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U.S.-Vietnam Economic and Trade Relations: Issues for the 114th Congress

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Summary

The year 2015 marks the 20th anniversary of the resumption of diplomatic relations between the United States and Vietnam. Since the resumption of diplomatic relations in 1995, Vietnam rapidly has 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 developing U.S. policy on some of these issues.

According to U.S. trade statistics, bilateral trade has grown from about $220 million in 1994 to $36.3 billion in 2014, transforming Vietnam into the 15th-largest source for U.S. imports and 44th-largest destination for U.S. exports. Vietnam is the second-largest source of U.S. clothing imports (after China), 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 in 2001. 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 Partnership (TPP), a trade agreement currently being negotiated by 12 countries, including the United States and Vietnam. Vietnam's incentive to join the TPP largely is 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 the Regional Comprehensive Economic Partnership (RCEP), a 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 accompanying issues and problems. Vietnam applied for, but has not been accepted into the U.S. Generalized System of Preferences (GSP) program, and is negotiating a Bilateral Investment Treaty (BIT) with the United States. Vietnam also would like the United States officially to recognize it as a market economy.

There also have been problems with U.S. imports of specific products from Vietnam, particularly catfish-like fish known as *basa* or *tra*. In 2008, the 110th Congress passed legislation that transferred the regulation of catfish from the Food and Drug Administration to the U.S. Department of Agriculture (USDA). The Vietnamese government strongly protested the law as a protectionist measure. The Agricultural Act of 2014 (P.L. 113-79) confirmed the transfer of inspection to the USDA, and explicitly included *basa* and *tra* as catfish.

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. Other economic issues have had an indirect effect on bilateral relations, such as claims of poor working conditions in factories in Vietnam and allegations of inadequate intellectual property rights (IPR) protection in Vietnam.

The 114th Congress may play an important role in one or more of these issues, as have past Congresses. Also, Congress would have to consider implementing legislation if a TPP agreement is concluded.

This report will be updated as circumstances require.

Contents

Figures

Tables

Contacts

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 the Republic of Vietnam (South Vietnam), President Gerald R. Ford extended President Richard M. Nixon's 1964 trade embargo on North Vietnam to cover the reunified nation.[1] 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.[2] 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.[3] On July 11, 1995, President Clinton restored diplomatic relations with Vietnam.[4] Two years later, President Clinton appointed the first U.S. ambassador to Vietnam since the end of the Vietnam War.

Bilateral relations also improved in part due 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 nearly 30 years of rapid growth in Vietnam. Since 2000, Vietnam's real GDP growth has averaged over 6% 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.[5] 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).[6] Over the last five fiscal years,

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1 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 (name redacted) et al. (out of print; available from the author upon request).

2 For more information about the thaw in U.S.-Vietnam relations, see CRS Report R40208, *U.S.-Vietnam Relations in 2014: Current Issues and Implications for U.S. Policy*, by (name redacted).

3 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.

4 William J. Clinton, "Remarks Announcing the Normalization of Diplomatic Relations With Vietnam," July 11, 1995. Online by Gerhard Peters and John T. Woolley, The American Presidency Project, http://www.presidency.ucsb.edu/ws/?pid=51605.

5 For more information about the BTA, see CRS Report RL30416, *The Vietnam-U.S. Bilateral Trade Agreement*, by (name redacted).

6 CRS Report RL33490, *Vietnam PNTR Status and WTO Accession: Issues and Implications for the United States*, by (name redacted), (name redacted), and (name redacted).

Congress has appropriated over $10 million each year to support Vietnam's economic reforms.[7] 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 Investment Treaty (BIT) and WTO agreements, as well as trade and investment policies in general.

Table 1. Growth in Bilateral Merchandise Trade Between United States and Vietnam

(in millions of U.S. dollars)

	U.S. Trade Data		Vietnamese Data	
Year	Exports to Vietnam	Imports from Vietnam	Exports to United States	Imports from United States
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
2012	4,623	20,266	19,668	4,827
2013	5,013	24,649	23,869	5,232
2014	5.725	30,584	28.656	6.284

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

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

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 in 1994, trade between the two

[7] The funded programs have recently focused assistance in operating in accordance with international rules and norms; fostering Vietnam's participation in and implementation of the provisions of the Trans-Pacific Partnership trade agreement currently being negotiated; and coordinating regional efforts as part of the Lower Mekong Initiative .

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 has rebounded since 2010.

Both nations are negotiating membership in the Trans-Pacific Partnership (TPP), a proposed 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 negotiating a bilateral investment treaty (BIT). The United States also has expressed an interest in closer economic relations, but has told Vietnam that it needs to make certain changes in the 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 also has 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* also has 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 114th Congress. Following this will be an analysis of key trends in bilateral trade to discern any potential sources of future trade friction.

Proposed Trans-Pacific Partnership (TPP)

In 2008, the Bush Administration notified Congress of its intention to enter into negotiations with the four members of the Trans-Pacific Strategic Economic Partnership Agreement—Brunei, Chile, New Zealand, and Singapore—to form a larger and more ambitious trade agreement. The U.S. announcement of interest in joining the renamed Trans-Pacific Partnership was quickly followed by similar expressions of interest by Australia, Malaysia, Peru, and Vietnam.[8] The nine countries formally agreed to accept Mexico and Canada into the ongoing negotiations on June 18 and 19, 2012, respectively. Japan was accepted into the negotiations on April 21, 2013.

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 would further open a sizeable market to U.S. exports and investments, and could accelerate economic reforms in Vietnam. According to U.S.

[8] Since then, other nations—including Indonesia, the Philippines, South Korea, and Thailand—have expressed an interest in the TPP, but are not parties to the ongoing negotiations.

trade statistics, Vietnam is the fifth-largest U.S. trading partner (after Canada, Mexico, Japan, and Singapore) among the nations currently involved in the TPP negotiations.

According to a 2010 interview with key Vietnamese analysts, Vietnam initially pressed for the following provisions in the TPP agreement:[9]

- Designation as a market economy prior to 2018;[10]
- Liberalization of trade in services (including certification and licensing);
- Relaxation of U.S. "yarn forward" rules on clothing trade;
- Prohibition on discrimination against state-owned enterprises; and
- Special consideration for developing economies.

Vietnam was also interested in greater market access for its agricultural and aquacultural exports, particularly in the United States. During U.S. Trade Representative (USTR) Michael Froman's visit to Vietnam in April 2015, Prime Minister Nguyen Tan Dung reportedly stated that much progress has been made in the TPP negotiations, but difficulties remain in the provisions covering market access, trade in services, investment, government procurement, intellectual property rights, state-owned enterprises, and labor.[11] Vuong Dinh Hue, head of the Vietnam's Communist Party Central Committee's Economic Commission, also met with USTR Froman, and reportedly suggested that the United States should take into account Vietnam's core interests relating to market access for clothing and textiles, footwear, and agricultural goods.[12]

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 21st 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 29 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 initially opposed the inclusion of "yarn-forward" conditions for clothing in the TPP agreement; it preferred the adoption of "cut and sew" rules (see "U.S. Clothing Imports from Vietnam").

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.[13] Over the last several

[9] "TPP—Vietnam's New Game in the Global Integration," *VietNamNet*, December 6, 7, and 8, 2010.

[10] Vietnam will be granted market economy status as of 2018 under the provisions of its WTO accession agreement.

[11] "Vietnam Hopes for Early Conclusion of TPP Talks with US," *VietNamNet*, April 23, 2015.

[12] "Party Official Discusses TPP with US Trade Representative," *VietNamNet*, April 23, 2015.

[13] 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 (name redacted).

years, ASEAN has organized meetings with various configurations of Asian nations—such as the ASEAN + 3 (China, Japan, and South Korea), ASEAN + 6 (Australia, China, India, Japan, New Zealand, and South Korea), and more recently, the Asian Regional Comprehensive Economic Partnership (RCEP)—to discuss the formation of a free trade area that would include only Asian nations.

If a TPP agreement is concluded, Congress would have to consider implementing legislation to amend any U.S. law inconsistent with the terms of the agreement. Unlike the ratification of international treaties, the implementing legislation for trade agreements must be approved by both the House of Representative and the Senate.[14]

Vietnam's Generalized System of Preferences (GSP) Application[15]

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, which is currently expired, authorizes the President to grant duty-free treatment for any eligible product from any beneficiary country.[16] Initially created by Title V of the Trade Act of 1974 (P.L. 93-618) for a 10-year period, the GSP program repeatedly has been 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. The AGOA Extension and Enhancement Act of 2015 (S. 1009), introduced on April 20, 2015, would reinstate the U.S. GSP program, and makes no mention of Vietnam's pending application.

Inclusion in the U.S. GSP program is an important 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 continues to inquire about the status of its GSP application, but reportedly sees inclusion in the proposed TPP as a preferable alternative. 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.

[14] 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 Treaties*, by (name redacted), (name reda cted), and (name redacted).

[15] 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 (name redacted) and (name redacted).

[16] For background information on the U.S. GSP program, see CRS Report RL33663, *Generalized System of Preferences: Background and Renewal Debate*, by (name redacted).

Status of Application

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.[17] 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.

Role of Congress

Under Title V of the Trade Act of 1974, 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 Members of Congress could indicate their preferences on this issue. In addition to hearings and communications to the Administration from Members, Congress could authorize or instruct the President to designate—or not to designate—Vietnam as a beneficiary developing country (BDC),[18] either as part of the legislation to reinstate 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. 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. In the 113th Congress, H.R. 1682 would have denied Vietnam's acceptance into the GSP program unless the President certified to Congress that Vietnam has met certain human rights conditions.

Bilateral Investment Treaty (BIT) Negotiations

During their June 2008 meeting, President Bush and Prime Minister Dung announced the launch of talks to establish a bilateral investment treaty (BIT). 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 currently is a party to 40 BITs in force; Vietnam has signed over 50 BITs.

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[17] The conditions are: it has normal trade relation status with the United States; is a member in the World Trade Organization (WTO) and the International Monetary Fund (IMF); and it is "not dominated or controlled by international communism."

[18] For an explanation of BDC status, see CRS Report RL33663, *Generalized System of Preferences: Background and Renewal Debate*, by (name redacted).

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, 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, presumably because the TPP agreement would encompass those issues that would be addressed in the BIT.

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 bilateral trade agreement (BTA) with the United States.[19] 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 generally has 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." In 2012, the Obama Administration released a new model BIT, which presumably would be used in any future talks with Vietnam.[20]

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.[21] 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." If the TPP negotiations appear to be running into problems, Vietnam may seek to restart the BIT talks.

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[19] Previous U.S. trade agreements have included language similar to that of the U.S. model BIT.

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

[21] For the complete text of the 2001 BTA, go to http://www.usvtc.org/trade/bta/text/.

The Role of Congress

If the United States and Vietnam successfully complete the negotiations of a BIT during the 114th Congress, the treaty would 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.

Non-Market Economy Designation

Vietnamese leaders would like the United States to change Vietnam's official designation from "nonmarket economy" to "market economy." During an April 2015 meeting with USTR Froman, Vuong Dinh Hue, head of the Vietnam's Communist Party Central Committee's Economic Commission, urged the United States to soon recognize Vietnam as a market economy.[22]

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 administrating 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. However, the General Agreement on Tariffs and Trade (GATT) implicitly defines a "non-market economy" for purposes of trade as "a country which has a complete or substantially complete monopoly of its trade and where all domestic prices are fixed by the State."[23]

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

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 GDP grew by 6% in 2014, fueled by industrial and service sector growth. Vietnam's consumer price index (CPI) rose by 4%. The unemployment rate remained low, but Vietnam continues to suffer from significant underemployment. Vietnam's total exports were $150 billion; imports were $148 billion.

Although the shift in economic policy has led to strong 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, which at times has fueled discontent among Vietnam's poor and lower-income population. Vietnam's economic priorities for 2015 are continuing reforms to its banking sector and maintaining macroeconomic stability.

Source: General Statistics Office of Vietnam.

[22] "Party Official Discusses TPP with US Trade Representative," *VietNamNet*, April 23, 2015.

[23] Ad Note to Article VI:1 of the GATT.

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 2013, the portion of Vietnam's real industrial output produced by SOEs declined from 50.3% to 16.3%.[24] 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.

In August 2010, Prime Minister Dũng announced a plan for the reorganization of the remaining SOEs.[25] Prime Minister Dũng 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 privatization of many of Vietnam's SOEs were confirmed during the 11th National Party Congress in January 2011. The stated goal was 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.[26] The Asian Development Bank (ADB) is providing Vietnam with a $630 million loan to help it reform its SOEs and improve corporate governance.[27]

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 exchange, but 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.[28] Attempts to sell shares in 25 SOEs in early 2014 via initial public offerings (IPOs) resulted in over 70% of the offered shares remaining unsold.[29] The Vietnamese government reports that it equitized 143 SOEs in 2014, and plans on equitizing about 280 in 2015.[30] 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.

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.[31] 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-

[24] Based on data from Vietnam's General Statistics Office.

[25] Kim Tan, "Government Shakes Up State-Owned Companies," *Dantri International News*, August 23, 2010.

[26] "150 SOEs Must Be Equitized Every Year," *VietNamNet*, May 14, 2012.

[27] For details, see ADB's webpage, http://www.adb.org/projects/project.asp?id=39538&p=vieproj.

[28] "150 SOEs Must Be Equitized Every Year," *VietNamNet*, May 14, 2012.

[29] "IPO Shares of State-owned Enterprises Unsalable," *VietNamNet*, April 8, 2014.

[30] "280 SOEs Slated for Equitization to be Listed This Year," *VietNamNet*, March 18, 2015.

[31] Leigh Murray, "Vinashin May Hurt Vietnam Banks," *Wall Street Journal*, December 13, 2010.

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.[32] 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.[33] 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."[34]

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 Dung tightened controls on various products to reduce inflationary pressure.[35] Those price controls were loosened in early 2012, but temporarily reinstated at the end of 2013 because of the approaching lunar new year.

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. 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 also to 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 counterveiling 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 actively has 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 (i.e., 2018) or until it meets U.S. criteria for a "market economy" designation.[36]

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

[32] "Vietnam Minister Says Vinashin Should Make Its Own Debt Payment," *Bloomberg*, December 8, 2010.

[33] "Vietnam Offers Loans to Ailing Shipbuilder Vinashin," *BBC*, December 28, 2010.

[34] "Vietnam Jails Former Vinashin Executives After Downfall," *Reuters*, March 30, 2012.

[35] "Vietnam to Set Price Controls on Commodities," *Vietnam Business News*, December 2, 2010.

[36] Other countries considered non-market economies by the United States include Armenia, Azerbaijan, Belarus, China, Georgia, Kyrgyz Republic, Moldova, Tajikistan, and Uzbekistan.

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 114th 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 and continue to be a regular source of trade friction between the United States and Vietnam. Vietnam is a major exporter of frozen fish fillets using certain varieties of fish—known as *basa, swai,* and *tra* in Vietnamese—that are commonly referred to as catfish in the global fish market.[37] Since 1999, Vietnamese exports of *basa, swai,* 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 2014, the United States imported over $314 million of *basa, swai,* and *tra* from Vietnam.[38]

Over the last 13 years, the United States has taken several actions that have had an impact on the import of Vietnamese *basa, swai,* and *tra*. In 2002, Congress passed legislation that prohibited the labeling of *basa, swai,* and *tra* as "catfish" in the United States.[39] In August 2003, the U.S. government imposed antidumping duties[40] on "certain frozen fish fillets from Vietnam," including *basa, swai,* and *tra*.[41] Despite these measures, U.S. imports of *basa, swai,* and *tra* from Vietnam continued to rise. However, according to the Vietnam Association of Seafood Exporters and Producers (VASEP), the number of companies exporting catfish to the United States has declined from 30 to 3.[42]

The ongoing tensions around catfish trade were heightened by the passage of the 2008 Farm Bill (P.L. 110-246) by the 110th Congress in March 2008, and the ITC's determination in June 2009 to keep in place the antidumping duties on certain frozen fish fillet imports from Vietnam "for the foreseeable future." The Agricultural Act of 2014 (P.L. 113-79) confirmed the 2008 Farm Bill transfer of catfish inspection to the U.S. Department of Agriculture, including *basa, swai,* and *tra*.

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

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[37] *Basa* (*Pangasius bocourti*), swai (*Pangasius pangasius*) 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.

[38] Based on U.S. International Trade Commission (USITC) online trade database (http://dataweb.usitc.gov/). Nearly $306 million of the imports were in the form of frozen catfish fillets.

[39] 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*.

[40] Antidumping duties are penalties imposed on goods imported at what is determined to be less than "fair value." For more about antidumping duties in the United States, see CRS Report RL32371, *Trade Remedies: A Primer*, by (name r edacted).

[41] International Trade Administration, "Notice of Antidumping Duty Order: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam," 68 *Federal Register* 47909, August 12, 2003.

[42] "Low Prices of Vietnam's Catfish Lead to Export Dilemma," *VietNamNet*, February 11, 2015.

shrimp and plastic bags as an indication of U.S. protectionism (see "Non-Market Economy Designation").[43] Supporters of U.S. trade policies against Vietnam's exports of *basa, swai*, 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.[44]

2008 Farm Bill

The legal status of Vietnam's *basa, swai,* 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) in June 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 could have redefined catfish to include *basa, swai,* 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 VASEP). Ambassador Le Cong Phung sent a 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, swai,* and *tra* as catfish as "protectionism at its worst."[45] Supporters of the provisions of the 2008 Farm Bill state that it provides greater protection to U.S. consumers.

Potential New Catfish Regulations

Draft regulations for catfish food safety inspection were delivered to the Office of Management and Budget (OMB) by the USDA in November 2009. On February 24, 2011, the USDA published in the *Federal Register* its proposed rule for mandatory inspection of catfish and catfish products.[46] The USDA is "proposing to apply the requirements for the inspection of imported

[43] 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.

[44] "Toxic Residues Could Shrivel Shrimp Exports: Experts," *Vietnam Economy News*, November 12, 2010.

[45] "A Fish by Any Other Name," *Wall Street Journal*, May 20, 2009.

[46] U.S. Department of Agriculture, "Mandatory Inspection of Catfish and Catfish Products," 76 *Federal Register* 10434- 10469, February 24, 2011.

meat products (21 U.S.C. 620) to the inspection of imported catfish products….” The proposed rule, however, left 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.

The catfish controversy reemerged after the passage of the Agricultural Act of 2014 (P.L. 113-79). Section 12106 amended Section 1(w) of the Federal Meat Inspection Act (21 U.S.C. 601(w)) to require “all fish of the order Siluriformes” be inspected by the USDA, confirming the change made in the 2008 Farm Bill, and effectively including *basa, swai,* and *tra* under the definition of catfish, and superseding the 2002 law. In addition, the Agricultural Act of 2014 requires that the FDA and the USDA coordinate their inspection activities to avoid duplication of efforts.

Based on the provisions of P.L. 110-246 and P.L. 113-79, the USDA submitted the final version of the catfish inspection regulations to OMB on June 2, 2014. OMB officially had 90 calendar days—or until September 1, 2014—to complete its review of the final rule. If OMB clears the regulations, they would be published and go into effect on the date specified in the regulation.

If adopted, the proposed new regulation 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 preliminary catfish regulations call for the new inspection program to be implemented in four phases. During Phase One, foreign countries exporting catfish to the United Sates 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 did not set a timeline for the four phases. It is not known if the final regulations include the same phased implementation.

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.[47] 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.[48] Prime Minister Dung reportedly has approved a 10-year, $2 billion “master plan” for the development of Vietnam’s fish farming industry that will promote infrastructure and technological development, disease control, and environmental improvement.[49]

[47] “Catfish Quality Tests Tightened for Export Hygiene Standards,” *Vietnam News*, April 15, 2010.

[48] “US Firm to Help Train Vietnamese Fish Farmers,” *Thanh Nien News*, March 27, 2010.

[49] “Vietnam to Inject US$2 Billion into 10-Year Fisheries Plan,” *CPA Vietnam*, March 11, 2011.

The Antidumping Sunset Review on Catfish

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."[50] 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."[51] In April 2014, the Department of Commerce lowered the antidumping duties on Vietnam's catfish exports to the United States.[52]

Implications for the 114th Congress

The passage of the Agricultural Act of 2014 (P.L. 113-79) clarified the definition of catfish, opening the way for USDA to finalize the catfish inspection rules required by the 2008 Farm Bill (P.L. 110-246). As of the writing of this report, the USDA has not released the new rule. Given past events, it is likely that the Vietnamese government will object to the new inspection requirements. In addition, some Members of Congress have previously objected to the transfer of the inspection of catfish from FDA to USDA, and may raise the issue during the 114th Congress.

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 114th Congress likely include clothing imports from Vietnam, workers' rights, and IPR protection.

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**).[53] 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 bilateral 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

[50] 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.

[51] "Vietnam Criticizes US Duties on Catfish as Protectionist," *Earth Times*, June 17, 2009.

[52] "US Imposes Unfair, but Bearable, Anti-dumping Tax on VN's Catfish," *VietNamNet*, April 4, 2014.

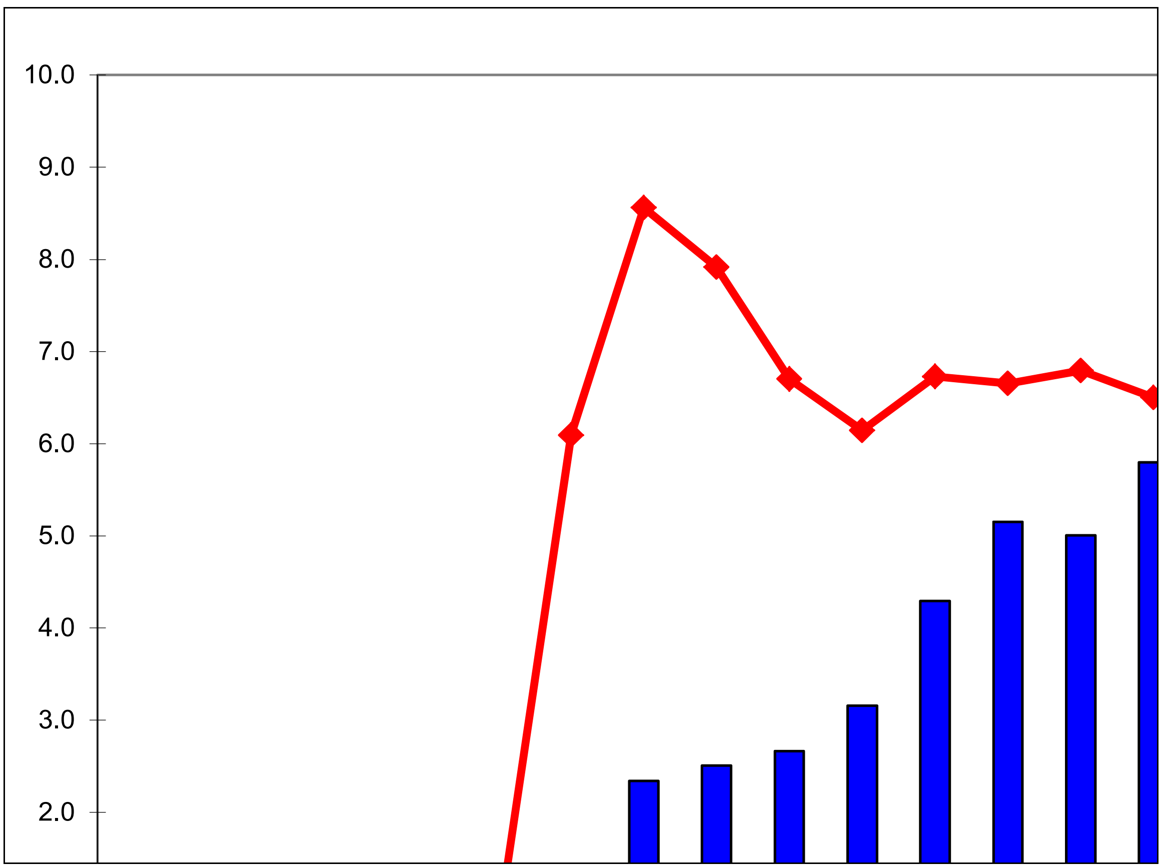
[53] For purposes of this section of the report, clothing imports and exports will be defined as commodities traded under chapters 61 and 62 of the U.S. Harmonized Tariff System (HTS), unless otherwise noted.

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.

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.[54] 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.

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.

Note: Imports valued using General Customs method.

[54] 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 (name redacted).

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[55] 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,[56] in the agreement. According to sources in the office of the U.S. Trade Representative, the 12 nations are using a "yarn-forward" rule, but are discussing terms for a "short supply" list that may allow a significant portion of Vietnam's clothing exports to qualify under the proposed TPP trade agreement for tariff exemption.[57]

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.[58] The State Department's 2013 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.[59]

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.

Vietnamese workers are not legally allowed to form unions independent from the VGCL, and efforts to organize independent unions in Vietnam reportedly have been thwarted by government suppression, including the arrest and imprisonment of union leaders. Some analysts have argued that restrictions of the right of association in Vietnam have impeded the improvement of labor rights in other areas. 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, Vietnamese workers have gone on strike reportedly because they felt that they were not well-represented by the official union. Human

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[55] 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.

[56] 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.

[57] For more about the TPP negotiations, the U.S. textile industry, and Vietnam's clothing exports to the United States, see CRS Report R42772, *U.S. Textile Manufacturing and the Trans-Pacific Partnership Negotiations*, by (name redact ed).

[58] In 2013, Vietnam revised its labor code, increasing workers' rights (such as provision of compulsory unemployment and health insurance, better overtime protection, mandatory rest breaks, and increased maternity leave). However, workers in Vietnam still face problems (see Tu Phuong Nguyen, "Reforming Labour Relations in Vietnam," *East Asia Forum*, June 6, 2014).

[59] Department of State, *Country Reports on Human Rights Practices for 2013: Vietnam*, http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper.

Rights Watch, however, has raised concern about the ability of Vietnamese workers to call an official strike, especially at state-owned enterprises (SOEs).[60]

Vietnamese workers did experience a few improvements in 2014 and 2015. In April 2014, the VGCL formed the Committee of Labor Relations to improve relations between local unions and their workers, improve relations between workers and managers, and avoid labor disputes.[61] In addition, the chairman of VGCT is allegedly pushing for a higher minimum wage than the one being proposed by the Vietnamese government.[62] Also, a weeklong strike in Ho Chi Minh City in April 2015 reportedly pressured the Vietnamese government to amend a new social insurance law that would have limited lump sum payments to workers when they leave their jobs.[63]

Between 2005 and 2008, the reported number of factory worker strikes in Vietnam increased from 147 to 762. Virtually all these strikes were illegal, or wildcat strikes, organized by workers without the support or assistance of the local union. The reported number of strikes declined in 2009 to 216, but then quickly rose to 981 in 2011.[64]

After the rise in wildcat strikes, the Vietnamese government appeared to tacitly accept that it had problems with the enforcement of its labor laws. Vietnam's official news agencies—*Thanhnien 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.[65] 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."[66]

Since then, the Vietnamese government has worked 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 worked with the International Labor Organization (ILO) to finalize a new Labour Code and Trade Union Law.[67] In June 2012, Vietnam's National Assembly approved the new law, which took effect on May 1, 2013. The ILO and MOLISA are

[60] Human Rights Watch, *Not Yet a Workers' Paradise*, New York, NY, May 2009.

[61] "Reforming Labour Relations in Vietnam," *East Asia Forum*, June 6, 2014.

[62] "Labor Union Calls for Sharp Increases in Vietnam's Minimum Wage," *Thanh Nien News*, August 1, 2014.

[63] Adam Fforde, "Vietnam's Workers Use Local Strikes to Push Party for Reforms," *World Politics Review*, April 17, 2015.

[64] For more about the strikes of this period, see Erwin Schweisshelm, "Trade Unions in Transition—Changing Industrial Relations in Vietnam," Global Union Column, Corporate Strategy and Industrial Development, University of the Witwatersrand, No. 182, September 2014.

[65] Among these articles are: "Impotent Labour Unions Don't Help Workers," *Thanhnien 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," *Thanhnien News*, December 2, 2008; and Minh Nam, "HCMC Officials call to Strengthen Unions, Tighten Labor Laws," *Thanhnien News*, February 12, 2009.

[66] 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.

[67] 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.

also working with Spain's Agency for International Development Cooperation on a program to eliminate child labor in Vietnam. In addition, the United Nations provided $2 million for a program to help the VGCL improve its grassroots relations.[68]

Vietnamese workers continue to face constraints on their right of association, their ability to form unions of their choice, and their ability to address grievances over their working conditions. Labor organizers, such as Do Thi Minh Hanh, Doan Huy Chuong, and Nguyen Hoang Quoc Hung, have been arrested and jailed for attempting to organize independent labor unions. In January 2015, the Vietnamese government reportedly issued new guidelines that establish procedures for settling wildcat strikes, but are seen as cumbersome and potentially costly for the striking workers.[69] Workers in some foreign-owned factories (particularly Taiwanese and South Korean-owned clothing factories) face "authoritarian" factory managers who violate Vietnamese laws on working hours and conditions, and hire under-aged workers.[70]

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 *2015 Special 301 Report*, an annual review of the global state of IPR protection and enforcement.[71] Vietnam remained on the Watch List because of its continuing problems with online piracy and the sales of counterfeit goods. The report states, "While there are laws in place for IPR crimes, Vietnam has yet to draft the implementing guidelines to the 2009 amendments to the 1999 Criminal Code, which would allow law enforcement agencies and courts to levy deterrent criminal penalties against IPR violators." 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.

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

About a decade has 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

[68] "UN Aid Helps Improve Trade Union Capacity," *Voice of Vietnam News*, April 1, 2010.

[69] Tu Phuong Nguyen, "Vietnam Strikes Out at Labor Disputes," *Asia Sentinel*, April 14, 2015.

[70] Workers Rights Consortium, *Made in Vietnam: Labor Rights Violations in Vietnam's Export Manufacturing Sector*, May 2013.

[71] For a copy of the 2015 report, see https://ustr.gov/sites/default/files/2015-Special-301-Report-FINAL.pdf.

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 2014; U.S. $ millions)

Top 10 Exports to Vietnam		Top 10 Imports from Vietnam	
Product	**Value**	**Product**	**Value**
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	700.500	Articles of apparel and clothing accessories, knitted or crocheted	5,417.784
Oil seeds and oleaginous fruits; miscellaneous grains, seeds and fruits; industrial or medicinal plants; straw and fodder	527.658	Articles of apparel and clothing accessories, not knitted or crocheted	3,788.939
Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof[a]	479.341	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	3,741.869
Cotton, including yarns and woven fabrics thereof	395.245	Footwear, gaiters and the like; parts of such articles	3,625.403
Edible fruit and nuts; peel of citrus fruit or melons	388.002	Furniture; bedding, mattresses, mattress supports, cushions and similar stuffed furnishings; lamps and lighting fittings, not elsewhere specified or included; illuminated signs, illuminated nameplates, and the like; prefabricated buildings	3,149.281
Residues and waste from the food industries; prepared animal feed	265.166	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof[a]	2,774.024
Wood and articles of wood; wood charcoal	254.959	Fish and crustaceans, molluscs and other aquatic invertebrates	1,136.199
Dairy produce; birds' eggs; natural honey; edible products of animal origin NESOI	231.932	Articles of leather; saddlery and harness; travel goods, handbags and similar containers; articles of animal gut (other than silkworm gut)	960.760
Plastics and articles thereof	226.866	Coffee, tea, maté, and spices	795.078
Optical, Photographic, cinematographic, measuring, checking, precision, medical or surgical instruments or apparatus; parts and accessories thereof	185.528	Edible fruits and nuts; peel of citrus fruit or melons	615.734

Source: U.S. International Trade Commission.

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

a. Most of these exports consist of machinery, mechanical appliances, and their parts.

According to U.S. trade statistics, the top U.S. imports from Vietnam in 2014, besides clothing and fish, were (in order): electrical machinery; footwear; furniture and bedding; machinery and mechanical appliances; articles of leather; spices, coffee, and tea; and edible fruit and nuts (see **Table 2**). The top U.S. exports to Vietnam included (in order) machinery and mechanical appliances; oil seeds; electrical machinery; cotton; edible fruit and nuts; residuals and waste from food industries; wood and articles of wood; dairy produce, birds' eggs, natural honey, and edible products of animal origin NESOI; plastic and plastic articles; and various forms of scientific and medical equipment. 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.

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.

Electrical Machinery

Vietnam's electrical machinery exports to the United States grew more than 1,500-fold since 2001, exceeding $1.9 billion in 2013 and then nearly doubling in value in 2014 to almost $3.8 billion. Electrical machinery constituted over 12% of total U.S. imports from Vietnam in 2014. According to interviews with foreign investors in Vietnam, there is great potential for growth in this sector because of Vietnam's relatively inexpensive, skilled workers. Vietnamese economic officials have indicated that expanding the nation's production of higher-valued consumer electronics and other electrical devices is a priority for the nation's transition to a middle-income economy.

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 2014. Vietnam was the second-largest source of footwear imports for the United States in 2014, more than 2.5 times the size of imports from Italy.

Furniture and Bedding

Since 2004, Vietnam has risen from being the 62nd-largest source for furniture and bedding imports for the United States to being the 4th-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 2014.

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 2001 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 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 talks over the TPP, a new BTA, as well as during the BIT negotiations.

Foreign Direct Investment

In 2013, Vietnam licensed 1,530 foreign direct investment (FDI) projects worth $22.4 billion.[72] The leading source of FDI in 2013 was Japan, with 352 projects worth $5.9 billion. The United States was the 15th-largest source of FDI in 2013 with 44 projects worth $130 million. The accumulated value of FDI in Vietnam for the period 1989-2013 is $234.1 billion. Japan was the leading investor during this period, followed by Singapore and South Korea. The United States was the 7th-largest investor, with 682 projects worth $10.7 billion.

Growing U.S. interest in investment opportunities in Vietnam could have an impact on the TPP and BIT negotiations and, by implication, have an effect on the 114th Congress if the negotiations are completed in 2015 or 2016. 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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72 Data from the General Statistics Office of Vietnam; latest available figures.