Congressional Research Service
Informing the legislative debate since 1914

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

Updated May 20, 2016

Congressional Research Service
https://crsreports.congress.gov
R41550

CRS REPORT
Prepared for Members and
Committees of Congress

Summary

The year 2015 was a memorable year in U.S.-Vietnam relations, marking the 40th anniversary of the end of the Vietnam War, the 20th anniversary of the reestablishment of diplomatic relations, the first U.S. visit by a Chairman of the Vietnamese Communist Party (VCP) (in July), and the conclusion of the Trans-Pacific Partnership (TPP) trade negotiations (in October). This year also will be marked with historical events, including the 15th anniversary of the United States granting Vietnam permanent normal trade relations (PNTR), the February signing of the TPP, and President Obama's first official visit to Vietnam in May.

According to U.S. trade statistics, bilateral trade has grown from about $220 million in 1994 to $45.1 billion in 2015, transforming Vietnam into the 13th-largest source for U.S. imports and 37th-largest destination for U.S. exports. Vietnam is the second-largest source of U.S. clothing imports (after China), and a major source for electrical machinery, footwear, and furniture. 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.

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. For the United States, Vietnam offers a significant market for U.S. exports, but some parties are concerned about Vietnam's protection of workers' rights, protection of intellectual property rights, and potential unfair competition from state-owned or state-controlled enterprises. Vietnam is also a party to negotiations to the Regional Comprehensive Economic Partnership (RCEP), a pan-Asian regional trade association that currently does not include the United States. It is uncertain how RCEP would affect Vietnam's interest and commitment to TPP, if both regional trade agreements are finalized. Congress would have to consider implementing legislation for the United States to comply with the TPP.

The growth in bilateral trade has not been without accompanying issues and problems. Vietnam would like the United States officially to recognize it as a market economy and to further relax U.S. restrictions on arms sales to Vietnam. In addition, the two nations have disagreed over U.S. treatment of the import of catfish-like fish known as *basa, swai,* or *tra,* from Vietnam. 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), which many analysts contend maintain stricter inspection standards than the FDA. 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, swai,* and *tra* as catfish. In November 2015, the USDA released final regulations for the import of catfish that went into effect in March 2016. While Vietnam continues to object to the regulatory change, it is making efforts to comply with the new U.S. inspection regime.

The 114th Congress may play an important role in one or more of these issues, as have past Congresses. The Human Rights Act of 2016 (S. 2632) opposes the "further easing of the prohibition on the sale of lethal military equipment to the Government of Vietnam" unless certain human rights conditions improve. The House report accompanying the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (H.R. 1890), cites a perceived lack of a "mechanism to ensure compliance by TPP parties" to international standards for labor laws and practices, and in particular Vietnam. Vietnam's compliance with a bilateral trade and labor relations side agreement to the TPP may factor in congressional consideration of the larger TPP agreement. This report will be updated as circumstances require.

Contents

Introduction 1
Proposed Trans-Pacific Partnership (TPP) 3
Issues During Negotiations 4
Key TPP Issues for U.S.-Vietnam Trade Relations 4
Market Access 5
Textiles and Apparel 5
Workers' Rights 6
Government Procurement 10
Intellectual Property Rights 10
State-Owned Enterprises 11
Implications for the 114th Congress 11
Catfish 12
2008 Farm Bill 13
New Catfish Regulations 13
Drafting the Regulations 13
Provisions of the New Regulations 14
Vietnam's Response 15
The Antidumping Sunset Review on Catfish 16
Arms Sales 16
Non-Market Economy Designation 18
State-Owned Enterprises 19
Price and Wage Controls 19
Vietnam's View 20
Vietnam's Generalized System of Preferences (GSP) Application 20
Role of Congress 21
Bilateral Investment Treaty (BIT) Negotiations 21
The Role of Congress 22
Other Economic Issues 22
U.S. Clothing Imports from Vietnam 22
IPR Protection 23
Key Trends in Bilateral Trade 24
Merchandise Trade 24
Product Interplay 25
Electrical Machinery 25
Footwear 26
Furniture and Bedding 26
Trade in Services 26
Foreign Direct Investment 26

Figures

Figure 1. U.S.- Vietnam Bilateral Merchandise Trade 2
Figure 2. U.S. Clothing Imports from Vietnam 23

Tables

Table 1. Top 5 U.S. Exports to Vietnam and Imports from Vietnam 24
Table 2. Growth in Bilateral Merchandise Trade Between United States and Vietnam 28

Appendixes

Appendix. Bilateral Merchandise Trade Data 28

Contacts

Author Information..... 29

Introduction

From the mid-1970s to the mid-1990s, economic and trade relations between the United States and the Socialist Republic of Vietnam (Vietnam) remained virtually frozen, in part a legacy of the Vietnam War. 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.[3] President Bill Clinton ordered an end to the U.S. trade embargo on Vietnam on February 3, 1994.[4] On July 11, 1995, the United States and Vietnam restored diplomatic relations.[5] Two years later, President Bill 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.[6] 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

---

[1] Office of Foreign Assets Control, Department of the 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 to congressional clients 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 Mark E. Manyin.

[3] After the Khmer Rouge took power in Cambodia in April 1975, isolated fighting occurred between Vietnam and renamed Democratic Kampuchea. On December 25, 1978, the Vietnamese government launched a military invasion of Kampuchea to oust the Khmer Rouge and end its reign of terror in which an estimated 2 million people had been killed. Initially hailed as liberators, the popular view in Cambodia of Vietnam had changed by the time Vietnamese troops withdrew in September 1989, leaving in power the government of Prime Minister Hun Sen. For more about Vietnam's invasion of Cambodia, see Kevin Doyle, "Vietnam's Forgotten Cambodian War," *BBC*, September 14, 2014.

[4] 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.

[5] 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.

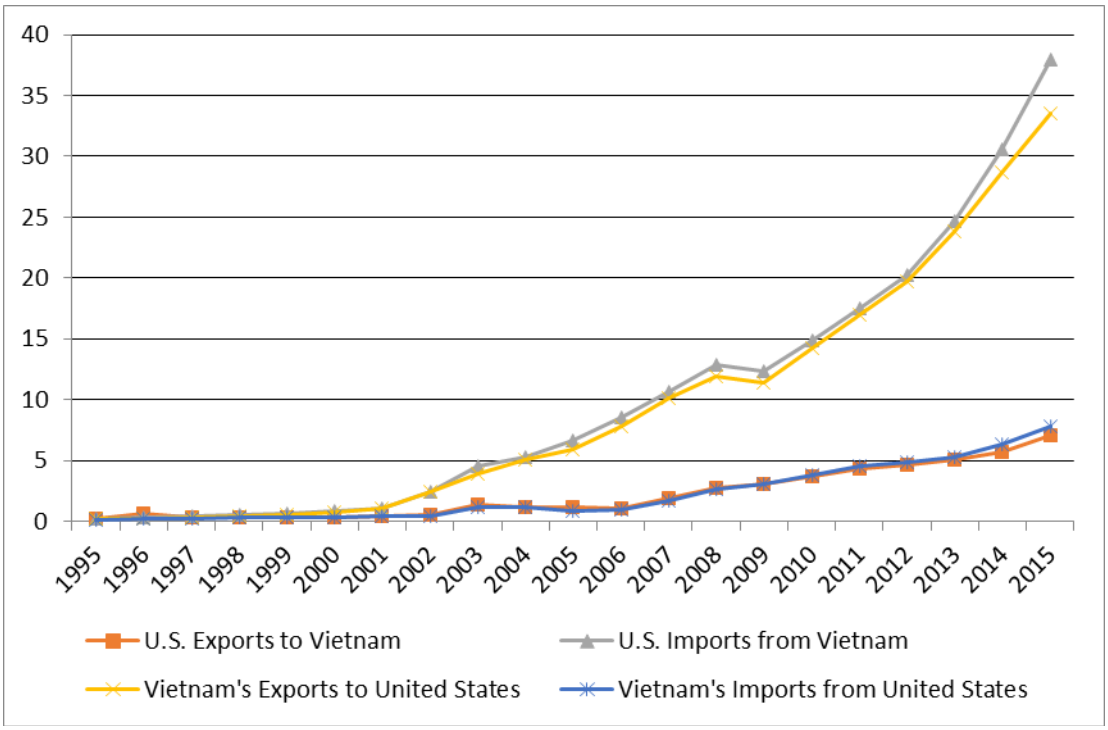
[6] For more information about the BTA, see CRS Report RL30416, *The Vietnam-U.S. Bilateral Trade Agreement*, by Mark E. Manyin.

Vietnam's accession to the World Trade Organization (WTO).[7] Over the last five fiscal years, Congress has appropriated over $10 million each year to support Vietnam's economic reforms.[8] 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.

U.S. and Vietnamese official trade data are comparatively close and reflect a similar pattern in the growth of bilateral trade (see **Figure 1**).[9] For the first few years following the end of the U.S. embargo in 1994, 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 rose again in 2007, following the United States granting PNTR status to Vietnam. U.S. imports from Vietnam slid 4.7% in 2009 because of the U.S. economic recession, but have rebounded sharply since 2010.

Figure 1. U.S.-Vietnam Bilateral Merchandise Trade

Official trade figures in billions of U.S. dollars



Source: See Appendix for details.

[7] 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 (out of print; available from the author to congressional clients upon request).

[8] 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.

[9] This is not the case with some other countries. For example, there are significant difference between official Chinese and U.S. trade data. See CRS Report RS22640, *What's the Difference?—Comparing U.S. and Chinese Trade Data*, by Michael F. Martin.

Both nations are parties to the Trans-Pacific Partnership (TPP), a regional trade agreement awaiting approval of implementing legislation by the respective legislatures of both nations. For its part, Vietnam also 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), but both those initiatives have receded in light of the TPP agreement. The United States also has expressed an interest in closer economic relations, including the possible elimination of restrictions on arms sales to Vietnam, but has previously told the Vietnamese government that it needs to make certain changes in the legal, regulatory, and operating environment of its economy to conclude either the BIT agreement or 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 catfish exports (known as *basa*, *swai*, and *tra*) also has generated tensions between the two nations. Other economic issues have had an indirect effect on bilateral relations, such as the United States' designation of Vietnam as a "non-market economy," and allegations of inadequate intellectual property rights (IPR) protection in Vietnam.

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.[10] 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. The 12 nations signed the agreement on February 4, 2016.[11]

Vietnam's membership in the TPP could complicate the congressional support for the trade agreement. 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. 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. Opponents cite Vietnam's human rights record, including with respect to workers' rights, and alleged unfair government support for certain industries as reasons for not entering into a trade agreement with Vietnam. According to U.S. trade statistics, Vietnam is the fifth-largest U.S. trading partner (after Canada, Mexico, Japan, and Singapore, respectively) among the 12 TPP nations.

[10] 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 agreement.

[11] For more information about the provisions of the TPP agreement, see CRS Report R44489, *The Trans-Pacific Partnership (TPP): Key Provisions and Issues for Congress*, coordinated by Ian F. Fergusson and Brock R. Williams.

Issues During Negotiations

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

- Designation as a market economy prior to 2019;[12]
- Liberalization of trade in services (including certification and licensing);
- Relaxation of U.S. "yarn forward" rules on clothing trade (see "Textiles and Apparel" below);
- 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.

The United States, in turn, pressed Vietnam to undertake the necessary economic and regulatory reforms necessary to fulfill its obligations under the proposed TPP agreement. The United States stated that it was 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).

Another complicating factor during the negotiations was Vietnam's negotiations with 15 other nations to form another regional trade agreement, the Regional Comprehensive Economic Partnership (RCEP), that does not include the United States.[13] RCEP negotiations formally began in November 2012, and are scheduled to be concluded by the end of 2016. It is uncertain how RCEP would affect Vietnam's interest and commitment to TPP, if both regional trade agreements are finalized.

When the TPP negotiations were concluded in October 2015, Vietnam's government-run media lauded the agreement for the increased trade and foreign investment it will bring to the nation.[14] Those press accounts stressed that the TPP would provide duty-free market access to the United States for Vietnam's clothing, footwear, and textile exporters, as well as attract foreign investors from Japan and the United States to set up more manufacturing facilities in Vietnam. The government-run press downplayed concerns about potential adverse effects on Vietnam's agricultural sector, possibly higher pharmaceutical prices, and required changes in Vietnam's labor laws and regulations. The TPP agreement was also viewed as another step in the normalization of relations with the United States.

Key TPP Issues for U.S.-Vietnam Trade Relations

The final text of the TPP agreement contains a number of provisions of particular importance to trade relations between the United States and Vietnam. The market access provisions provide for the gradual elimination of tariffs on most goods, but both nations secured safeguard measures for selected goods of domestic importance. The agreement's textile and apparel provisions utilize the "yarn forward" approach preferred by the U.S. government, but also allow for an extensive "short supply list" that will likely qualify a significant amount of Vietnamese exports to enter the United

[12] Vietnam will be granted market economy status as of 2019 under the provisions of its WTO accession agreement.

[13] For more about RCEP, see CRS In Focus IF10342, *What Is the Regional Comprehensive Economic Partnership?*, by Michael F. Martin et al.

[14] Dien Luong, "Why Vietnam Loves the Trans-Pacific Partnership," *Diplomat*, March 16, 2016.

States for the TPP's preferential tariff rates. On workers' rights, the two nations signed a separate "United States-Vietnam Plan for the Enhancement of Trade and Labour Relations" in which Vietnam commits to comply with International Labour Organization (ILO) standards and requires that the Vietnamese government "ensure that its laws and regulations permit workers, without distinction, employed by an enterprise form a grassroots labour union of their own choosing without prior authorization."[15] Both governments also open up much of government procurement to foreign suppliers, but with limits on certain goods and services considered of national security interest. On intellectual property (IP) rights, the TPP agreement commits both nations to protect and enforce IP rights, including agreed upon "geographical indicators," and obligates Vietnam to recognize IP rights for biologics. The agreement's chapter on State-Owned Enterprises (SOEs) forbids, with some specific exceptions, all TPP members from providing "non-commercial assistance" to its SOEs, and forbids its SOEs from discriminating against foreign firms.

Market Access

In general, chapter 2 of the TPP agreement commits each nation to afford national treatment and customs duty-free entry to the goods and services of the other member nations, unless otherwise provided in the agreement. Each nation has included a tariff elimination schedule for the phased out reduction in tariffs, which can span up to 20 years. The United States stipulated that it would establish tariff rate quotas (TRQs) for sugar (including imports from Vietnam), certain dairy products, and beef from Japan. The United States also reserved the right to impose agricultural safeguard measures for certain dairy products, but none of them applied to Vietnamese goods. Vietnam established TRQs for used engines, unmanufactured tobacco, and tobacco refuse.

The United States and Vietnam also exchanged letters with regard to U.S. inspection requirements for "*Siluriformes*, including *pangasius*, *tra*, and *basa*"—which are catfish-like fish—pursuant of the Food, Conservation, and Energy Act of 2008 (P.L. 110-246) and the Agricultural Act of 2014 (P.L. 113-79). Vietnam has asserted that these laws constitute a form of protectionism for U.S. catfish producers (see "Catfish" below). The letters recognize the importance of *pangasius*, *tra*, and *basa* to Vietnamese farmers, and commit the two countries to consult with each other following the release of final U.S. regulations governing the inspection of *Siluriformes*. The United States also promises to consider a "transitional period for the implementation of the final rule," and "subject to the availability of appropriated funds, work with Viet Nam and other interested parties, to identify and provide technical assistance" for compliance with the final rule.

Textiles and Apparel

As indicated above, the U.S. and Vietnamese governments entered into the TPP negotiations with conflicting objectives. Similarly, the U.S. textile and apparel sectors were split on the treatment of their products in the TPP.[16] In the negotiations, the U.S. Trade Representative supported a "yarn-forward" rule of origin, as had been done in previous U.S. trade agreements;[17] the Vietnamese negotiators and U.S. apparel companies argued for a less restrictive "cut and sew" rule of origin.

[15] The full text of the plan is available online at https://ustr.gov/sites/default/files/TPP-Final-Text-Labour-US-VN-Plan-for-Enhancement-of-Trade-and-Labour-Relations.pdf.

[16] The U.S. textile industry that continues to produce certain yarns and fabrics domestically supported gradual elimination of tariffs on textile and apparel products as long as imported apparel assembled in a TPP country use yarns and fabrics manufactured in a TPP country, whereas U.S. apparel companies and retailers that rely on extensive global supply chains favored the immediate elimination of tariffs upon implementation of the TPP without such restrictions.

[17] "Yarn-forward" requires the use of U.S. or other TPP country yarns and fabrics in the manufacture of textile and apparel products to qualify for preferential access under TPP. Similar yarn-forward rule of origin is included in NAFTA, CAFTA-DR, and agreements with Australia, Chile, Colombia, Panama, Peru, and Singapore.

The TPP agreement has a separate chapter (Chapter 4) on textiles and apparel that adopts a "yarn-forward" rule of origin approach, but also provides for an extensive list of fibers, yarns, and fabrics deemed to be in "short supply." These materials that can be sourced outside of the TPP member nations and still qualify for duty-free treatment.

The short supply list includes 187 items that some observers think is sufficiently extensive and could allow a significant share of Vietnamese apparel to qualify for duty-free treatment. Other analysts, however, are less certain that Vietnam's clothing and textile industry will significantly benefit from the TPP provisions. In particular, the "yarn-forward" rule of origin will present a challenge to Vietnamese apparel manufacturers who currently source the majority of their fabrics and textiles from China, a non-TPP nation.[18] Vietnam's domestic textile industry currently lacks the capacity and expertise to supply the apparel industry with the necessary materials, but investors from China, South Korea, and Taiwan reportedly are building weaving and dyeing factories in Vietnam to comply with the "yarn forward" rule of the TPP.[19] Some Japanese and U.S. companies are also setting up textile and apparel manufacturing facilities in Vietnam to take advantage of the TPP's benefits.[20]

Workers' Rights

Current Status

The U.S. government, a number of non-governmental organizations (NGOs), and human rights advocacy groups have been critical of Vietnam's restrictions on workers' rights. While they generally recognize that Vietnam has made improvements in its labor laws since the start of the century, they see ongoing problems with local government enforcement and business compliance.[21] The State Department's 2014 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.[22]

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. In addition, workers are prohibited from forming industry-wide or trade unions that represent workers in different enterprises.

---

[18] "Trying Times for Vietnamese Firms after TPP," *Vietnam Net*, March 20, 2016.

[19] Ibid.

[20] "Vietnam's Textile-Garment Industry in the Post-TPP Period," *Vietnam Net*, March 3, 2016; "US Investors Pour Money into Vietnam's Textile & Garment Industry," *Vietnam Net*, February 7, 2016.

[21] 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).

[22] Department of State, *Country Reports on Human Rights Practices for 2014*, http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dlid=236490.

Some analysts have argued that restrictions of the right of association in Vietnam have impeded the improvement of labor rights. Other observers, however, counter that since the launch of *doi moi*, there has been progress on worker rights 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. In 2009, Human Rights Watch raised concern about the ability of Vietnamese workers to call an official strike, especially at state-owned enterprises (SOEs).[23] According to the State Department's most recent human rights report for Vietnam, none of the 262 reported strikes between January and November 2015 "followed the authorized conciliation and arbitration process" required by Vietnam's labor laws, and were therefore, technically illegal.[24]

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.[25] In addition, the chairman of VGCL is allegedly pushing for a higher minimum wage than the one being proposed by the Vietnamese government.[26] Also, a week-long 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.[27]

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.[28]

After the rise in wildcat strikes, the Vietnamese government appeared tacitly to accept that enforcement of its labor laws have been problematic. 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.[29] 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."[30]

---

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

[24] State Department, *Vietnam 2015 Human Rights Report*, February 29, 2016.

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

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

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

[28] 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.

[29] 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.

[30] Peter Jennings, *Re: Human Rights Watch Report 'Not Yet a Workers' Paradise' of May 4, 2009*, Australian People

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.[31] In June 2012, Vietnam's National Assembly approved the new law, which took effect on May 1, 2013. 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 provided $2 million for a program to help the VGCL improve its grassroots relations.[32]

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.[33] Workers in some foreign-owned factories (particularly Taiwanese and South Korean-owned clothing factories) face "authoritarian" factory managers who reportedly violate Vietnamese laws on working hours and conditions, and hire under-aged workers.[34]

TPP Labor Provisions

Chapter 19 of the TPP requires all parties to the agreement make sure their laws and regulations are in compliance with the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998), including:

- freedom of association and the effective recognition of the right to collective bargaining;
- the elimination of all forms of forced or compulsory labour;
- the effective abolition of child labor, a prohibition on the worst forms of child labor and other labor protections for children and minors;
- the elimination of discrimination in respect of employment and occupation; and
- acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

In addition, all TPP members have promised to "encourage enterprises to voluntarily adopt corporate social responsibility initiatives on labour issues" and promote public awareness of their respective labor laws. The TPP agreement also creates a Labour Council consisting of "senior governmental representatives" that will meet every two years to discuss labor issues and review compliance with the TPP's labor provisions. Five years after the TPP enters into force, the Labour

for Health, Education and Development Abroad, Inc., Sydney, June 17, 2009.

[31] 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.

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

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

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

Council will review the implementation of Chapter 19 and make recommendations to the TPP Commission.[35]

The United States-Vietnam Plan for the Enhancement of Trade and Labour Relations (the Plan) obligates the Vietnamese government to enact legal reforms to ensure that it is incompliance with Chapter 19 of the TPP agreement, as well as implement a number of specific reforms. These include amending existing laws, decrees or resolutions such that:

- "workers, without distinction, employed by an enterprise" may form a grassroots labor union of their own choosing without prior authorization;
- the grassroots labor unions may be formed across enterprises "and at levels above the enterprise";
- the grassroots labor unions can register with its choice of either the VGCL or a "competent government body";
- "A grassroots labour union registered with the competent government body shall have the right autonomously to elect its representatives, adopt its constitution and rules, organize its administration, including managing its finances and assets, bargain collectively, and organize and lead strikes and other collective actions related to the occupational and socio-economic interests of the workers at its enterprise";
- "A grassroots labour union registered with the competent government body shall have no lesser rights in law and practice with regard to the labour rights as stated in the lLO Declaration than a grassroots labour union under the VGCL";
- Vietnam's laws do not mandate that "A labour union registered with the competent government body to operate according to the Statutes of Viet Nam General Confederation of Labour";
- all labor union officials are elected by that labor union's membership, and union can employ persons to assist with its activities; and
- Vietnam's laws allow for rights-based strikes, consistent with ILO guidance.

The Plan requires Vietnam change its labor laws and establish the necessary institutional changes prior to the date the TPP agreement enters into force between the United States and Vietnam. The Plan also establishes a process whereby the two nations review Vietnam's implementation of the TPP's labor provisions and those contained in the Plan. If, after a five-year transition period, the United States determines that Vietnam is not complying with its obligations, the United States "may withhold or suspend any tariff reductions that are scheduled to come into effect thereafter."

In addition, the Vietnamese government will develop and implement a strategy for targeting inspection and other enforcement activities to sectors where forced labor or child labor has been identified, and "allow independent experts legally operating in Viet Nam to carry out research studies in sectors where forced labour or child labour has been identified and to publicly release their findings, source data and methodology." The Plan also establishes a Senior Officials Committee (SOC):

> composed of senior officials from the Office of the U.S. Trade Representative and the Department of Labor for the United States and from the Ministry of Industry and Trade and the Ministry of Labor, Invalids, and Social Affairs for Viet Nam to monitor, assess and

[35] Chapter 27 of the TPP agreement establishes a Trans-Pacific Partnership Commission (TPP Commission) to consider matters pertaining to the implementation and operation of the agreement.

> facilitate rapid response to any concerns about compliance with and implementation of the legal and institutional reforms under this Plan.

The SOC is to meet every year for 10 years, and conduct a joint review during the third, fifth, and tenth year after the TPP agreement comes into force.

Critics of the Plan point to several perceived shortcomings of its provisions. A Minority Staff Report of the House Ways and Means Committee asserts that the Plan does not contain sufficient mechanisms to ensure Vietnam's compliance with its obligations with respect to workers' rights.[36] Other critics note that the Plan does not contain provisions pertaining to the identification or definition of the "competent government body" with which the independent grassroots labor unions are to register, or assurances that the "competent government body" will not attempt to exert inappropriate pressure on the labor unions.

Government Procurement

Chapter 15 of the TPP agreement requires all parties to provide national treatment and utilize nondiscriminatory practices in the provision of goods and services procured by government entities, unless otherwise provided in the TPP agreement. Both the United States and Vietnam stipulated exceptions for the procurement of certain types of goods and services. The United States, for example, used a "negative list" approach, excluding certain types of agricultural, nuclear, shipbuilding, and defense-related goods and services from its government procurement obligations. Vietnam, by contrast, used a mixture of a "negative list" and a "positive list," excluding some goods and services (for example, construction services for the Ministry of Transport) and enumerating which goods and services are included for other government entities.

Intellectual Property Rights

Chapter 18 of the TPP Agreement obligates the member nations to abide by several international intellectual property rights agreements[37] and provide national treatment to the intellectual property of other nations. The Agreement also states, "The obligations of this Chapter do not and should not prevent a Party from taking measures to protect public health," and permit the nations to "promote access to medicines for all." The chapter also provides for the recognition of "geographical indications" (i.e., goods identified with a specific location, such as "Tennessee Whiskey" or "Phu Quoc Fish Sauce).

Trademarks are protected, and renewable "for a term of no less than 10 years." Copyrights are granted for 70 years after the death of the author or performer. Data exclusivity for biologics is protected for 5-8 years following the first date of marketing approval. In a separate letter exchange, the United States and Vietnam agreed that Article 9.6 of Chapter II of the "Agreement of the United States of America and Socialist Republic of Vietnam on Trade Relations"[38] will apply to "any new pharmaceutical product that is or contains a biologic." Article 9.6 provides no less than five years protection for pharmaceutical or agrochemical products.

---

[36] U.S. Congress, House Committee on Ways and Means, *TPP Issue Analysis: Worker Rights*, prepared by Minority Staff Report, 114th Cong., 2nd sess., February 1, 2016.

[37] The agreements are the TRIPS Agreement, the Patent Cooperation Agreement, the Paris Convention, the Berne Convention, the Madrid Protocol, the Budapest Treaty, the Singapore Treaty, the Union for the Protection of New Varieties of Plants Convention, the WIPO Copyrights Treaty, and the WIPO Performances and Phonograms Treaty.

[38] Also known at the Vietnam-U.S. Bilateral Trade Agreement. For more about this agreement, see CRS Report RL30416, *The Vietnam-U.S. Bilateral Trade Agreement*, by Mark E. Manyin.

State-Owned Enterprises

Chapter 17 of the TPP Agreement requires that the state-owned enterprises (SOEs) and designated monopolies for each nation afford national treatment to foreign companies in their commercial activities. The chapter also prohibits the provision to or by state-owned enterprises of "non-commercial assistance." Non-commercial assistance includes debt or liability forgiveness; loans or loan guarantees "on terms more favourable than those commercially available to that enterprise"; "equity capital inconsistent with the usual investment practice"; and "goods or services other than general infrastructure on terms more favourable than those commercially available to that enterprise." Each nation is permitted to exempt the SOEs and designated monopolies of sub-central levels of government from certain provisions in the agreement. The United States identified the following entities as SOEs or designated monopolies, and provided for the exemption from certain provisions in the agreement: the Federal National Mortgage Association; the Federal Home Loan Mortgage Corporation; the Government National Mortgage Association; and the Federal Financing Bank. Vietnam included all its SOEs and designated monopolies as being included in the exemption provisions.

Implications for the 114th Congress

Congress has to pass implementing legislation to amend any U.S. law inconsistent with the terms of the TPP agreement in order for the TPP to enter into force in the United States. Unlike the ratification of international treaties, the implementing legislation for trade agreements must be approved by both the House of Representative and the Senate.[39] Vietnam's National Assembly reportedly will consider the TPP agreement in July 2016.

Congressional consideration of TPP implementation legislation is likely to be influenced by Vietnam's participation in the trade agreement. TPP supporters see several potential economic and strategic benefits of Vietnam's membership. U.S. companies exporting certain goods—such as beef, dairy products, poultry, cotton and cotton cloth, and telecommunications products—anticipate greater access to Vietnam's consumer markets. U.S. retailers expect to be able to import lower cost/higher quality consumer goods from Vietnam, in some cases replacing imports currently coming from China. The conclusion of a trade agreement between the two nations may also signal the further normalization of bilateral relations, and foster greater cooperation on various geopolitical issues, such as regional security and environmental protection.

According to several assessments of the estimated impact of the trade agreement, including those done by the Vietnamese government, Vietnam is likely to be among the greatest economic beneficiaries of the TPP. The Vietnamese government anticipates the TPP agreement will not only bring a short-term boost in merchandise trade, but also substantial inward foreign direct investment. Some U.S. observers contend that could translate into a loss in U.S manufacturing jobs and a rising trade deficit with Vietnam. In addition, the increase in Vietnam's exports may also benefit China, which is a leading provider of raw materials, parts, and components used by Vietnam's leading export sectors.

Some Members of Congress and analysts have also expressed concern about the trade agreement's implications for human rights in Vietnam, and more specifically, workers' rights.[40]

---

[39] For more about the congressional role with regards to the TPP agreement, see CRS In Focus IF10297, *TPP-Trade Promotion Authority (TPA) Timeline,* by Ian F. Fergusson.

[40] For example, 13 Members of Congress sent a letter to President Obama on May 5, 2015, stating "Trans-Pacific Partnership (TPP) should not advance without enforceable human rights provisions and enforceable international labor

Some of these analysts are skeptical that the Vietnamese government will abide by the terms of the United States-Vietnam Plan for the Enhancement of Trade and Labour Relations (the Plan), and that Vietnamese workers will not be allowed to form independent trade unions or be afforded fair treatment during labor disputes. Others critics maintain that accepting Vietnam as a TPP member would reduce U.S. leverage on Vietnam regarding human rights in general. Other analysts, however, think that the Plan is sufficiently strong to enhance workers' rights in Vietnam, and that the resulting influx of U.S. investment will foster a general improvement in working conditions in Vietnam.

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.[41] 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 2015, the United States imported over $320 million of *basa*, *swai*, and *tra* from Vietnam.[42]

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.[43] In August 2003, the U.S. government imposed antidumping duties on "certain frozen fish fillets from Vietnam," including *basa*, *swai*, and *tra*.[44] In June 2009, the ITC determined to keep the duties in place "for the foreseeable future." According to the Vietnam Association of Seafood Exporters and Producers (VASEP), the number of companies exporting catfish to the United States declined from 30 to 3 following the imposition of antidumping duties.[45] Despite the reported decline in exporters, U.S. imports of *basa*, *swai*, and *tra* from Vietnam continued to rise.

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 June 2008. The 2008 Farm Bill transferred catfish inspection (including *basa*, *swai*, and *tra*) from the Food and Drug Administration (FDA) to the U.S. Department of Agriculture (USDA). The transfer was confirmed in the Agriculture Act of 2014 (P.L. 113-79). As discussed in more detail below, the new inspection regime took effect on

---

standards." Letter to President Barack Obama, May 5, 2015, https://lofgren.house.gov/news/documentsingle.aspx?DocumentID=397927.

[41] *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.

[42] Based on U.S. International Trade Commission (USITC) online trade data (http://dataweb.usitc.gov/). Includes imports under USHTS codes 030272, 030324, 030432, and 030462. More than $319 million of the imports were in the form of frozen catfish fillets (030462).

[43] 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*.

[44] 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. 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 Vivian C. Jones.

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

March 1, 2016. In the eyes of the Vietnamese government, the U.S. response to the growth of Vietnam's *basa*, *swai*, 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 indication of U.S. protectionism (see "Non-Market Economy Designation").[46] 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.

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 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). Then-Ambassador to the United States 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."[47] Supporters of the provisions of the 2008 Farm Bill state that it provides greater protection to U.S. consumers.

New Catfish Regulations

The issuance of new catfish inspection regulations proved to be an extended process spanning more than five years. The Secretary of Agriculture sent draft regulations to the Office of Management and Budget (OMB) in November 2009; the final regulations were published in December 2015.

Drafting the 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

[46] 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.

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

in the *Federal Register* its proposed rule for mandatory inspection of catfish and catfish products.[48] The USDA was "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, 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. The USDA's Food and Safety Inspection Service (FSIS) published the final regulation in the *Federal Register* on December 2, 2015, more than six years after draft regulations were first delivered to OMB. The new regulations took effect on March 1, 2016, but provide a transition period lasting until September 1, 2017, before full implementation takes place.[49]

Provisions of the New Regulations

The new regulations require all imported catfish and catfish products (defined as all fish of the order Siluriformes) 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 FSIS. In addition, the FSIS will 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.

Prior to March 1, 2016, foreign countries wishing to export catfish to the United States had to provide to FSIS a list of establishments (with the establishment name and number) "that currently export and will continue to export Siluriformes fish and fish products to the United States." The foreign countries were also required to provide:

> documentation showing that they currently have laws or other legal measures in place that provide authority to regulate the growing and processing of fish for human food and to assure compliance with the Food and Drug Administration's (FDA) regulatory requirements in 21 CFR part 123, Fish and Fishery Products.

During the transition period that will last until September 1, 2017, FSIS will inspect all U.S. establishments that slaughter, or slaughter and process and distribute catfish or products containing catfish, as well as conduct species and residue sampling on imported catfish shipments at U.S. import establishments on a random basis. During the same period, foreign countries wishing to export catfish to the United States must submit "adequate documentation showing the equivalence of their Siluriformes inspection systems with that of the United States." If the FSIS

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

[49] United State Department of Agriculture Federal Safety and Inspection Service, "Mandatory Inspection of Fish of the Order Siluriformes and Products Derived from Such Fish," 80 *Federal Register* 75590-75630, December 2, 2015.

requests additional equivalency documentation, the foreign country will have 90 days to submit the additional information. To demonstrate the equivalence of their inspection standards, foreign governments must provide information regarding the inspection program's administration, the relevant laws and regulations, copies of inspection documents and forms, and procedures to maintain inspection standards.

Vietnam's Response

As a possible preparation for heightened U.S. inspection requirements, starting in 2010, Vietnam's Ministry of Agriculture and Rural Development (MOARD) tightened export hygiene standards for *basa*, *swai*, and *tra*. Effective April 12, 2010, all *basa* and *tra* exported from Vietnam needed certificates for hygiene and food safety issued by the National Agro-Forestry-Fisheries Quality Assurance Department.[50] In addition, MOARD and the Ministry of Industry and Trade contracted U.S.-based Mazzetta Company to train Vietnamese fish breeders how to comply with U.S. standards.[51] In 2011, then Prime Minister Dung reportedly 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.[52]

Following the publication of the new catfish regulations, a spokesperson for Vietnam's Ministry of Foreign Affairs reportedly expressed disappointment, stating the new regulations are unnecessary, could constitute a non-tariff trade barrier, reduce Vietnamese exports, and harm the lives of Vietnamese farmers.[53] Vietnamese officials also reportedly indicated that the 18-month transition period is much shorter than the customary five years granted to developing nations, and suggested that the new regulations may violate the WTO sanitary and phytosanitary agreement.[54] Following U.S. Secretary of Agriculture Tom Vilsack's two day visit to Vietnam in April to discuss the new catfish inspection requirements, a "top Vietnamese trade official" reportedly insisted that the United States revoke the new catfish inspection regulations, or potentially face a formal WTO challenge.[55] Dao Tran Nhan, the Commercial Counselor for Vietnam's U.S. embassy, told a reporter, "The use of unjustifiable and discriminatory phytosanitary accusations is a disappointing tactic that may need to be addressed by WTO litigation."[56]

In 2014, 10 nations, including Vietnam, reportedly informed the Office of the U.S. Trade Representative that the then-proposed catfish regulations could hamper TPP negotiations and were a violation of U.S. WTO obligations. On March 14, 2016, Vietnam submitted to the WTO's Committee on Sanitary and Phytosanitary Measures comments on the U.S. catfish regulations, stating, "Therefore, at this important session of the SPS Committee, Viet Nam reiterates our deep

[50] "Catfish Quality Tests Tightened for Export Hygiene Standards," *Vietnam News*, April 15, 2010.

[51] "US Firm to Help Train Vietnamese Fish Farmers," *Thanh Nien News*, March 27, 2010.

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

[53] "Vietnam Says New US Rule on Catfish Inspection Disappointing, Unnecessary," *Tuoi Tre News*, December 1, 2015.

[54] "Vietnam's Question on Catfish," *Washington Trade Daily*, March 21, 2016.

[55] Ian Kullgreen, "Vietnam Still Fuming over Catfish, Not Soothed by Vilsack Visit," *Politico*, April 27, 2016.

[56] Ibid.

concerns that the new catfish inspection regulation of the United States is likely in violation of the WTO SPS Agreement."[57] None of the nations, however, have filed a WTO case.[58]

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."[59] 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."[60] In April 2014, the Department of Commerce lowered the antidumping duties on Vietnam's catfish exports to the United States.[61]

Arms Sales

Restrictions on the sales of military equipment and arms are one of the few U.S. trade restrictions with Vietnam that remains in place since the end of the Vietnam War in 1975. In 1975, U.S. military sales to all of Vietnam were banned as part of the larger ban on bilateral trade.[62] In 1984, the U.S. government included Vietnam on the International Traffic in Arms Regulations (ITAR) list of countries that were denied licenses to acquire defense articles and defense services. The restrictions on arms sales remained in effect after President Clinton lifted the general trade embargo in February 1994. To the Vietnamese government, the continuing restrictions on trade in military equipment and arms are a barrier to the normalization of diplomatic relations and constrain closer bilateral ties.

In April 2007, the Department of State amended ITAR to permit "on a case-by-case basis licenses, other approvals, exports or imports of non-lethal defense articles and defense services destined for or originating in Vietnam." Vietnam was subsequently permitted to participate in the Foreign Military Financing (FMF) program, administered by the State Department. Vietnam was able to purchase spare parts for Huey helicopters and M113 Armored Personnel Carriers captured during the Vietnam War.

Until 2013, the Obama Administration generally tied arms sales to human rights conditions. In 2010, then U.S. Ambassador to Vietnam Michael Michalak said:

---

[57] See World Trade Organization, Committee on Sanitary and Phytosanitary Measures, "Comments of Viet Nam on yhe New Regulation of the United States on Mandatory Inspection of Catfish and Catfish Products," G/SPS/GEN/1485, March 18, 2016.

[58] Ron Nixon, "U.S. Catfish Program Could Stymie Pacific Trade Pact, 10 Nations Say," *New York Times*, June 27, 2014.

[59] 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.

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

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

[62] During the Vietnam War, the United States imposed a complete embargo on arms sales to North Vietnam, and then expanded it to cover the entire country after the end of the war.

> We would very much like to expand our military to military relationship to include the sale of arms, but until we are more comfortable with the human rights situation in Vietnam, that's just not going to be possible.

Since 2013, another factor has inserted itself into the U.S. debate over arms sales to Vietnam: rising U.S. concerns about China's increased assertiveness over disputed islands and waters in the South China Sea have led the Obama Administration to see Vietnam as a partner on maritime security issues. As a result, on October 2, 2014, the State Department announced that the United States would "allow the future transfer of maritime security-related defense articles to Vietnam." The announcement came alongside the official meeting of Secretary of State John Kerry and Foreign Minister Pham Binh Minh in Washington. The State Department and the Defense Department reportedly await details from their Vietnamese counterparts in terms of the types of maritime security-related defense articles the nation would like.

In November 2015, the White House announced that it would provide $19.6 million in maritime assistance to Vietnam in FY2015 and would seek to provide $20.5 million in FY2016. The Administration says that it hopes to use the funds to help Vietnam "bolster its maritime Intelligence, Surveillance, and Reconnaissance (ISR)" and boost "command and control within Vietnam's maritime agencies."[63] In a February 2016 hearing before the Senate Armed Services Committee, Admiral Harry Harris Jr., the head of U.S. Pacific Command, said:

> I believe that we should improve our relationship with Vietnam. I think it's a great strategic opportunity for us, and I think the Vietnamese people would welcome the opportunity to work closer with us as their security partner of choice.

Since the partial lifting of the arms sales embargo, the Vietnamese government, and some U.S. observers, have called for a complete end to the arms sales restrictions. During a joint presentation in Washington with U.S. Ambassador to Vietnam Ted Osius, Vietnam's Ambassador to the United States Pham Quang Vinh said the end of the arms embargo would show that relations were fully normalized. Ambassador Osius proceeded to state that human rights remain a difficult issue in bilateral relations, and that more progress on human rights is needed for the relationship to reach its fullest potential.[64] Speaking in Hanoi in August 2015, Secretary of State Kerry stated that additional relaxation of the arms sales restrictions would be "tied to further progress" on human rights.[65] There are reports that the United States and Vietnam are discussing whether to end the restrictions on bilateral arms sales before or during President Obama's scheduled trip to Vietnam in May 2016.[66]

The sale of arms to Vietnam may be a source of some controversy for Congress. While some Members support the provision of lethal assistance, others object in part because of Vietnam's alleged human rights record. For now, the provision of maritime security-related defense articles appears acceptable because of the tensions in the South China Sea. Until Vietnam indicates in more detail the types of military assistance it seeks, the issue is likely to remain on a back burner. Some sources indicate that Vietnam may request advanced radar equipment, which may test the

---

[63] The White House, "Fact Sheet: U.S. Building Maritime Capacity in Southeast Asia," November 17, 2015; Terri Moon Cronk, "DoD's Maritime Strategy Addresses Nation's Asia-Pacific Interests," *DoD News*, September 18, 2015.

[64] Prashanth Parameswaran, "What's Next for US-Vietnam Relations?," *Diplomat*, April 8, 2015.

[65] State Department, "Remarks. Secretary of State John Kerry And Vietnamese Deputy Prime Minister/Foreign Minister Pham Binh Minh," August 7, 2015.

[66] Prashanth Parameswaran, "US May Lift Vietnam Arms Embargo for Obama Visit," *Diplomat*, April 27, 2016. Also see CRS Insight IN10489, *Will the United States Remove its Restrictions on Lethal Arms Sales to Vietnam?*, by Mark E. Manyin and Paul K. Kerr.

limits of partial lifting of the restrictions on arms sales for both the Obama Administration and Congress.

Non-Market Economy Designation

Vietnamese leaders would like the United States to change Vietnam's official designation under U.S. law from "nonmarket economy" to "market economy."[67]

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." "Nonmarket economy" status is particularly significant for antidumping (AD) and countervailing duty (CVD) cases heard by the U.S. International Trade Administration. 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."[68]

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.

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 6.7% in 2015, fueled by construction and industrial sector growth. Inflation in Vietnam in 2015 was under 2%, the lowest in 14 years. The unemployment rate remained low, but Vietnam continues to suffer from significant underemployment. Vietnam's total exports were $162 billion; imports were $165 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.

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

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

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%.[69] 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 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.[70] 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.[71] The Vietnamese government reports that it equitized 143 SOEs in 2014, and plans on equitizing about 280 in 2015.[72] 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.

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, then-Prime Minister Dung tightened controls on various products to reduce inflationary pressure, which was spiking at the time.[73] Those price controls were loosened in early 2012, but temporarily reinstated at the end of 2013 because of the approaching lunar new year holiday.

On wage control, Vietnamese 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.

---

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

[70] "150 SOEs Must Be Equitized Every Year," *VietNamNet*, May 14, 2012.

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

[72] "280 SOEs Slated for Equitization to Be Listed This Year," *VietNamNet*, March 18, 2015.

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

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., 2019) or until it meets U.S. criteria for a "market economy" designation.[74]

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 a nonmarket economy generally makes it more likely that AD and CVD cases will result in adverse rulings against Vietnamese companies.[75] In theory, the 114th Congress could consider legislation weighing in on the designation of Vietnam as a market or nonmarket economy by amending or superseding existing U.S. law.

Vietnam's Generalized System of Preferences (GSP) Application[76]

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). The U.S. GSP program authorizes the President to grant duty-free treatment for any eligible product from any beneficiary country.[77] 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. U.S. officials have indicated that they told the Vietnamese government that its labor standards must improve in order to qualify for the GSP program.[78]

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.

---

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

[75] Because Vietnam is considered a "non-market economy," the U.S. International Trade Administration uses a "proxy nation" to determine the "market prices" of goods produced by Vietnam in AD or CVD cases. For more about this subject, see CRS Report RL32371, *Trade Remedies: A Primer*, by Vivian C. Jones.

[76] 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 (out of print; available from the author to congressional clients upon request).

[77] For background information on the U.S. GSP program, see CRS Report RL33663, *Generalized System of Preferences: Overview and Issues for Congress*, by Vivian C. Jones. Title V also provides the President with specific political and economic criteria to use when designating eligible countries and products.

[78] CRS communication with U.S. trade official, March 2016.

Vietnam's interest in qualifying for the U.S. GSP program waned as the TPP negotiations neared completion, presumably because the conclusion of the trade agreement would provide better trade conditions than afforded under GSP. If the TPP agreement is not implemented in the near future, the Vietnamese government's interest in the GSP program may revive. Also, if Vietnam complies with the bilateral labor agreement accompanying the TPP agreement, it is uncertain if Vietnam's labor standards will be sufficient to qualify for the GSP program.

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 act delegates that authority 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),[79] 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, the Fostering Rights through Economic Engagement in Vietnam Act (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.[80]

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.

The first round of BIT negotiations was held in Washington, DC, on 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 Department of the Treasury. 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. If

[79] For an explanation of BDC status, see CRS Report RL33663, *Generalized System of Preferences: Overview and Issues for Congress*, by Vivian C. Jones.

[80] The bill was referred to the House Committee on Ways and Means Subcommittee on Trade, and received no further action.

implementation of the TPP agreement appear to be running into problems, Vietnam may seek to restart the BIT talks.

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.[81] 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 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.

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 influence relations between the United States and Vietnam indirectly. Of these, the most prominent issues for the 114th Congress likely include clothing imports from Vietnam 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 2**).[82] 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 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. U.S. clothing imports from Vietnam in 2015 totaled more than $10.5 billion. However, since its peak in 2003, the share of clothing in total U.S. imports from Vietnam has declined. In 2015, 27.6% of U.S. imports from Vietnam were clothing.

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.[83] In both cases, Vietnam initially protested U.S.

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

[82] 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.

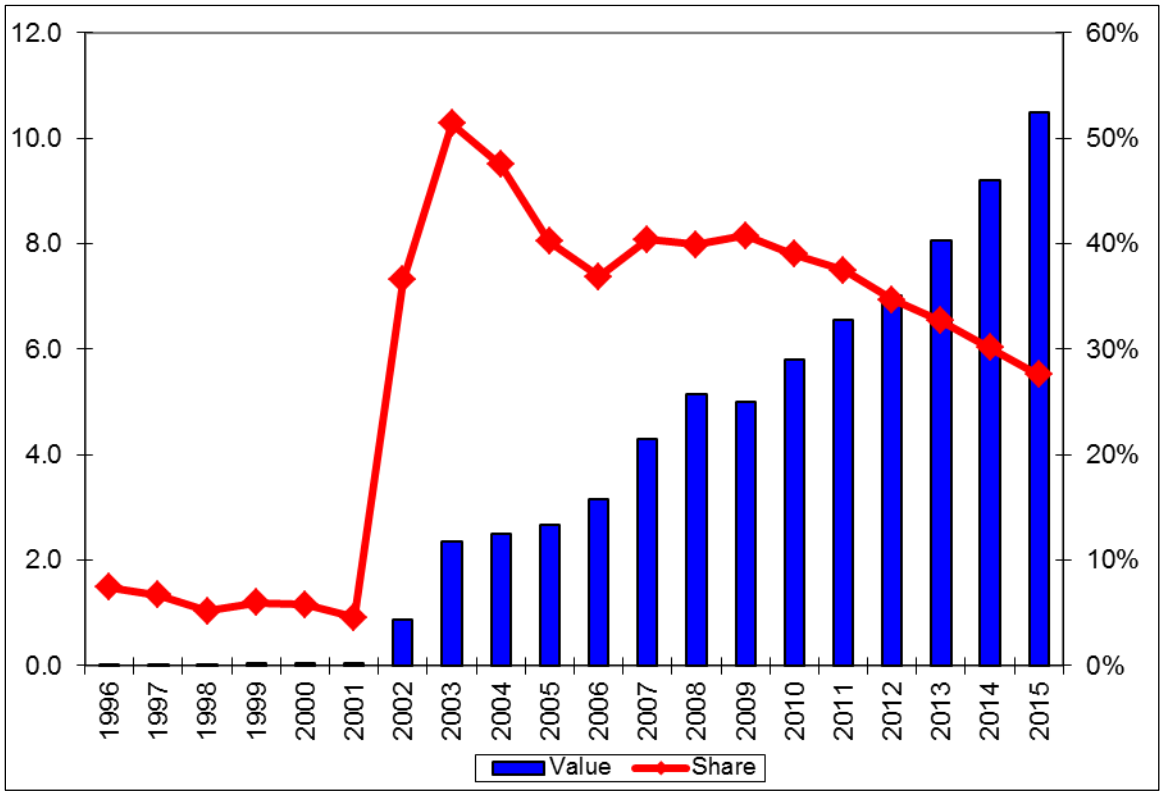
[83] For more information on the bilateral textile agreement and the monitoring program, see CRS Report RL34262, *U.S. Clothing Imports from Vietnam: Trade Policies and Performance*, by Michael F. Martin.

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 (such as Georgia, North Carolina, and South Carolina) 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. apparel 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. According to some observers, industrial concerns that the TPP agreement could create another possible sharp increase in Vietnamese clothing imports was a major factor in USTR support for "yarn forward" provisions in the proposed trade agreement. Some major U.S. retailers and importers, however, supported rule of origin provisions in TPP that would allow more Vietnamese clothing imports to qualify for preferential treatment.

Figure 2. 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.

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 *2016*

Special 301 Report, an annual review of the global state of IPR protection and enforcement.[84] Vietnam remained on the Watch List because of its continuing problems with online piracy and the sales of counterfeit goods. The report states:

> Online piracy and sales of counterfeit goods over the Internet continue to be common.… Counterfeit goods—including counterfeits of high-quality—also remain widely available in physical markets, and, while still limited, domestic manufacturing of counterfeit goods is emerging as an issue. In addition, book piracy, software piracy, and cable and satellite signal theft persist. Enforcement continues to be a challenge for Vietnam.

The perceived continuing problems with Vietnam's IPR protection may have played a role in the TPP negotiations, as well as in 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

Over two decades 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 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 1. Top 5 U.S. Exports to Vietnam and Imports from Vietnam

(According to U.S. trade statistics for 2015; U.S. $ millions)

Top 5 Exports to Vietnam		Top 5 Imports from Vietnam	
Product	**Value**	**Product**	**Value**
Aircraft, spacecraft, and parts thereof	951	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	8,308
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	865	Articles of apparel and clothing accessories, knitted or crocheted	6,161
Cotton, including yarns and woven fabrics thereof	627	Footwear, gaiters and the like; parts of such articles	4,473

[84] For a copy of the 2016 report, see https://ustr.gov/issue-areas/intellectual-property/special-301/2016-special-301-review.

Top 5 Exports to Vietnam		Top 5 Imports from Vietnam	
Product	**Value**	**Product**	**Value**
Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof[a]	600	Articles of apparel and clothing accessories, not knitted or crocheted	4,321
Oil seeds and oleaginous fruits; miscellaneous grains, seeds and fruits; industrial or medicinal plants; straw and fodder	432	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	3,864

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 2015, besides clothing, were (in order): electrical machinery; footwear; and furniture and bedding (see **Table 1**). The top U.S. exports to Vietnam included (in order) aircraft; electrical machinery; cotton; machinery and mechanical appliances; and oil seeds. 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. Particularly noticeable in 2015 was the jump of electrical machinery as the leading import from Vietnam; in 2014, it was the 3rd largest import after the two apparel categories. Similarly, footwear rose from being the 4th largest import in 2014 to the 3rd largest import in 2015.

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 as parts and components are shipped back and forth across the Pacific Ocean. Electrical machinery is among the top five exports for both countries to each other. 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 has grown dramatically since 2001, from less than $1 million to just under $1 billion in 2011 and then increasing to more than $8.3 billion in 2015. Electrical machinery constituted nearly 22% of total U.S. imports from Vietnam in 2015. 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 2015. Vietnam was the second-largest source of footwear imports for the United States in 2015 (after China), more than three times the size of imports from Indonesia (the next largest source).

Over a decade ago, the U.S. footwear industry reached a general agreement on its trade policy position in trade agreements.[85] Under this agreement, the membership of the American Apparel and Footwear Association (AAFA) and the Rubber and Plastics Footwear Manufacturers Association (RPFMA) supported the elimination of nearly all footwear tariffs immediately in future trade agreements, except for tariffs on certain types of rubber/fabric and plastic/protective footwear that were determined to be manufactured in the United States.[86] Pursuant to this agreement, the two associations are supporting the TPP.[87]

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 2015.

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. It is likely that the United States will press Vietnam for more access during talks over the TPP, as well as during the BIT negotiations.

Foreign Direct Investment

In 2014, Vietnam licensed 1,843 foreign direct investment (FDI) projects worth $21.9 billion.[88] The leading source of FDI in 2014 was South Korea, with 588 projects worth $7.7 billion. The United States was the 10th-largest source of FDI in 2014 with 43 projects worth $310 million. The accumulated value of FDI in Vietnam for the period 1989-2014 is $252.7 billion. South Korea

[85] Letter from Kevin M. Burke, President & Chief Executive Officer, AAFA, to Donald Evans, Secretary of Commerce, February 21, 2003.

[86] In the TPP, these footwear types include 18 items such as certain waterproof footwear with rubber or plastic soles that are glued together (Harmonized Tariff Schedule (HTS) 6401.10.00) and sports and certain athletic footwear with outer soles of rubber or plastics, valued over $12 per pair (HTS 6402.91.990). The Footwear Distributors and Retailers of America (FDRA) describes the specific sensitive tariff lines in its TPP Footwear Duty Guidebook.

[87] New Balance, a U.S.-based manufacturer of athletic shoes that reportedly produces a quarter of its output in the United States, urged that tariffs on rubber and plastic footwear products that are manufactured domestically not be reduced, or at least that tariff reductions on such items should be delayed as long as possible. New Balance has stated its opposition to the TPP (Len Bracken, "New Balance Opposes TPP, Cites Tariff Cuts," *Daily Report for Executives*, April 12, 2016).

[88] Data from the General Statistics Office of Vietnam; latest available figures.

was the leading investor during this period, followed by Japan and Singapore. The United States was the 7th-largest investor, with 725 projects worth $11.0 billion.

Growing U.S. interest in investment opportunities in Vietnam could have an impact on the TPP and BIT negotiations. 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.

Appendix. Bilateral Merchandise Trade Data

The table below provides the official merchandise trade data for the United States and Vietnam.

Table 2. 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
2015	7,072	37,993	33,480	7,800

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

Author Information

Michael F. Martin
Specialist in Asian Affairs

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.