sup>31</sup> The Asian Development Bank (ADB) is providing Vietnam with a \$630 million loan to help it reform its SOEs and improve corporate governance.<sup>32</sup>

The urgency to reform Vietnam's SOEs is being driven, in part, by the financial problems of Vietnam Shipbuilding Industry Group (Vinashin). Vinashin nearly went bankrupt in 2010, after a series of poor investments in non-shipbuilding ventures.<sup>33</sup> The company had run up \$4.4 billion in debts by June 2010, and was having trouble servicing its debt to both Vietnamese and non-Vietnamese banks. On December 8, 2010, Planning and Investment Minister Võ Hồng Phúc stated that Vinashin was responsible for its own debt, but that the government would help lead the company back to profitability.<sup>34</sup> Following Minister Phúc's statement, the state-owned Development Bank of Vietnam offered Vinashin interest-free loans to help the company with its cash flow problems.<sup>35</sup> In March 2012, nine former Vinashin executives were sentenced to up to 20 years in jail and were ordered to pay substantial fines for "intentionally violating state rules on economic management with serious consequences."<sup>36</sup>

## Price and Wage Controls

The *doi moi* process has led to the gradual deregulation of most prices and wages in Vietnam. However, the Vietnamese government maintains controls over key prices, including certain major industrial products (such as cement, coal, electricity, oil and steel) and basic consumer products (such as meat, rice, and vegetables). In December 2010, Prime Minister Dũng tightened controls on various products to reduce inflationary pressure.<sup>37</sup> Vietnam's year-on-year consumer price index (CPI) in November 2010 was 11%.

The Vietnamese government also maintains control over some wages. Government workers are paid according to a fixed pay scale, and all workers are subject to a national minimum wage law.

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<sup>29</sup> "150 SOEs Must Be Equitized Every Year," *Viet Nam Net*, May 14, 2012.

<sup>30</sup> Kim Tan, "Government Shakes Up State-owned Companies," *Dantri International News*, August 23, 2010.

<sup>31</sup> "150 SOEs Must Be Equitized Every Year," *Viet Nam Net*, May 14, 2012.

<sup>32</sup> For details, see ADB's webpage—<http://www.adb.org/projects/project.asp?id=39538&p=vieproj>.

<sup>33</sup> Leigh Murray, "Vinashin May Hurt Vietnam Banks," *Wall Street Journal*, December 13, 2010.

<sup>34</sup> "Vietnam Minister Says Vinashin Should Make Its Own Debt Payment," *Bloomberg*, December 8, 2010.

<sup>35</sup> "Vietnam Offers Loans to Ailing Shipbuilder Vinashin," *BBC*, December 28, 2010.

<sup>36</sup> "Vietnam Jails Former Vinashin Executives After Downfall," *Reuters*, March 30, 2012.

<sup>37</sup> "Vietnam to Set Price Controls on Commodities," *Vietnam Business News*, December 2, 2010.

Workers for private enterprises, foreign-owned ventures and SOEs receive wages based largely on market conditions. Vietnam's recent inflation has given rise to upward pressure on wages. The Prime Minister's anti-inflation policy is supposed to also curb wage increases.

The Vietnamese government asserts that most of the prices and wages in Vietnam are market-determined, especially the prices of goods exported to the United States. In addition, Vietnamese exports face strong competitive pressure from other Asian nations, such as Bangladesh, China, Malaysia, and Thailand. As such, the Vietnamese government maintains that it should be considered a market economy, particularly in anti-dumping and countervailing duty cases.

## **Vietnam's View**

The Vietnamese government maintains that its economy is as much a market economy as many other nations around the world, and has actively sought formal recognition as a market economy from its major trading partners. A number of trading partners—including ASEAN, Australia, India, Japan, and New Zealand—have designated Vietnam a market economy for purposes of international trade. Under the terms of its WTO accession agreement with the United States, Vietnam is to remain a non-market economy for up to 12 years after its accession or until it meets U.S. criteria for a “market economy” designation.<sup>38</sup>

Designation as a market economy has both symbolic and practical value for Vietnam. The Vietnamese government views market economy designation as part of the normalization of trade relations with the United States. In addition, Vietnam's designation as an NME generally makes it more likely that antidumping and countervailing duty cases will result in adverse rulings against Vietnamese companies. In theory, the 112<sup>th</sup> Congress could consider legislation weighing in on the designation of Vietnam as a market or non-market economy by amending or superseding existing U.S. law.

## **Catfish**

Catfish have been a regular source of trade friction between the United States and Vietnam for the past decade. Vietnam is a major exporter of frozen fish fillets using certain varieties of fish—known as basa and tra in Vietnamese—that are commonly referred to as catfish in the global fish market.<sup>39</sup> Since 1999, Vietnamese exports of basa and tra frozen fish fillets have secured a growing share of the U.S. market, despite the objections of the U.S. catfish industry and the actions of the U.S. government. In 2011, the United States imported over \$304 million of basa and tra from Vietnam.<sup>40</sup>

Over the last 10 years, the United States has taken several actions that were designed to have an impact on the import of Vietnamese basa and tra. In 2002, Congress passed legislation that

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<sup>38</sup> Other countries considered non-market economies by the United States include Armenia, Azerbaijan, Belarus, China, Georgia, Kyrgyz Republic, Moldova, Tajikistan, and Uzbekistan.

<sup>39</sup> Basa (*pangasius bocourti*) and tra (*pangasius hypophthalmus*) are fresh-water fish from the Mekong River basin of Vietnam. U.S. catfish (*ictalurus punctatus*)—also known as channel catfish—are also fresh-water fish, typically raised for commercial purposes in aquaculture ponds. All three species are siluriformes, with the characteristic barbels (whiskers) from which the name catfish was derived.

<sup>40</sup> Based on U.S. International Trade Commission (USITC) online trade database (<http://dataweb.usitc.gov/>).

prohibited the labeling of basa and tra as “catfish.”<sup>41</sup> In August 2003, the U.S. government imposed antidumping duties on “certain frozen fish fillets from Vietnam,” including basa and tra.<sup>42</sup> Despite these measures, Vietnam’s exports of basa and tra continued to rise.

In the eyes of the Vietnamese government, the U.S. response to the growth of Vietnam’s basa and tra exports constitutes a case of trade protectionism designed to shelter U.S. catfish producers from legitimate competition. Vietnam also points to U.S. anti-dumping measures on Vietnamese shrimp and plastic bags as an indications of U.S. protectionism (see “Non-Market Economy Designation”).<sup>43</sup> Supporters of U.S. trade policies against Vietnam’s exports of basa and tra say the measures are designed to defend U.S. consumers and businesses from the unsafe products and unfair business practices of Vietnam. In November 2010, the Vietnam Association of Seafood Exporters and Producers (VASEP) cautioned Vietnam’s seafood processors about carcinogenic residuals from herbicides in shrimp, after Japan tightened its inspections of Vietnamese exports.<sup>44</sup>

The ongoing tensions around catfish trade were heightened by the passage of the 2008 Farm Bill (P.L. 110-246) by the 110<sup>th</sup> Congress on May 22, 2008, and the ITC’s determination on June 15, 2009, to keep in place the antidumping duties on certain frozen fish fillet imports from Vietnam “for the foreseeable future.” The issue has resurfaced in the deliberations of the Agriculture Reform, Food, and Jobs Act of 2012 (S. 3240).

## **2008 Farm Bill**

The legal status of Vietnam’s basa and tra exports to the United States was brought into question by the provisions of section 11016 of the 2008 Farm Bill (P.L. 110-246), enacted on June 18, 2008. The section, entitled “Inspection and Grading,” established a voluntary fee-based grading program for “catfish (as defined by the Secretary).” The law also stipulated specific aspects of the examination and inspection of catfish, including the conditions under which the fish were raised and transported. By these provisions, the 2008 Farm Bill effectively transferred the regulation of imported catfish from the Food and Drug Administration (FDA) to the USDA, which is generally viewed as maintaining stricter inspection standards than the FDA.

The possibility that the Secretary of Agriculture may redefine catfish to include basa and tra, thereby making them subject to the stricter USDA inspection standards, brought forth objections from Vietnam’s Ambassador to the United States, its Minister of Agriculture and Rural Development, and Vietnam’s catfish industry (including their trade association, the Vietnam Association of Seafood Exporters and Producers, or VASEP). Ambassador Le Cong Phung sent a

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<sup>41</sup> Language was introduced into the Farm Security and Rural Investment Act of 2002 (P.L. 107-171) that restricted the legal definition of catfish to the family Ictaluridae, effectively banning the use of the term “catfish” for basa and tra.

<sup>42</sup> International Trade Administration, “Notice of Antidumping Duty Order: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam,” 68 FR 47909, August 12, 2003.

<sup>43</sup> Starting in 2005, the United States began imposing anti-dumping duties on “certain frozen and canned warmwater shrimp” from Vietnam after the International Trade Administration (ITA) determined that they were being sold at “less than fair market value.” Because Vietnam is a non-market economy, the ITA used cost estimates from Bangladesh to determine “fair market value.” In November 2010, the United States extended the anti-dumping duties for another five years. Vietnam is appealing this determination to the World Trade Organization, citing the U.S. use of “zeroing,” a controversial method for calculating anti-dumping duties. In March 2010, the ITA issued a final determination on antidumping and countervailing duties on polyethylene retail carrier bags from Vietnam. For this decision, the ITA used India as the surrogate nation to determine fair market value.

<sup>44</sup> “Toxic Residues Could Shriveled Shrimp Exports: Experts,” *Vietnam Economy News*, November 12, 2010.

letter to nearly 140 Members of Congress, suggesting that a reclassification of basa and tra as catfish would call into question the U.S. commitment to the WTO and endanger the jobs of more than 1 million Vietnamese farmers and workers. In addition, an opinion article in the *Wall Street Journal* referred to the possible reclassification of basa and tra as catfish as “protectionism at its worst.”<sup>45</sup> Supporters of the provisions of the 2008 Farm Bill state that it provides greater protection to U.S. consumers.

Draft regulations for catfish food safety inspection were delivered to the Office of Management and Budget (OMB) by the USDA on November 13, 2009. On February 24, 2011, the USDA published in the *Federal Register* its proposed rule for mandatory inspection of catfish and catfish products.<sup>46</sup> The USDA is “proposing to apply the requirements for the inspection of imported meat products (21 U.S.C. 620) to the inspection of imported catfish products....” The proposed rule, however, leaves some of the key issues related to Vietnamese imports unresolved, including the definition of catfish. The USDA requested public comments on the proposed rule, to be delivered on or before June 24, 2011.<sup>47</sup> Since the period for public comment ended, no further action has been taken on the proposed rule.

If adopted, the proposed rule would require all imported catfish and catfish products come from a facility that complies with USDA sanitation standards. To qualify for import into the United States, foreign countries would have to demonstrate that their laws, regulatory administration, evaluation system, and standards are equivalent to U.S. standards administered by the USDA Food Safety and Inspection Service (FSIS). As drafted, the FSIS would review the inspection systems of other nations to determine their equivalency with U.S. standards; these reviews may include periodic onsite visits to overseas catfish facilities.

The proposed catfish rule would be implemented in four phases. During Phase One, foreign countries exporting catfish to the United States would have to document that they have the legal authority to regulate catfish. In addition, FSIS would conduct onsite audits of foreign countries. By Phase Three, foreign (and domestic) establishments will have to be in compliance with USDA sanitation requirements. By Phase Four, foreign countries will have to have implemented a catfish inspection program that is the equivalent of the U.S. inspection program. The proposed rule does not set a timeline for the four phases.

As a possible preparation for heightened U.S. inspection requirements, Vietnam’s Ministry of Agriculture and Rural Development (MOARD) tightened export hygiene standards for basa and tra. Effective April 12, 2010, all basa and tra exported from Vietnam will need certificates for hygiene and food safety issued by the National Agro-Forestry-Fisheries Quality Assurance Department.<sup>48</sup> In addition, MOARD and the Ministry of Industry and Trade have contracted U.S.-based Mazzetta Company to train Vietnamese fish breeders how to comply with U.S. standards.<sup>49</sup> Prime Minister Dũng reportedly has approved a 10-year, \$2 billion “master plan” for the

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<sup>45</sup> “A Fish by Any Other Name,” *Wall Street Journal*, May 20, 2009.

<sup>46</sup> U.S. Department of Agriculture, “Mandatory Inspection of Catfish and Catfish Products,” 76 *Federal Register* 10434- 10469, February 24, 2011.

<sup>47</sup> Comments may be submitted online at <http://www.regulations.gov>, or by mail to: Docket Clerk, U.S. Department of Agriculture (USDA), FSIS, Room 2-2127 George Washington Carver Center, 5601 Sunnyside Avenue, Beltsville, MD 20705. All submissions must include the agency’s name and the docket number FSIS-2008-0031.

<sup>48</sup> “Catfish Quality Tests Tightened for Export Hygiene Standards,” *Vietnam News*, April 15, 2010.

<sup>49</sup> “US Firm to Help Train Vietnamese Fish Farmers,” *Thanh Nien News*, March 27, 2010.

development of Vietnam's fish farming industry that will promote infrastructure and technological development, disease control, and environmental improvement.<sup>50</sup>

## The Antidumping Sunset Review

While the USDA prepared the new catfish rule, the ITC issued on June 15, 2009, a final determination in its five-year (sunset) review of the existing antidumping duties on "certain frozen fish fillets from Vietnam."<sup>51</sup> In a unanimous decision, the six ITC commissioners voted to continue the antidumping duties "for the foreseeable future." The Vietnamese government and the Vietnam Fishery Association expressed their opposition to the ITC's decision. Vietnam's deputy minister of trade and industry, Nguyen Thanh Bien, was quoted as saying, "in this economic context, this decision shows the heavy protectionism of the U.S. judicial and executive agencies."<sup>52</sup>

## The Agriculture Reform, Food, and Jobs Act of 2012

The lack of a final rule to implement the catfish inspection provisions of the 2008 Farm Bill is a source of frustration for some Members of Congress. They support amending the Agricultural Reform, Food, and Jobs Act of 2012 (S. 3240) to support the implementation of the USDA catfish inspection program. Other Members of Congress, however, consider the transfer of catfish inspection from FDA to USDA a needless expense, and wish to amend S. 3240 to return the responsibility to inspect catfish back to FDA. They also are concerned that the implementation of the USDA catfish inspection program will be harmful to the ongoing TPP negotiations.

## Implications for the 112<sup>th</sup> Congress

Two of the last four Congresses have passed legislation containing provisions that critics assert are designed to restrict or prevent the import of basa and tra from Vietnam and protect the U.S. catfish industry from foreign competition. Earlier in the 112<sup>th</sup> Congress, legislation was introduced – H.R. 4296 and S. 496 – to return the inspection of catfish back to the FDA. The issue has also been raised during consideration of the Agricultural Reform, Food, and Jobs Act of 2012 (S. 3240). According to some observers, congressional action on the treatment of catfish imports could have broader implications for bilateral trade relations with Vietnam, as well as the success of the TPP negotiations.

## Other Economic Issues

The preceding issues are topics where there has been or continues to be direct bilateral interaction. In addition, there are several economic issues that indirectly influence relations between the United States and Vietnam. Of these, the most prominent issues for the 112<sup>th</sup>

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<sup>50</sup> "Vietnam to Inject US\$2 Billion into 10-Year Fisheries Plan," *CPA Vietnam*, March 11, 2011.

<sup>51</sup> Under the provisions of the Uruguay Round Agreements Act (P.L. 103-465), antidumping duties must be revoked after five years unless the DOC and the ITC determine that revoking the duties would lead to the continuance or recurrence of dumping and cause material injury within a foreseeable time period.

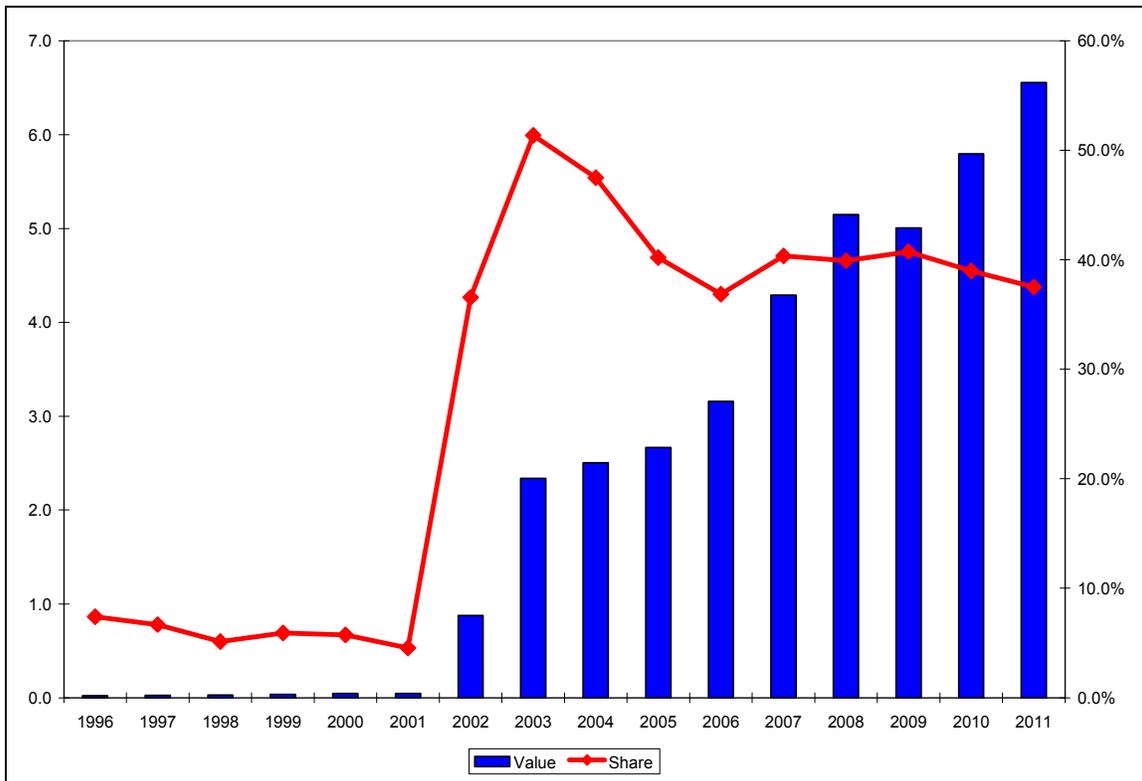
<sup>52</sup> "Vietnam Criticizes US Duties on Catfish as Protectionist," *Earth Times*, June 17, 2009.

Congress likely include clothing imports from Vietnam, workers' rights, IPR protection, and Vietnam's exchange rate policy.

## U.S. Clothing Imports from Vietnam

Vietnam's clothing exporters to the United States were among the greatest beneficiaries of the U.S. decision to grant Vietnam conditional NTR status in December 2001 (see **Figure 1**).<sup>53</sup> Vietnam has become a major source of U.S. clothing imports, second only to China. Up until 2002, U.S. imports of clothing from Vietnam were small both in value (below \$50 million) and as a share of total imports from Vietnam (below 10%). Following the U.S. extension of conditional NTR to Vietnam, U.S. clothing imports from Vietnam shot up in value and share. As a share of total imports, clothing peaked in 2003 at 51.4%. The value of U.S. clothing imports from Vietnam continued to rise every year until 2009, with the largest year-on-year increases occurring in 2003 and 2007—the first full years after the U.S. granted Vietnam conditional and permanent NTR status, respectively. Following a slight decline in 2009, the value of clothing imports from Vietnam once again began to rise. However, since its peak in 2003, the share of clothing in total U.S. imports from Vietnam has declined.

**Figure 1. U.S. Clothing Imports from Vietnam**  
Value (\$ billions) and Share of Total U.S. Imports from Vietnam



Source: U.S. International Trade Commission.

<sup>53</sup> For purposes of this section of the report, clothing imports and exports will be defined as commodities traded under chapters 61 and 62 of the U.S. Harmonized Tariff System (HTS), unless otherwise noted.

**Notes:** Imports valued using General Customs method.

The two spikes in clothing imports gave rise to efforts to restrict clothing trade with Vietnam, first in the form of a separate bilateral textile agreement and later in the form of a unilateral monitoring program that expired in January 2009.<sup>54</sup> In both cases, Vietnam initially protested U.S. efforts to restrict clothing trade, but in the end complied with the U.S. policies. Several Members of Congress, and in particular Members with significant clothing and textile manufacturing in their districts or states, voiced concern that a “surge” in Vietnamese clothing exports to the United States could cause damage to U.S. textile companies and workers. However, major U.S. retailers and importers maintained that these two programs would restrict trade from Vietnam, causing harm to U.S. companies and consumers.

There continues to be congressional and commercial interest in the growth of clothing imports from Vietnam. For the TPP negotiations, supporters of the U.S. textile industry are advocating using a “yarn-forward” rule<sup>55</sup> in the clothing and textile chapter of the proposed agreement. Backers of major U.S. retailers and apparel distributors, as well as the Vietnamese government, would prefer a more liberal approach, such as a “cut and sew” rule,<sup>56</sup> in the agreement.

## Workers’ Rights

The U.S. government and a number of non-governmental organizations (NGOs) such as Human Rights Watch have been critical of Vietnam’s restrictions on workers’ rights. There is a general recognition that Vietnam has made significant improvements in its labor laws, but that local government enforcement and business compliance remain ongoing problems. The State Department’s 2011 human rights report on Vietnam singled out problems with suppression of independent labor unions, failure to enforce laws governing the right to organize, forced or compulsory labor, child labor, and unacceptable working conditions.

Workers in Vietnam have the legal right to collective bargaining. At present, all labor unions in Vietnam must be a member of the Vietnam General Confederation of Labor (VGCL). The VGCL is supposed to organize a union within six months of the establishment of any new business, regardless of its ownership—state, foreign, or private. Human Rights Watch has also raised concern about the ability of Vietnamese workers to call an official strike, especially at state-owned enterprises (SOEs).<sup>57</sup>

Efforts to organize independent unions in Vietnam reportedly have been thwarted by government suppression, including the arrest and imprisonment of union leaders. Other observers, however, counter that since the launch of *doi moi*, worker rights have made progress despite the restrictions on their independent right to organize. These observers point out that hundreds of unaffiliated (and therefore unofficial) “labor associations” have sprouted without significant repression, that the VGCL has evolved into a more aggressive advocate for workers, and in many recent cases,

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<sup>54</sup> For more information on the bilateral textile agreement and the monitoring program, see CRS Report RL34262, *U.S. Clothing Imports from Vietnam: Trade Policies and Performance*, by Michael F. Martin.

<sup>55</sup> A yarn-forward rule would require that the production of the yarn and all subsequent manufacturing activity for the item of apparel occur in a TPP-member country.

<sup>56</sup> A cut and sew rule would require that the cutting of the fabric and the sewing of the fabric into an item of apparel occur in a TPP-member country. The fabric and/or the yarn could come from other non-TPP nations.

<sup>57</sup> Human Rights Watch, *Not Yet a Workers’ Paradise*, New York, NY, May 2009.

Vietnamese workers have gone on strike reportedly because they felt that they were not well-represented by the official union.

The Vietnamese government appears to tacitly accept that it has problems with the enforcement of its labor laws. Vietnam's official news agencies—*Thanhniên News*, Vietnam Net, and Voice of Vietnam News—ran a series of reports in 2008 and 2009 describing problems with Vietnam's protection of workers' rights, the flaws of the VGCL, and efforts to improve working conditions in Vietnam.<sup>58</sup> The humanitarian aid agency of the Australian Council of Trade Unions, which has worked closely with the VGCL on workers' education, wrote in a letter to Human Rights Watch, "Our experience in workers' education in Vietnam also leads us to believe that the government, far from trying to lower workers' conditions or repress workers, is sensitive to the needs of women and men workers."<sup>59</sup>

The Vietnamese government is working with various international organizations to improve its labor laws, regulations and enforcement. Vietnam's Ministry of Labour, Invalids, and Social Affairs (MOLISA) and the VGCL are currently working with the International Labor Organization (ILO) to finalize a new Labour Code and Trade Union Law.<sup>60</sup> In May 2012, Vietnam's National Assembly discussed some possible changes in the draft legislation, but no final vote was taken. The ILO and MOLISA are also working with Spain's Agency for International Development Cooperation on a program to eliminate child labor in Vietnam. In addition, the United Nations is providing \$2 million for a program to help the VGCL improve its grassroots relations.<sup>61</sup>

## IPR Protection

The U.S. government remains critical of Vietnam's record on intellectual property rights (IPR) protection. Vietnam was included in the "Watch List" in the U.S. Trade Representative's *2012 Special 301 Report*, an annual review of the global state of IPR protection and enforcement.<sup>62</sup> Vietnam remained on the Watch List because of its continuing problems with IPR piracy and trademark infringement. The report does state that "Vietnam improved its regulatory framework in 2011 by passing decrees to strengthen copyright protection and border enforcement." The report also noted that the U.S. government had funded IPR enforcement training in Vietnam in 2009. The perceived continuing problems with Vietnam's IPR protection may play a role in the TPP and BIT negotiations, as well as any consideration of Vietnam's GSP application.

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<sup>58</sup> Among these articles are: "Impotent Labour Unions Don't Help Workers," *Thanhniên News*, June 22, 2008; "Government Units to Tackle Labour Disputes," *Vietnam Net*, February 21, 2009; "Vietnam Works for Harmonious Labour Relations," *Voice of Vietnam News*, March 18, 2009; Minh Nam, "Flouting of Labor Laws Rife in HCMC: Report," *Thanhniên News*, December 2, 2008; and Minh Nam, "HCMC Officials call to Strengthen Unions, Tighten Labor Laws," *Thanhniên News*, February 12, 2009.

<sup>59</sup> Peter Jennings, *Re: Human Rights Watch Report 'Not Yet a Workers' Paradise' of May 4, 2009*, Australian People for Health, Education and Development Abroad, Inc., Sydney, June 17, 2009.

<sup>60</sup> The new labor law was to have been submitted in October 2010 (see "Labour Law Reform to Boost Integration," *Vietnam News*, April 2, 2010), but MOLISA and the VGCL requested a postponement from the National Assembly to permit more consultation with stakeholders. MOLISA is overseeing the drafting of the proposed law, but has assigned VGCL the responsibility of preparing the law's trade union provisions.

<sup>61</sup> "UN Aid Helps Improve Trade Union Capacity," *Voice of Vietnam News*, April 1, 2010.

<sup>62</sup> For a copy of the 2012 report, see <http://www.ustr.gov/about-us/press-office/reports-and-publications/2012-2>.

## Vietnam's Exchange Rate Policy

One aspect of Vietnam's economic system that has *not* been changed by *doi moi* is its exchange rate policy. Vietnam continues to maintain a government-managed exchange rate relative to the U.S. dollar. The State Bank of Vietnam (SBVN) sets a range in which the value of the Vietnamese dong can fluctuate relative to the U.S. dollar. In March 2009, the SBVN has widened the band to  $\pm 5\%$  from the official exchange rate, and has devalued the dong several times. In addition, the SBVN has taken steps to reduce downward pressure on the dong, including tightening the regulation of foreign exchange transactions and raising interest rates.

## Key Trends in Bilateral Trade

The preceding sections of the report have focused on current and past issues in U.S.-Vietnam trade relations. The final section of the report attempts to identify potential sources of future trade friction by examining trends in bilateral trade figures. The focus will be on three aspects of recent trade relations—merchandise trade, trade in services, and foreign direct investment (FDI).

## Merchandise Trade

Only a few years have passed since trade relations between the United States and Vietnam have opened. As previously mentioned, the rapid growth in Vietnam's export of two types of products—clothing and catfish—quickly made them sources of trade tension between the two nations. However, other commodities that contribute more to U.S.-Vietnam trade flows could also become touch points for trouble in bilateral trade relations.

**Table 2. Top 10 U.S. Exports to Vietnam and Imports from Vietnam**  
(According to U.S. trade statistics for 2011; U.S. \$ millions)

Top 10 Exports to Vietnam		Top 10 Imports from Vietnam	
Product	Value	Product	Value
Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof	540.610	Articles of apparel and clothing accessories, knitted or crocheted	3,782.039
Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television recorders and reproducers, parts and accessories	372.192	Articles of apparel and clothing accessories, not knitted or crocheted	2,773.679
Cotton, including yarns and woven fabrics thereof	370.519	Footwear, gaiters and the like; parts of such articles	2,045.757
Meat and edible meat offal	298.327	Furniture; bedding, mattresses, mattress supports, cushions and similar stuffed furnishings; lamps and lighting fittings, not elsewhere specified or included; illuminated sign illuminated nameplates and the like; prefabricated buildings	1,844.465

Top 10 Exports to Vietnam		Top 10 Imports from Vietnam	
Product	Value	Product	Value
Vehicles other than railway or tramway rolling stock, and parts and accessories thereof	270.956	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles	996.955
Plastics and articles thereof	197.384	Fish and crustaceans, molluscs and other aquatic invertebrates	793.674
Residues and waste from the food industries; prepared animal feed	194.112	Coffee, tea, maté and spices	629.421
Iron and steel	189.722	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof	589.219
Dairy produce; birds' eggs; natural honey; edible products of animal origin, NESOI	170.835	Mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes	433.062
Raw hides and skins (other than furskins) and leather	155.846	Edible fruit and nuts; peel of citrus fruit or melons	406.061

**Source:** U.S. International Trade Commission.

**Notes:** Products categorized by HTS chapters; NESOI = Not elsewhere specified or included.

According to U.S. trade statistics, the top U.S. imports from Vietnam in 2011, besides clothing and fish, were (in order) footwear; furniture and bedding; electrical machinery; spices, coffee, and tea; machinery; mineral fuel and oil; and edible fruits and nuts (see **Table 2**). The top U.S. exports to Vietnam included (in order) machinery; electrical machinery; cotton; meat; non-railway vehicles; plastic and plastic articles; food waste and animal feed; iron and steel; dairy produce, eggs, honey, and edible products of animal origin; and leather and raw hides and skins. The juxtaposition of these two lists reveals product categories that may warrant watching, as well as a connection between some of the top trade commodities.

### **Furniture and Bedding**

Over the last 10 years, Vietnam has risen from being the 62<sup>nd</sup> largest source for furniture and bedding imports for the United States to being the fourth-largest source—surpassing past leaders such as Italy, Malaysia, and Taiwan. Furniture and bedding provided over 10% of total U.S. imports from Vietnam in 2011.

### **Footwear**

While most of the focus has been on clothing imports from Vietnam, footwear constituted nearly 12% of total U.S. imports from Vietnam in 2011. Vietnam was the second-largest source of footwear imports for the United States in 2011, nearly twice the size of Italy and three times the size of Indonesia.

## **Electrical Machinery**

Vietnam's electrical machinery exports to the United States grew more than 1,500-fold since 2001, reaching nearly \$1 billion in 2011 and nearly 6% of total U.S. imports from Vietnam. According to interviews with foreign investors in Vietnam, there is great potential for growth in this sector because of Vietnam's inexpensive, skilled workers.

## **Product Interplay**

There is also a discernable interplay between Vietnam's top exports to the United States and the top U.S. exports to Vietnam. Vietnam imports substantial amounts of cotton from the United States, which is then used to manufacture clothing to be exported to the United States. Similarly, Vietnam imports wood from the United States that may end up in the furniture that is imported by the United States from Vietnam. There is also a significant amount of cross-trade in electrical machinery—a top-10 export item for both countries—as parts and components are shipped back and forth across the Pacific Ocean. The implication is that efforts to curtail the growth of certain top exports of Vietnam to the United States could result in a decline in U.S. exports to Vietnam and possible job losses in the United States.

## **Trade in Services**

The United States perceives a trade advantage in several of the services sectors, especially financial services. In the latest U.S. National Trade Estimate (NTE), the Office of the U.S. Trade Representative indicated that as part of the implementation of the BTA, Vietnam has committed to greater liberalization of a broad array of its services sectors, including financial services, telecommunications, express delivery, distribution services, and certain professions. Vietnam has already committed to allowing 100% foreign ownership of securities firms and express delivery service providers by 2012. It is likely that the United States will press Vietnam for more access during the BTA talks, as well as during the BIT negotiations.

## **Foreign Direct Investment**

In 2010, Vietnam licensed 1,237 foreign direct investment (FDI) projects worth \$19.886 billion.<sup>63</sup> The leading source of FDI in 2010 was Singapore, with 11 projects worth \$4.5865 billion. The United States was the fifth largest source of FDI in 2010 with 64 projects worth \$1.936 billion. The accumulated value of FDI in Vietnam for the period 1998-2010 is \$194.572 billion. Taiwan was the leading investor during this period, followed by South Korea and Singapore. The United States was the 7<sup>th</sup> largest investor, with 568 projects worth \$13.104 billion.

Growing U.S. interest in investment opportunities in Vietnam could have an impact on the BIT negotiations and, by implication, have an effect on the 112<sup>th</sup> Congress if the negotiations are completed in 2012. In addition, as more U.S. companies invest in Vietnam, there is the possibility of more business-to-business disagreements between U.S. and Vietnamese companies, and more constituent pressure on Congress to address perceived shortcomings in Vietnam's treatment of foreign-owned enterprises.

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<sup>63</sup> Data from the General Statistics Office of Vietnam; latest available figures.

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