



U.S.-Vietnam Economic and Trade Relations: Issues for the 112th Congress

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Summary

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

Bilateral trade has grown from about \$220 million in 1994 to \$18.6 billion in 2010. Vietnam is the second-largest source of U.S. clothing imports, and a major source for footwear, furniture, and electrical machinery. Much of this rapid growth in bilateral trade can be attributed to U.S. extension of normal trade relations (NTR) status to Vietnam. Another major contributing factor is over 20 years of rapid economic growth in Vietnam, ushered in by a 1986 shift to a more market-oriented economic system.

Bilateral trade may increase if both nations become members of the Trans-Pacific Strategic Economic Partnership Agreement (TPP). The United States and Vietnam are among the nine countries negotiating the terms of expansion of the trade association. The Obama Administration envisions an expanded TPP as a “21st Century free trade agreement” that will become the cornerstone for a trans-Pacific regional trade association. Vietnam is also a party to negotiations to form a larger pan-Asian regional trade association based on the Association of Southeast Asian Nations (ASEAN) that could exclude the United States and prove to be an alternative to the TPP.

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

There have also been problems with U.S. imports of specific products from Vietnam, particularly catfish-like fish known as basa or tra. In 2002, Congress passed legislation that prohibited the labeling of basa and tra as “catfish.” In 2008, the 110th Congress passed legislation that transferred the regulation of catfish from the Food and Drug Administration to the U.S. Department of Agriculture (USDA). The Vietnamese government strongly protested these actions as largely protectionist measures. On February 24, 2011, the USDA released proposed new catfish regulations, which did not resolve the status of Vietnam’s basa and tra exports.

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

The 112th Congress may play an important role in one or more of these issues, as have past Congresses. The 112th Congress would have to consider implementing legislation if a TPP agreement is concluded. If the 112th Congress should take up GSP renewal, it may also consider Vietnam’s pending application. The 112th Congress may also weigh in on its designation as a market or non-market economy. Finally, if current growth trends continue, Congress may be asked to act on the rising amount of footwear, furniture, and/or electrical machinery being imported from Vietnam. This report will be updated as circumstances require.

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Introduction

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

Economic and trade relations between the two nations began to thaw during the Clinton Administration, building on joint efforts during the Reagan and George H. W. Bush Administrations to resolve a sensitive issue in the United States—recovering the remains of U.S. military personnel declared “missing in action” (MIA) during the Vietnam War.² The shift in U.S. policy also was spurred by Vietnam's withdrawal from Cambodia. President Bill Clinton ordered an end to the U.S. trade embargo on Vietnam on February 3, 1994.³ In 1997, President Clinton appointed the first U.S. ambassador to Vietnam since the end of the Vietnam War.

Bilateral relations also improved, in part, due to Vietnam's 1986 decision to shift from a Soviet-style central planned economy to a form of market socialism. The new economic policy, known as *Doi Moi* (“change and newness”), ushered in a period of over 20 years of rapid growth in Vietnam. Since 1995, Vietnam's real GDP growth has averaged over 7% per year, second only to China. Much of that growth has been generated by foreign investments 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, 2001.⁴ As part of the BTA, the United States extended to Vietnam conditional most favored nation (MFN) trade status, now known as normal trade relations (NTR). Economic and trade relations further improved when the United States granted Vietnam permanent normal trade relations (PNTR) status on December 29, 2006, as part of Vietnam's accession to the World Trade Organization (WTO).⁵ Over the last three years, the United States government has appropriated approximately \$10 million each year to support Vietnam's economic reforms.⁶ In addition, the two nations have set up a ministerial-level Trade

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

² For more information about the thaw in U.S.-Vietnam relations, see CRS Report R40208, *U.S.-Vietnam Relations in 2011: Current Issues and Implications for U.S. Policy*, by Mark E. Manyin.

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

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

⁵ 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.

⁶ USAID correspondence with CRS in December 2010.

and Investment Agreement (TIFA) Council to discuss issues related to the implementation of the BIT and WTO agreements, as well as trade and investment policies in general.

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

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

Year	U.S. Trade Data		Vietnamese Data	
	Exports to Vietnam	Imports from Vietnam	Exports to United States	Imports from United States
1994	173	50	NA	NA
1995	253	199	170	130
1996	616	319	204	246
1997	278	388	287	252
1998	274	553	469	325
1999	291	609	504	323
2000	368	822	733	363
2001	461	1,053	1,065	411
2002	580	2,395	2,453	458
2003	1,324	4,555	3,939	1,143
2004	1,163	5,276	5,025	1,134
2005	1,192	6,630	5,924	863
2006	1,100	8,566	7,845	987
2007	1,903	10,633	10,105	1,701
2008	2,790	12,901	11,869	2,635
2009	3,108	12,290	11,356	3,009
2010	3,710	14,868	12,800	NA

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

Notes: U.S. data valued at F.A.S. and customs value; Vietnam data valued at F.O.B. and C.I.F; NA = not available.

The growth in bilateral trade has not been without its accompanying issues and problems. Both nations are negotiating membership in the Trans-Pacific Strategic Economic Partnership Agreement (TPP), a multilateral trade group. For its part, Vietnam has indicated a desire to foster closer trade relations by applying for acceptance into the U.S. Generalized System of Preferences

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

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

Trans-Pacific Strategic Economic Partnership Agreement (TPP)

The Bush Administration notified Congress of its intention to enter into negotiations with the members of the Trans-Pacific Strategic Economic Partnership Agreement (TPP) on September 22, 2008.⁷ The TPP—previously known as the P4—is a multilateral free trade agreement between Brunei, Chile, New Zealand, and Singapore that came into force in 2006.⁸ The U.S. announcement of interest in joining the TPP was quickly followed by similar expressions of interest by Australia, Malaysia, Peru, and Vietnam.⁹

In the President's 2010 Annual Report on the U.S. trade agreements program, the Obama Administration stated that U.S. participation in the TPP "is the strongest vehicle for achieving economic integration across the Asia-Pacific region and advancing U.S. economic interests with the fastest-growing economies in the world."¹⁰ Vietnam's Deputy Prime Minister and Foreign Minister Pham Gai Khiem listed negotiations to join the TPP—along with the U.S. BIT talks and Partnership and Cooperative Agreement with the European Union—as among Vietnam's top trade priorities in 2009.¹¹ During an April 2010 speech in Washington, DC, Prime Minister Nguyễn Tấn Dũng made particular note of both countries' participation in the TPP negotiations.¹²

The first meeting of the nine negotiating parties was held in Melbourne, Australia, on March 15-19, 2010. Since then, subsequent rounds were held in June, October, and December 2010, and February and March of 2011.

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

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

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

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

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

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

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

In addition, Vietnam's priorities for the TPP may pose problems for the United States. According to an interview with key Vietnamese analysts, Vietnam is pressing for the following provisions in the TPP agreement:¹³

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

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

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

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

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

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

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

¹⁷ The proposed TPP agreement would be presented to Congress as a Congressional-Executive Agreement, not as a treaty. For more information on Congressional-Executive Agreements, see CRS Report 97-896, *Why Certain Trade* (continued...)

Vietnam's Generalized System of Preferences (GSP) Application¹⁸

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

The U.S. GSP program authorizes the President to grant duty-free treatment for any eligible product from any beneficiary country.¹⁹ Initially created by Title V of the Trade Act of 1974 (P.L. 93-618) for a 10-year period, the GSP program has been repeatedly renewed by Congress, most recently in a one-year extension on December 22, 2009, as part of P.L. 111-124. The statute also provides the President with specific political and economic criteria to use when designating eligible countries and products.

Inclusion in the U.S. GSP program is a high trade priority for the Vietnamese government. Vietnam has already been accepted into several other GSP programs, including those of Canada, the European Union (EU), and Japan. The status of Vietnam’s GSP application was reportedly raised during the meeting of the U.S.-Vietnam Trade and Investment Framework Agreement (TIFA) Council in Washington, DC, from April 15-22, 2009.²⁰ On December 2, 2009, Vietnam’s Foreign Minister Pham Gia Khiem reportedly asked former U.S. Trade Representative Susan Schwab to urge the Obama Administration to add Vietnam to the U.S. GSP program.²¹ According to sources in Vietnam’s Ministry of Foreign Affairs (MOFA), the Vietnamese government sees its acceptance into the GSP program as another step in the normalization of bilateral relations.

Compliance with Eligibility Criteria

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

(...continued)

Agreements Are Approved as Congressional-Executive Agreements Rather Than as Treaties, by Jeanne J. Grimmatt.

¹⁸ 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.

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

²⁰ “Vietnam, U.S. Boosting Agricultural, Trade, Labor Cooperation,” *Vietnam Business Forum*, April 28, 2009.

²¹ “Former US Trade Representative Visits Vietnam,” *Voice of Vietnam News*, December 3, 2009.

Is Vietnam a “Communist” Country?

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

U.S. law does not provide any general definition of a “Communist” country. Some observers point to Vietnam’s official name—the Socialist Republic of Vietnam—and the government’s control by the Communist Party of Vietnam (Đảng Cộng sản Việt Nam) as *prima facie* evidence that Vietnam is a “Communist” country. Other observers counter that after over two decades of *doi moi*,²² Vietnam no longer is a “Communist” country in terms of its economic system. In addition, even if Vietnam was a “Communist” country, according to these observers, it is “not dominated or controlled by international communism” because no such entity exists following the collapse of the Soviet Union.

Workers’ Rights

Among the GSP eligibility criteria, Vietnam’s recognition of internationally accepted workers’ rights has proven to be the most problematic. Prior to the 1986 advent of *doi moi*, there were many allegations about substandard working conditions in Vietnam, including “sweatshop” working conditions, the use of child labor, and severe restrictions on the right of association and collective bargaining.²³ Since then, the Vietnamese government is generally perceived to have made concerted efforts to comply with many internationally recognized labor standards.

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

IPR Protection

Vietnam remained on the U.S. Special 301 Watch List in 2010, with the official report noting a rise in online piracy.²⁴ The 2010 National Trade Estimate Report on Foreign Trade Barriers (NTE)²⁵ states that

²² *Doi Moi*, which literally means “change and newness” and is often translated as “renovation,” is the Vietnamese Communist Party’s term for reform and renovation in the economy. This term was coined in 1986 for Vietnam’s transition from the centrally planned command economy to a “market economy with socialist direction.”

²³ For more information about pre-Doi Moi working conditions in Vietnam, see CRS Report RL30896, *Vietnam’s Labor Rights Regime: An Assessment*, coordinated by Mark E. Manyin.

²⁴ For the complete text of the 2010 Special 301 Report, see <http://www.ustr.gov/about-us/press-office/reports-and-publications/2010-3>.

²⁵ Office of the U.S. Trade Representative, *The 2010 National Trade Estimate Report on Foreign Trade Barriers*, Washington, DC, March 2010.

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

The NTE report also notes that in 2009 Vietnam revised its IPR Law, as well as IPR-related provisions in the Criminal Code, to provide criminal penalties for IPR infringement conducted on a commercial scale. In addition, the NTE indicated that “Vietnamese agencies took some initial steps to enforce IP protections on the Internet.”

Statements by past U.S. officials indicated that Vietnam’s IPR protection was playing a role in the decision on its GSP application. In an interview on March 9, 2009, Jay L. Eizenstat, ex-director for customs affairs for USTR in the Bush Administration, pointed out that “intellectual property rights violations are easily seen in Vietnam and this is the reason for the unlikelihood of gaining GSP although Vietnam satisfies basic criteria.”²⁶ It is unclear to what extent this attitude is held in the Obama Administration.

Congressional Implications

On December 31, 2010, the GSP program expired. The 111th Congress did not pass legislation expending the GSP program beyond the extension it passed on December 22, 2009, as part of P.L. 111-124. Until such time that Congress reestablishes the GSP program, it is highly unlikely that there will be a decision on Vietnam’s pending application.

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

If the GSP program is reestablished, there are several ways by which Congress could indicate its preferences on this issue. In addition to hearings and communications to the Administration from Members of Congress, Congress could authorize or instruct the President to designate—or not to designate—Vietnam as a beneficiary developing country (BDC), either as part of the legislation to extend the GSP program or in separate legislation. Alternatively, Congress could pass legislation—separately or as part of the renewal of the GSP program—stipulating additional eligibility criteria for the President to consider when deciding to confer BDC status to Vietnam. Both versions of the Vietnam Human Rights Act introduced during the 111th Congress (H.R. 1969 and S. 1159) would have prohibited the inclusion of Vietnam in the GSP program unless the President determines and certifies that Vietnam has met certain specified workers’ rights criteria. 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.

²⁶ “Exporters Must be Good at Product Valuation, Seminar,” *Vietnam Business Forum*, March 9, 2009.

Bilateral Investment Treaty (BIT) Negotiations

During their June 2008 meeting, President Bush and Prime Minister Dũng announced the launch of talks to establish a bilateral investment treaty (BIT).²⁷ 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 has signed 47 BITs, with 40 currently in force. Vietnam has signed over 50 BITs.

Status of the Negotiations

The first round of BIT negotiations was held in Washington, DC, from December 15-18, 2008. The Vietnamese delegation included representatives from the Ministry of Planning and Investment, the Ministry of Industry and Trade, the Ministry of Finance, the Ministry of Justice, and the State Bank of Vietnam. The U.S. delegation included representatives of the U.S. Trade Representative's Office, the Department of State, the Department of Commerce, and the Treasury Department. Since then, two more rounds of talks have been held—one on June 1-2, 2009, in Hanoi, and another on November 17-19, 2009, in Washington, DC. A proposed fourth round of talks that was to be held in early 2010 has not happened. As the host for the next bilateral BIT talks, Vietnam is supposed to suggest when and where to hold the meetings. According to USTR, Vietnam has not suggested a date for the talks. The ongoing TPP talks have seemingly reduced the interest in both countries in concluding the BIT agreement.

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

The United States has generally based its past BIT negotiations on a model BIT. In 2004, the Bush Administration revised the model BIT, partially in response to provisions in the Trade Act of 2002 (P.L. 107-210). In the Trade Act of 2002, Congress mandated several negotiating objectives to narrow the scope of investment protection. The act stated that the principal U.S. negotiating objective on foreign investment is to reduce or eliminate barriers to investment, "while ensuring that foreign investors in the United States are not accorded greater substantive rights with respect to investment protections than United States investors in the United States, and to secure for investors important rights comparable to those that would be available under United States legal principles and practice." The Obama Administration is reportedly reviewing the current model BIT, and may be deferring progress with Vietnam until the review is completed.²⁸

²⁷ For more information about BITs and the U.S. BIT program, see CRS Report RL33978, *The U.S. Bilateral Investment Treaty Program: An Overview*, by Martin A. Weiss.

²⁸ "Horvath: BIT to Balance Business Needs with Labor, Environmental Goals," *World Trade Online*, March 10, 2010.

In addition, the existing 2001 Bilateral Trade Agreement (BTA) between the United States and Vietnam included provisions in Chapter 4 governing investment and the future negotiation of a bilateral investment treaty.²⁹ 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 112th Congress, the treaty will be subject to Senate ratification. Action on the part of Congress as a whole may be required if the terms of the BIT require changes in U.S. law.

Non-Market Economy Designation

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

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

State-Owned Enterprises

For the United States, one of the main concerns about Vietnam’s economy is the continued importance of state-owned enterprises (SOEs) in the nation’s industrial sector. Between 1995 and 2010, the portion of Vietnam’s real industrial output produced by SOEs declined from 50.3% to 22.1%.³⁰ 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.

²⁹ For the complete text of the 2001 BTA, go to <http://www.usvtc.org/trade/bta/text/>.

³⁰ Based on data from Vietnam’s General Statistics Office.

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, and most of the shares remain owned by the Vietnamese government. Twenty years ago, there were about 12,000 SOEs in Vietnam. By the end of 2009, the number of SOEs had been reduced to 1,471 by either restructuring or equitization.³¹ To some analysts, however, the retention of a controlling interest in the shares of the companies provides the Vietnamese government with the means to continue to manage the operations of the equitized SOEs.

In August 2010, Prime Minister Dũng announced a plan for the reorganization of the remaining SOEs.³² Prime Minister Dũng has called on every government agency responsible for the administration of a SOE to submit a report on its economic performance by the end of 2010. Plans for the equitization of the SOEs were confirmed during the 11th National Party Congress in January 2011. Vietnam will reportedly equitize nine SOEs in 2011, including the Construction Machinery Corporation (Coma), Licogi, and Lilama.³³ The stated goal is to restructure and reorganize all the SOEs to increase their efficiency by the end of 2015. The Asian Development Bank (ADB) is providing Vietnam with a \$630 million loan to help it reform its SOEs and improve corporate governance.³⁴

The urgency to reform Vietnam's SOEs is being driven, in part, by the recent financial problems of Vietnam Shipbuilding Industry Group (Vinashin). Vinashin is reportedly nearly bankrupt, after a series of poor investments in non-shipbuilding ventures.³⁵ The company had run up \$4.4 billion in debts by June 2010, and was having trouble servicing its debt to both Vietnamese and non-Vietnamese banks. It is unclear if the Vietnamese government will rescue Vinashin. On December 8,

Vietnam's Economy at a Glance

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

Vietnam's real GDP grew by 6.78% in 2010, fueled by industrial and service sector growth. Vietnam's consumer price index (CPI) rose by 11.75%. The unemployment rate remained low, but Vietnam continues to suffer from significant underemployment. Vietnam's total exports were \$71.6 billion; imports were \$84.0 billion. Licensed Foreign direct investment into Vietnam in 2011 was \$17.2 billion.

Although the shift in economic policy has led to rapid growth, it has also brought many of the traditional problems of market-oriented economies. Vietnam has periodically struggled with inflation, fiscal deficits, trade imbalances, and other cyclical economic phenomena common to market economies. Vietnam has also seen a rising income and wealth disparity, that at times has fueled discontent among Vietnam's poor and lower-income population. Vietnam's economic priorities for 2011 are to stabilize economic growth at 6.5% and contain inflation.

Source: General Statistics Office of Vietnam.

³¹ "Time to Restructure State Enterprises," *Viet Nam News*, November 26, 2010.

³² Kim Tan, "Government Shakes Up State-owned Companies," *Dantri International News*, August 23, 2010.

³³ "Big Guys' Restart Equitization Plan in 2011," *Vietnam Net*, February 23, 2011.

³⁴ For details, see ADB's webpage—<http://www.adb.org/projects/project.asp?id=39538&p=vieproj>.

³⁵ Leigh Murray, "Vinashin May Hurt Vietnam Banks," *Wall Street Journal*, December 13, 2010.

2010, Planning and Investment Minister Võ Hồng Phúc stated that Vinashin was responsible for its own debt, but that the government would help lead the company back to profitability.³⁶ Following Minister Phúc's statement, the state-owned Development Bank of Vietnam offered Vinashin interest-free loans to help the company with its cash flow problems.³⁷

Price and Wage Controls

The *doi moi* process has led to the gradual deregulation of most prices and wages in Vietnam. However, the Vietnamese government maintains controls over key prices, including certain major industrial products (such as cement, coal, electricity, oil and steel) and basic consumer products (such as meat, rice, and vegetables). In December 2010, Prime Minister Dũng tightened controls on various products to reduce inflationary pressure.³⁸ Vietnam's year-on-year consumer price index (CPI) in November 2010 was 11%.

The Vietnamese government also maintains control over some wages. Government workers are paid according to a fixed pay scale, and all workers are subject to a national minimum wage law. Workers for private enterprises, foreign-owned ventures and SOEs receive wages based largely on market conditions. Vietnam's recent inflation has given rise to upward pressure on wages. The Prime Minister's anti-inflation policy is supposed to also curb wage increases.

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

Vietnam's View

The Vietnamese government maintains that its economy is as much a market economy as many other nations around the world, and has actively sought formal recognition as a market economy from its major trading partners. A number of trading partners—including ASEAN, Australia, India, Japan, and New Zealand—have designated Vietnam a market economy for purposes of international trade. Under the terms of its WTO accession agreement with the United States, Vietnam is to remain a non-market economy for up to 12 years after its accession or until it meets U.S. criteria for a "market economy" designation.³⁹

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

³⁶ "Vietnam Minister Says Vinashin Should Make Its Own Debt Payment," *Bloomberg*, December 8, 2010.

³⁷ "Vietnam Offers Loans to Ailing Shipbuilder Vinashin," *BBC*, December 28, 2010.

³⁸ "Vietnam to Set Price Controls on Commodities," *Vietnam Business News*, December 2, 2010.

³⁹ Other countries considered non-market economies by the United States include Armenia, Azerbaijan, Belarus, China, Georgia, Kyrgyz Republic, Moldova, Tajikistan, and Uzbekistan.

the designation of Vietnam as a market or non-market economy by amending or superseding existing U.S. law.

Catfish

Catfish have been a constant source of trade friction between the United States and Vietnam for the past decade. Vietnam is a major exporter of frozen fish fillets using certain varieties of fish—known as basa and tra in Vietnamese—that are commonly referred to as catfish in the global fish market.⁴⁰ Since 1999, Vietnamese exports of basa and tra frozen fish fillets have secured a growing share of the U.S. market, despite the objections of the U.S. catfish industry and the actions of the U.S. government. In 2009, Vietnam reportedly exported 47,000 tons of basa and tra, worth \$134 million to the United States.⁴¹

Over the last 10 years, the United States has taken several actions that were designed to have an impact on the import of Vietnamese basa and tra. In 2002, Congress passed legislation that prohibited the labeling of basa and tra as “catfish.”⁴² In August 2003, the U.S. government imposed antidumping duties on “certain frozen fish fillets from Vietnam,” including basa and tra.⁴³ Despite these measures, Vietnam’s exports of basa and tra continued to rise.

In the eyes of the Vietnamese government, the U.S. response to the growth of Vietnam’s basa and tra exports constitutes a case of trade protectionism designed to shelter U.S. catfish producers from legitimate competition. Vietnam also points to U.S. anti-dumping measures on Vietnamese shrimp and plastic bags as an indications of U.S. protectionism (see “Non-Market Economy Designation”).⁴⁴ Supporters of U.S. trade policies against Vietnam’s exports of basa and tra say the measures are designed to defend U.S. consumers and businesses from the unsafe products and unfair business practices of Vietnam. In November 2010, the Vietnam Association of Seafood Exporters and Producers (VASEP) cautioned Vietnam’s seafood processors about carcinogenic residuals from herbicides in shrimp, after Japan tightened its inspections of Vietnamese exports.⁴⁵

The ongoing tensions around catfish trade were heightened by two fairly recent events. The first was the passage of the 2008 Farm Bill (P.L. 110-246) by the 110th Congress on May 22, 2008.

⁴⁰ Basa (*pangasius bocourti*) and tra (*pangasius hypophthalmus*) are fresh-water fish from the Mekong River basin of Vietnam. U.S. catfish (*ictalurus punctatus*)—also known as channel catfish—are also fresh-water fish, typically raised for commercial purposes in aquaculture ponds. All three species are siluriformes, with the characteristic barbels (whiskers) from which the name catfish was derived.

⁴¹ *Ibid.*

⁴² 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.

⁴³ International Trade Administration, “Notice of Antidumping Duty Order: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam,” 68 FR 47909, August 12, 2003.

⁴⁴ 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.

⁴⁵ “Toxic Residues Could Shrivele Shrimp Exports: Experts,” *Vietnam Economy News*, November 12, 2010.

The second event was the ITC's determination on June 15, 2009, to keep in place the antidumping duties on certain frozen fish fillet imports from Vietnam "for the foreseeable future."

2008 Farm Bill

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

The possibility that the Secretary of Agriculture may redefine catfish to include basa and tra, thereby making them subject to the stricter USDA inspection standards, brought forth objections from Vietnam's Ambassador to the United States, its Minister of Agriculture and Rural Development, and Vietnam's catfish industry (including their trade association, the Vietnam Association of Seafood Exporters and Producers, or VASEP). Ambassador Le Cong Phung sent a letter to nearly 140 Members of Congress, suggesting that a reclassification of basa and tra as catfish would call into question the U.S. commitment to the WTO and endanger the jobs of more than 1 million Vietnamese farmers and workers. In addition, an opinion article in the *Wall Street Journal* referred to the possible reclassification of basa and tra as catfish as "protectionism at its worst."⁴⁶ Supporters of the provisions of the 2008 Farm Bill state that it provides greater protection to U.S. consumers.

Draft regulations for catfish food safety inspection were delivered to the Office of Management and Budget (OMB) by the USDA on November 13, 2009. On February 24, 2011, the USDA published in the *Federal Register* its proposed rule for mandatory inspection of catfish and catfish products.⁴⁷ The USDA is "proposing to apply the requirements for the inspection of imported meat products (21 U.S.C. 620) to the inspection of imported catfish products...." The proposed rule, however, leaves some of the key issues related to Vietnamese imports unresolved, including the definition of catfish. The USDA is requesting public comments on the proposed rule. Comments may be sent to the USDA on or before June 24, 2011.⁴⁸

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

⁴⁶ "A Fish by Any Other Name," *Wall Street Journal*, May 20, 2009.

⁴⁷ U.S. Department of Agriculture, "Mandatory Inspection of Catfish and Catfish Products," 76 *Federal Register* 10434- 10469, February 24, 2011.

⁴⁸ Comments may be submitted online at <http://www.regulations.gov>, or by mail to: Docket Clerk, U.S. Department of Agriculture (USDA), FSIS, Room 2-2127 George Washington Carver Center, 5601 Sunnyside Avenue, Beltsville, MD 20705. All submissions must include the agency's name and the docket number FSIS-2008-0031.

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

As a possible preparation for heightened U.S. inspection requirements, Vietnam's Ministry of Agriculture and Rural Development (MOARD) has tightened export hygiene standards for basa and tra. Effective April 12, 2010, all basa and tra exported from Vietnam will need certificates for hygiene and food safety issued by the National Agro-Forestry-Fisheries Quality Assurance Department.⁴⁹ In addition, MOARD and the Ministry of Industry and Trade have contracted U.S.-based Mazzetta Company to train Vietnamese fish breeders how to comply with U.S. standards.⁵⁰ Prime Minister Dũng reportedly has approved a 10-year, \$2 billion "master plan" for the development of Vietnam's fish farming industry that will promote infrastructure and technological development, disease control, and environmental improvement.⁵¹

The Antidumping Sunset Review

While the USDA prepared the new catfish regulations, 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."⁵² 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."⁵³

Implications for the 112th Congress

Two of the last four Congresses have passed legislation containing provisions that critics assert are designed to restrict or prevent the import of basa and tra from Vietnam and protect the U.S. catfish industry from foreign competition. Given that the 110th Congress chose to take action with respect to the definition and regulation of catfish, the 112th Congress may be disinclined to alter or reverse a process already underway. However, legislation has been introduced – S. 496 – to return the inspection of catfish back to the FDA.

⁴⁹ "Catfish Quality Tests Tightened for Export Hygiene Standards," *Vietnam News*, April 15, 2010.

⁵⁰ "US Firm to Help Train Vietnamese Fish Farmers," *Thanh Nien News*, March 27, 2010.

⁵¹ "Vietnam to Inject US\$2 Billion into 10-Year Fisheries Plan," *CPA Vietnam*, March 11, 2011.

⁵² 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.

⁵³ "Vietnam Criticizes US Duties on Catfish as Protectionist," *Earth Times*, June 17, 2009.

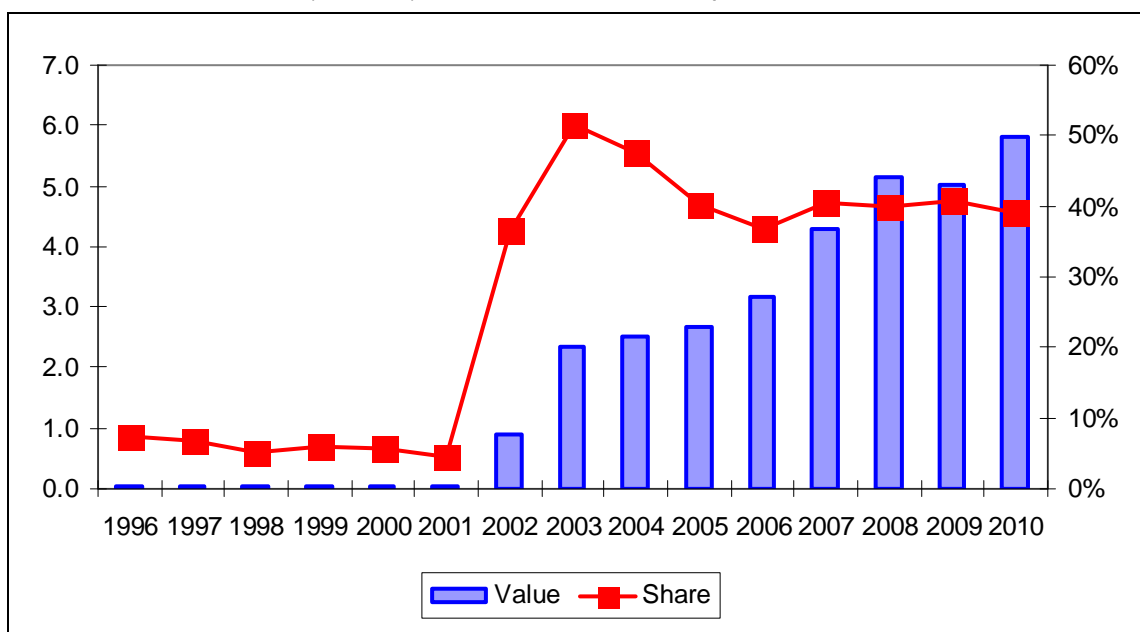
Other Economic Issues

The preceding issues are topics where there has been or continues to be direct bilateral interaction. In addition, there are several economic issues that indirectly influence relations between the United States and Vietnam. Of these, the most prominent issues for the 112th Congress likely include clothing imports from Vietnam, workers' rights, IPR protection, and Vietnam's exchange rate policy.

U.S. Clothing Imports from Vietnam

Vietnam's clothing exporters to the United States were among the greatest beneficiaries of the U.S. decision to grant Vietnam conditional NTR status in December 2001 (see **Figure 1**).⁵⁴ Up until 2002, U.S. imports of clothing from Vietnam were small both in value (below \$50 million) and as a share of total imports from Vietnam (below 10%). Following the U.S. extension of conditional NTR to Vietnam, U.S. clothing imports from Vietnam shot up in value and share. As a share of total imports, clothing peaked in 2003 at 51.4%. The value of U.S. clothing imports from Vietnam has 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. Vietnam has become a major source of U.S. clothing imports, second only to China. In 2010, nearly 40% of U.S. clothing imports came from Vietnam.

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



Source: U.S. International Trade Commission.

Notes: Imports valued using General Customs method.

⁵⁴ 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.

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 2009.⁵⁵ In both cases, Vietnam initially protested U.S. efforts to restrict clothing trade, but in the end complied with the U.S. policies. Several Members of Congress, and in particular Members with significant clothing and textile manufacturing in their districts or states, voiced concern that a “surge” in Vietnamese clothing exports to the United States could cause damage to U.S. clothing and textile companies and workers. However, major U.S. retailers and importers maintained that these two programs would restrict trade from Vietnam, causing harm to U.S. companies and consumers.

Workers’ Rights

The U.S. government and a number of non-governmental organizations (NGOs) such as Human Rights Watch have been critical of Vietnam’s restrictions on workers’ rights. There is a general recognition that Vietnam has made significant improvements in its labor laws, but that local government enforcement and business compliance remain an ongoing problem. The State Department’s 2009 human rights report on Vietnam singled out problems with suppression of independent labor unions, failure to enforce laws governing the right to organize, child labor in rural areas, and inadequate safety conditions (especially in small- and medium-sized enterprises).

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. According to the State Department’s 2009 *Country Report on Human Rights Practices*, “in actuality only 85% of state-owned enterprises, 60% of foreign-invested enterprises, and 30% of private enterprises were unionized.”⁵⁶ Human Rights Watch has also raised concern about the ability of Vietnamese workers to call an official strike, especially at state-owned enterprises (SOEs).⁵⁷

Efforts to organize independent unions in Vietnam reportedly have been thwarted by government suppression, including the arrest and imprisonment of union leaders. Other observers, however, counter that since the launch of *doi moi*, worker rights have made progress despite the restrictions on their independent right to organize. These observers point out that hundreds of unaffiliated (and therefore unofficial) “labor associations” have sprouted without significant repression, that the VGCL has evolved into a more aggressive advocate for workers, and in many recent cases, Vietnamese workers have gone on strike reportedly because they felt that they were not well-represented by the official union.

The Vietnamese government appears to tacitly accept that it has problems with the enforcement of its labor laws. Vietnam’s official news agencies—*Thanhnieu 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

⁵⁵ 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.

⁵⁶ Bureau of Democracy, Human Rights, and Labor, *2009 Country Reports on Human Rights Practices, 2009 Human Rights Reports: Vietnam*, U.S. Department of State, Washington, DC, March 11, 2010.

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

in Vietnam.⁵⁸ 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."⁵⁹

The Vietnamese government is working with various international organizations to improve its labor laws, regulations and enforcement. Vietnam's Ministry of Labour, Invalids, and Social Affairs (MOLISA) and the VGCL are currently working with the International Labor Organization (ILO) to finalize a new Labour Code and Trade Union Law, to be submitted to Vietnam's National Assembly for consideration in October 2011.⁶⁰ The ILO and MOLISA are also working with Spain's Agency for International Development Cooperation on a program to eliminate child labor in Vietnam. In addition, the United Nations is providing \$2 million for a program to help the VGCL improve its grassroots relations.⁶¹

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 *2010 Special 301 Report*, an annual review of the global state of IPR protection and enforcement.⁶² Vietnam remained on the Watch List because of its continuing problems with IPR piracy and trademark infringement. The report does state that "the United States is encouraged by recent steps that the government has taken to improve IPR protection and enforcement, including recent amendments to the IP Law, an increase in administrative fines for copyright infringement, and a continuation of efforts to address Internet piracy ... However, overall enforcement efforts remain insufficient to address rampant piracy and counterfeiting." The report also noted that the U.S. government had funded IPR enforcement training in Vietnam in 2009.

The perceived continuing problems with Vietnam's IPR protection may play a role in any consideration of its GSP application, as well as the bilateral BIT negotiations. The Foreign Relations Authorization Act, Fiscal Years 2010 and 2011 (H.R. 2410) and the Foreign Relations Authorization and Reform Act, Fiscal Years 2010 and 2011 (H.R. 2475) would have established 10 additional "intellectual property attachés to serve in United States embassies or other diplomatic missions." Assignment priority would be given to countries identified in the USTR's *Special 301 Report*, which could imply the assignment of one of the attachés to Vietnam. H.R.

⁵⁸ Among these articles are: "Impotent Labour Unions Don't Help Workers," *Thanhnie 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," *Thanhnie News*, December 2, 2008; and Minh Nam, "HCMC Officials call to Strengthen Unions, Tighten Labor Laws," *Thanhnie News*, February 12, 2009.

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

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

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

⁶² For a copy of the 2009 report, see <http://www.ustr.gov/about-us/press-office/reports-and-publications/2010-3>.

2410 was passed by the House on June 10, 2009, and referred to the Senate on June 22, 2009. The Senate took no further action on the bill.

Vietnam's Exchange Rate Policy

One aspect of Vietnam's economic system that has *not* been changed by *doi moi* is its exchange rate policy. Vietnam continues to maintain a government-managed exchange rate relative to the U.S. dollar. The State Bank of Vietnam (SBVN) sets a range in which the value of the Vietnamese dong can fluctuate relative to the U.S. dollar. Since March 2009, the SBVN has widened the band to $\pm 5\%$ from the official exchange rate, and devalued the dong five times. The last devaluation occurred on February 11, 2011, lowering the official interbank exchange rate to 20,693 dong = \$1. Since then, the SBVN has taken steps to reduce downward pressure on the dong, including tightening the regulation of foreign exchange transactions and raising interest rates.

Key Trends in Bilateral Trade

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

Merchandise Trade

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

Table 2. Top 10 U.S. Exports to Vietnam and Imports from Vietnam

(According to U.S. trade statistics for 2010; U.S. \$ millions)

Top 10 Exports to Vietnam		Top 10 Imports from Vietnam	
Product	Value	Product	Value
Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof	466.235	Articles of apparel and clothing accessories, knitted or crocheted	3,359.480
Vehicles other than railway or tramway rolling stock, and parts and accessories thereof	306.611	Articles of apparel and clothing accessories, not knitted or crocheted	2,438.063
Residues and waste from the food industries; prepared animal feed	266.303	Furniture; bedding, mattresses, mattress supports, cushions and similar stuffed furnishings; lamps and lighting fittings, not elsewhere specified or included; illuminated sign illuminated nameplates and the like; prefabricated buildings	1,826.354
Iron and steel	255.332	Footwear, gaiters and the like; parts of such articles	1,622.933
Cotton, including yarns and woven fabrics thereof	254.261	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	807.772
Meat and edible meat offal	247.676	Fish and crustaceans, molluscs and other aquatic invertebrates	647.823
Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television recorders and reproducers, parts and accessories	189.378	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof	534.195
Wood and articles of wood; wood charcoal	156.289	Coffee, tea, maté and spices	435.524
Plastics and articles thereof	153.806	Mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes	407.495
Dairy produce; birds' eggs; natural honey; edible products of animal origin, NESOI	140.703	Edible fruit and nuts; peel of citrus fruit or melons	344.707

Source: U.S. International Trade Commission.

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

According to U.S. trade statistics, the top U.S. imports from Vietnam in 2010, besides clothing and fish, were (in order) furniture and bedding; footwear; electrical machinery; machinery; spices, coffee, and tea; mineral fuel and oil; and edible fruits and nuts (see **Table 2**). The top U.S. exports to Vietnam included (in order) machinery; non-railway vehicles; food waste and animal feed; iron and steel; cotton; meat; electrical machinery; wood and wooden articles; plastic and plastic articles; and dairy produce, eggs, honey, and edible products of animal origin. The juxtaposition of these two lists reveals product categories that may warrant watching, as well as a connection between some of the top trade commodities.

Furniture and Bedding

Over the last 10 years, Vietnam has risen from being the 62nd largest source for furniture and bedding imports for the United States to being the fourth-largest source—surpassing past leaders such as Italy, Malaysia, and Taiwan. Furniture and bedding provided over 12% of total U.S. imports from Vietnam in 2010.

Footwear

While most of the focus has been on clothing imports from Vietnam, footwear imports from Vietnam were nearly 11% of total imports in 2010. Vietnam was the second-largest source of footwear imports for the United States in 2010, nearly twice the size of Italy and three times the size of Indonesia.

Electrical Machinery

Vietnam's electrical machinery exports to the United States grew more than 1,000-fold over the last 10 years, reaching nearly \$808 million in 2010 and over 5% of total U.S. imports from Vietnam. According to interviews with foreign investors in Vietnam, there is great potential for growth in this sector because of Vietnam's inexpensive, skilled workers.

Product Interplay

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

Trade in Services

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

Foreign Direct Investment

In 2009, Vietnam licensed 1,208 foreign direct investment (FDI) projects worth \$23.107 billion.⁶³ The leading source of FDI in 2009 was the United States, with 70 projects worth \$9.945 billion. The second- and third-largest sources of FDI in 2008 were the Cayman Islands and South Korea, respectively. The accumulated value of FDI in Vietnam for the period 1998-2009 is \$194.430 billion. South Korea was the leading investor during this period, followed by Taiwan and Malaysia. The United States was the 5th largest investor, with 589 projects worth \$15.403 billion.

Growing U.S. interest in investment opportunities in Vietnam could have an impact on the BIT negotiations and, by implication, have an effect on the 112th Congress if the negotiations are completed in 2011. In addition, as more U.S. companies invest in Vietnam, there is the possibility of more business-to-business disagreements between U.S. and Vietnamese companies, and more constituent pressure on Congress to address perceived shortcomings in Vietnam's treatment of foreign-owned enterprises.

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⁶³ Data from the General Statistics Office of Vietnam; latest available figures.