



Potential Trade Effects of Adding Vietnam to the Generalized System of Preferences Program

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Summary

In May 2008, Vietnam formally requested to be added to the U.S. Generalized System of Preferences (GSP) program as a “developing country.” 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. Vietnam has already been accepted into several other developed-country GSP programs around the world, including Canada, the European Union (EU), and Japan.

The GSP statute provides the President with the authority to designate any country a beneficiary developing country, provided the country complies with various trade and investment policies and labor conditions. Congress does not need to act to approve GSP status for Vietnam. The President is, however, required to notify Congress of his intention. The inclusion of Vietnam into the GSP program is generally viewed as another step in the development of closer bilateral relations.

Most of the public comments submitted to the USTR were supportive of approving Vietnam’s application. However, there were some issues raised that could cause problems in accepting Vietnam into the GSP program—in particular, Vietnam’s record on workers’ rights. A preliminary assessment conducted by the GSP Subcommittee of the Trade Policy Staff Committee (TPSC), an interagency group chaired by the USTR, reportedly contained reservations about Vietnam’s record on worker rights. In addition, Vietnam’s record on human rights may also have an impact on its application, even though the President is not legally required to consider this issue when evaluating Vietnam’s application.

If accepted into the GSP program, up to 3,400 different types of exports from Vietnam could potentially enter into the United States duty-free. While Vietnam’s leading exports to the United States—knitted and non-knitted clothing—are deemed “import sensitive” and therefore excluded from GSP eligibility, some of its fastest growing exports are eligible for duty-free status under the GSP. These exports include electrical machinery, fruits, and coffee preparations. Imports of these commodities would likely increase if Vietnam is granted beneficiary developing country (BDC) status. This could lead to an increase in the U.S. bilateral trade deficit with Vietnam and a shift in the mix of U.S. imports from Vietnam. It might also foster a relocation of some assembly operations from China to Vietnam, thereby reducing the U.S. bilateral trade deficit with China.

The Generalized System of Preferences program was renewed on October 21, 2011, with the passage of P.L. 112-40, extending the program until July 31, 2013.

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In May 2008, the Socialist Republic of Vietnam (Vietnam) formally requested consideration for designation as a “beneficiary developing country” (BDC) under the United States’ Generalized System of Preferences (GSP) program. If accepted into the GSP program, up to 3,400 different types of exports from Vietnam could potentially enter into the United States duty-free. While Vietnam’s top export to the United States—clothing—is not GSP-eligible, other leading exports, such as electrical machinery, fruits, and coffee preparations, could benefit from Vietnam’s addition to the GSP program. Vietnam has already been accepted into several other developed-country GSP programs around the world, including Canada, the European Union (EU), and Japan.

On June 20, 2008, the U.S. Trade Representative (USTR) announced that it was initiating a review of Vietnam’s eligibility for GSP benefits, and solicited comments on the matter until August 4, 2008.¹ Five days later, Vietnam’s Prime Minister Nguyen Tan Dung raised the issue of Vietnam’s GSP application with then President Bush during his official visit to the White House. In a joint statement issued after their meeting, “President Bush affirmed that the United States is seriously reviewing Vietnam’s request to be designated as a beneficiary of the Generalized System of Preferences program.”² To date, no decision has been made on Vietnam’s GSP application.

On December 31, 2010, the GSP program temporarily expired, rendering consideration of Vietnam’s application moot. Initially authorized in Title V of the Trade Act of 1974, the GSP program had been renewed by the 111th Congress with the passage of P.L. 111-124, but Congress did not take action to extend the program beyond that date. The GSP program was renewed on October 21, 2011, with the passage of P.L. 112-40, extending the program until July 31, 2013. As a result, the issue of Vietnam’s application became relevant again.³

Consideration of Vietnam’s GSP application is also being influenced by its participation in the ongoing negotiations of a multilateral trade agreement in the Asia-Pacific region. Formally known as the Trans-Pacific Strategic Economic Partnership (TPP), the proposed trade agreement could include up to 11 nations – Australia, Brunei, Canada, Chile, Malaysia, Mexico, New Zealand, Peru, Singapore, United States, and Vietnam. If Vietnam becomes a party to the TPP agreement, it would no longer be eligible to join the GPS program under current U.S. policy.

Vietnam’s addition to the U.S. GSP program is generally viewed as another possible step in the process of promoting the continued growth of trade relations and expanding bilateral ties between the two countries. In December 2006, Congress passed and President Bush signed H.R. 6111 (P.L. 109-432), extending permanent normal trade relations (PNTR) status to Vietnam. On January 11, 2007, Vietnam acceded into membership in the World Trade Organization (WTO). On June 21, 2007, the two nations concluded a Trade and Investment Framework Agreement (TIFA).⁴ During their summit meeting (the fourth such meeting in four years), Prime Minister Dung and President Bush also discussed initiating negotiations of a Bilateral Investment Treaty (BIT). Vietnam has

¹ 73 F.R. 35173, June 20, 2008.

² White House, Office of the President, “Joint Statement Between the United States of America and the Socialist Republic of Vietnam,” Press Release, June 25, 2008.

³ For more information regarding the GSP program and its recent renewal, see CRS Report RL33663, *Generalized System of Preferences: Background and Renewal Debate*, by Vivian C. Jones

⁴ The text of the U.S.-Vietnam TIFA is available on the USTR’s web page at http://www.ustr.gov/assets/Trade_Agreements/TIFA/asset_upload_file81_12935.pdf.

also expressed an interest in eventually negotiating a Free Trade Agreement (FTA) with the United States.

What Is GSP?

The Generalized System of Preferences (GSP) provides non-reciprocal preferential tariff treatment to certain products imported from designated developing countries. The United States, the European Union, and other developed countries implemented such programs in the 1970s in order to promote economic growth in developing countries by stimulating their exports. The U.S. program was established by Title V of the Trade Act of 1974 (P.L. 93-618) for a 10-year period. Since then, Congress has extended the program 10 times, most recently through July 31, 2013 in P.L. 112-40.

The basic principle behind the GSP is to provide certain goods originating in developing countries with preferential market access (usually in the form of lower tariff rates or duty-free status) to developed country markets in order to spur economic growth. The program was first adopted internationally in 1968 by the United Nations Conference on Trade and Development (UNCTAD) at the UNCTAD II Conference.

In general, the U.S. GSP program authorizes the President to grant duty-free treatment under the GSP for any eligible product from any beneficiary developing country (BDC) or least-developed beneficiary developing country (LDBDC). The statute also provides the President with specific political and economic criteria to use when designating eligible countries and products.⁵

Country Eligibility

Under the GSP eligibility criteria, there are certain mandatory factors that may not be waived. First, certain developed countries are specifically excluded.⁶ Other mandatory criteria require exclusion of any country that:

- is “Communist,” *unless* it has normal trade relation status with the United States; is a member in the World Trade Organization (WTO) and the International Monetary Fund (IMF); and it is “not dominated or controlled by international communism;”
- engages in actions that would restrict or raise prices of vital commodities;
- provides trade preferences to developed countries other than the United States which has, or is likely to have, a significant adverse effect on United States commerce.

Other mandatory criteria may be waived “if the President determines that such designation will be in the national economic interest of the United States and reports such determination to the Congress with the reasons therefor.” These criteria preclude countries that:

⁵ 19 U.S.C. §2462; Section 502 of P.L. 93-618, as amended. For a more detailed discussion of the GSP program, see CRS Report RL33663, *Generalized System of Preferences: Background and Renewal Debate*, by Vivian C. Jones.

⁶ These countries are Australia, Canada, European Union member states, Iceland, Japan, Monaco, New Zealand, Norway, and Switzerland.

- have nationalized or expropriated the property of U.S. citizens or companies;
- have failed to acknowledge or enforce arbitral awards that are in U.S. favor;
- aided or abetted individuals or groups that have engaged in international terrorism;
- have not taken steps to provide its workers with internationally recognized worker rights; or
- have not taken steps to “eliminate the worst forms of child labor.”⁷

Other discretionary factors that the President may consider when deciding to confer BDC status are: (1) the desire of the country to be designated; (2) the level of economic development of the country, including gross national product (GNP) and living standards; (3) whether other developed countries offer similar tariff benefits to the country; (4) the degree to which the country has agreed to provide equitable and reasonable access to its markets, commodities, and resources; (5) the level of protection it provides to intellectual property; (6) the extent to which it has reduced barriers to trade and investment; and (7) the degree to which it has provided its workers with workers rights including collective bargaining, a minimum age for child labor, and prohibition of forced labor or the worst forms of child labor.⁸

Product Eligibility

The President is authorized to designate products as eligible for GSP treatment after consultation with the International Trade Commission.⁹ Products are designated generally for all GSP recipients to the extent that countries have not exceeded statutory limits for importing certain products. Product eligibility under GSP is also restricted in the law by several factors. First, the GSP statute specifically excludes certain categories of goods as “import-sensitive,” including textiles and apparel; certain watches; footwear and other accessories; certain electronics, steel, and glass products; and certain agricultural products subject to tariff-rate quotas.¹⁰

Second, the law establishes automatic “competitive need limits” (CNLs) that require the President to suspend GSP treatment if imports of a product from a single country reach a specified threshold value (\$140 million in 2010) or if 50% or more of total U.S. imports of a product entering under GSP come from a single country (unless a waiver is granted).¹¹ Third, GSP rules of origin only allow duty-free entry if the article is imported directly from the beneficiary country, and at least 35% of the value (of materials and/or processing) of an eligible product is the “growth, product, or manufacture” of a beneficiary developing country.¹²

⁷ 19 U.S.C. §2462, as amended.

⁸ *Ibid.*

⁹ 19 U.S.C. §2463(a)(1).

¹⁰ 19 U.S.C. §2463(b).

¹¹ 19 U.S.C. §2463(c).

¹² 19 U.S.C. §2463(a)(2).

Process for Vietnam

An evaluation of Vietnam's eligibility for GSP status began with a Federal Register notice announcing the review.¹³ Public comments were solicited from June 20, 2008 to August 4, 2008.¹⁴ A subsequent review to determine whether Vietnam complied with the statutory requirements for designation as a GSP beneficiary was conducted by the GSP Subcommittee of the Trade Policy Staff Committee (TPSC), an interagency group chaired by the USTR, in consultation with the U.S. International Trade Commission (USITC).¹⁵ The TPSC did not officially conclude the review, and according to officials at USTR, Vietnam's record on worker rights was in question.¹⁶ Based on a conversation with a Vietnamese official, it is unclear if Vietnam has been apprised of the status of the TPSC review.¹⁷ If at some point, the TPSC were to favorably reevaluate Vietnam's eligibility, it would present its findings to the USTR, who will, in turn, present a recommendation to the President. The final decision whether to grant Vietnam (or any other potential BDC) GSP eligibility is made by the President.¹⁸

Evaluating Vietnam's Prospects

Vietnam's acceptance into the U.S. GSP program will hinge on a combination of the TPSC's evaluation (and the President's subsequent approval) of Vietnam's compliance with these eligibility criteria, and the perceived acceptability of including Vietnam as a beneficiary developing country.

Compliance with Eligibility Criteria

There may be some ambiguity regarding Vietnam's compliance with both the mandatory and discretionary GSP criteria. For the four mandatory criteria, the most debatable issue may be its classification as a "Communist country," and more specifically whether or not it is controlled or dominated by "international communism." Among the criteria that may be waived or assessed on a more progressive basis, the most likely source of challenges is Vietnam's record in providing workers with internationally recognized workers' rights.

Is Vietnam a "Communist Country"?

U.S. federal law does not currently include a specific definition of what constitutes a "Communist country." The concept of Communism has two distinct common definitions—one political and one economic. The political definition typically hinges on the domination of society's political system by a single and self-perpetuating party. The economic definition is usually based on the

¹³ 73 F.R. 35173, June 20, 2008.

¹⁴ Public comments concerning Vietnam's GSP eligibility are posted on the USTR website: http://www.ustr.gov/sites/default/files/uploads/gsp/asset_upload_file576_15064.pdf

¹⁵ The TPSC was established by Section 242 of the Trade Expansion Act of 1962 (19 U.S.C. §1872) and implemented by Executive Order 12188, as amended. The President delegated the administration of the GSP program to the committee in sec. 8 of Executive Order 11846, as amended. See also 19 C.F.R. §2007.2(e).

¹⁶ Discussion with USTR officials, September 2008.

¹⁷ Discussion with Vietnamese trade official, July 2012.

¹⁸ 29 U.S.C. §2462.

holding of all property in common, with the ownership being ascribed to the community as a whole or to the state.

Politically, the Vietnamese government does not refer to itself as communist country, but as socialist republic. However, Vietnam is a one-party state controlled by the Communist Party of Vietnam (VCP). Since the mid-1990s, the VCP appears to have followed a strategy of permitting most forms of personal and religious expression while selectively repressing individuals and organizations that it deems a threat to the party's monopoly on power.

Economically, Vietnam has been steadily transforming its centrally planned economy into a market economy, and has allowed the creation and growth of private enterprise. Vietnam's constitution and civil code recognize and protect private property rights. Yet, government influence and control over Vietnam's economy still remains comparatively high.¹⁹

Even if Vietnam were determined to be a "Communist country," GSP statutory provisions specify that it can still qualify for GSP status if it is a member of the WTO and IMF, received NTR status from the United States, and is found to be "not dominated or controlled by international communism."²⁰ Vietnam is a recent member of the WTO (date of accession January 11, 2007) and a member of long-standing in the IMF (since September 1956). In December 2006, Vietnam was conferred permanent NTR status by the United States. In addition, given that the Soviet Union and its Council for Mutual Economic Assistance (Comecon) no longer exist, it is unclear how to define what constitutes "domination or control by international communism."

Workers' Rights

Among the five mandatory, but discretionary, criteria, Vietnam's recognition of internationally-accepted workers' rights may prove to be the most controversial. Prior to the 1986 advent of *doi moi*, Vietnam's process of market-oriented economic renovation, 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.²¹ Since then, the Vietnamese government is generally perceived to have made concerted efforts to comply with internationally-recognized labor standards.

In its statement of support 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. Vietnam rejoined the ILO as a member state in 1992 and has worked with the ILO in drafting new labor laws, including the 1994 Labor Code. Vietnam's Ministry of Labour, Invalids, and Social Affairs (MOLISA), in consultation with the Vietnam General Confederation of Labor (VGCL) and the ILO, drafted a new labor code and a new trade union law which were presented for consideration and passed by the National Assembly in June 2012. In addition, Vietnam has ratified five of the eight fundamental ILO conventions—covering compulsory labor, income inequality, discrimination, minimum age, and the worst forms of child labor—and an additional

¹⁹ For more information, see CRS Report RL33316, *U.S.-Vietnam Relations in 2008: Background and Issues for Congress*, by Mark E. Manyin.

²⁰ 19 U.S.C. §2462(b)(2)(A)(i-iii).

²¹ 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.

12 other ILO conventions. Vietnam reported it is considering ratification of two more conventions, concerning the freedom of association and the right to collective bargaining. In addition, the United States and Vietnam signed a Memorandum of Understanding regarding labor cooperation in November 2000, which has fostered the exchange in technical expertise and training on a broad range of labor issues.

Freedom of Association

Despite the aforementioned 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. At present, all labor unions in Vietnam must be a member of the VGCL. Efforts to organize independent unions in Vietnam reportedly have been thwarted by government suppression, including the arrest and imprisonment of union leaders. In Vietnam's GSP submission, the government maintains that "the Vietnam Constitution of 1992, along with other domestic laws, guarantees that workers have the right of association" and that "citizens are entitled to freedom of speech and freedom of the press; they have the right to receive information and the right of assembly, association and demonstration in accordance with the law."²²

Despite the provisions in Vietnam's constitution, some observers maintain that the ability of workers to form unions independent from the VGCL has, to some extent, been thwarted. According to Amnesty International, two days after Tran Quoc Hien was chosen as spokesperson for the independent United Workers-Farmers Organization (UWFO) in January 2007, he was arrested. The Vietnamese authorities claimed that he and his accomplices incited demonstrations and posted "distorted" articles on the Internet. On May 15, 2007, Tran Quoc Hien was sentenced to five years' imprisonment plus two years' probation.²³ On October 26, 2010, Amnesty International condemned the Vietnamese government for imprisoning union activists Doan Huy Chuong, Do Thi Minh Hanh, and Nguyen Hoang Quoc Hung for "legitimate work on labor rights."²⁴

Other observers conclude that since the launch of the *doi moi* reforms, worker rights have made progress despite the restrictions on the right to organize. In addition, hundreds of unaffiliated (and therefore unofficial) "labor associations" have sprouted without significant repression, and in many recent cases, Vietnamese workers went on strike reportedly because they felt that they were not well-represented by the official union.

Workers in Vietnam have the legal right to collective bargaining; 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 Reports on Human Rights Practices*, "In actuality only 85 percent of state-owned enterprises, 60 percent of foreign-invested enterprises, and 30 percent of private enterprises were unionized."²⁵

²² Government of the Socialist Republic of Vietnam. "Statement re Supporting Documentation [of GSP Status]," May 9, 2008, p. 9.

²³ "Vietnam: Internet Writer Tran Quoc Hien Sentenced," *English Pen*, May 25, 2007.

²⁴ Amnesty International, *Heavy Sentences for Viet Nam Labour Activists Condemned*, October 26, 2010.

²⁵ Department of State, *2009 Country Reports on Human Rights Practices*, Washington, DC, March 11, 2010, <http://www.state.gov/g/drl/rls/hrrpt/2009/index.htm>. Subsequent versions of the report did not indicate the percentage of enterprises which had labor unions.

Right to Strike

According to the government of Vietnam, strikes are not uncommon in Vietnam, and the Labor Code was amended in late 2006 in order to clarify the cases in which a strike may occur (i.e., after a legally mandated dispute resolution process has been carried out).²⁶ Vietnamese officials also maintain that there are many strikes in Vietnam, and that even in cases where strikes are deemed “illegal,” the law prohibits retribution against strikers.²⁷

The VGCI reported 961 strikes in 2011. Many of these strikes arose spontaneously, without trade union leadership.²⁸ In most cases, the workers have struck for higher wages and better working conditions. Many of the strikes have occurred at foreign-owned enterprises, particularly at South Korean and Taiwanese manufacturing facilities.²⁹ The Vietnamese government—led by the Ministry of Labor, War Invalids and Social Affairs (MOLISA)—for the most part has not moved against the strikes, despite the fact that many have been technically illegal.

In its 2009 report, “Not Yet a Workers’ Paradise,” Human Rights Watch states, that while Vietnamese laws do recognize the right of official unions to call a strike, the law also sets “strict and cumbersome conditions that must first be met, which effectively nullify this right.”³⁰ According to Human Rights Watch, strikes in Vietnam are rarely given legal authorization. In addition, strikes are prohibited in 54 sectors considered essential public services, or important to national security. Leaders of illegal strikes reportedly face harassment and possible arrest for their activities. The report includes brief descriptions of 13 individuals who have been arrested, detained, or imprisoned for their activities related to workers’ rights.

Action in Congress

Many in Congress continue to be concerned about Vietnam’s human rights record. In the 112th Congress, the Fostering Rights through Economic Engagement in Vietnam Act (H.R.5157) would prohibit the President from granting GSP benefits to Vietnam unless the President determines and certifies to Congress that the Government of Vietnam:

1. is not on the special watch list of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7107(b)(3)(A)); and
2. does not engage in pervasive violations of internationally-recognized human rights, including freedom of speech and freedom of religion.

Others in Congress see the granting of GSP status to Vietnam as an important foreign policy tool, much like the U.S. grant of PNTR status to Vietnam and U.S. support of its WTO accession. First, some see the value in continuing to expand relations with a country that continues to have an ambivalent relationship with China.³¹ Second, many also believe that continued engagement with

²⁶ Government of the Socialist Republic of Vietnam. “Statement re Supporting Documentation [of GSP Status],” May 9, 2008, p. 10.

²⁷ Ibid.

²⁸ “Solutions to Labourers’ Strikes Require Efforts from All Sides,” *Vietnam Net*, September 5, 2008.

²⁹ Author’s interview with unnamed industrial sources.

³⁰ Human Rights Watch, *Not Yet a Workers’ Paradise: Vietnam’s Suppression of the Independent Workers’ Movement*, New York, NY, May 4, 2009.

³¹ CRS Report RL33490, *Vietnam PNTR Status and WTO Accession: Issues and Implications for the United States*, by (continued...)

Vietnam in the commercial policy arena can serve as an indirect encouragement for the government to promote increased pluralism, accountability, and adherence to the “rule of law.”³² Some believe that continued normalization of relations with Vietnam is also symbolically important because it places greater distance between the U.S.-Vietnam relationship and the legacy of the Vietnam War.³³

Public Comments on GSP Status for Vietnam

As part of the process of assessing Vietnam’s suitability for the GSP program, the USTR accepted public comments until August 4, 2008. Over 20 different organizations and companies submitted comments. Eighteen of the commentators supported Vietnam’s acceptance in the GSP program; two opposed it; and three expressed some reservations, but stopped short of stating their opposition.

Supporters of adding Vietnam as a BDC in the GSP program generally pointed to several factors. They maintained that it would be beneficial to both Vietnam and the United States economically and politically. In addition, it would help raise many of the people of Vietnam out of poverty—one of the principal goals of the GSP program. The supporters also pointed to Vietnam’s *doi moi* policies as evidence of its compliance with the GSP eligibility and then indicated that acceptance into the GSP program would help progress Vietnam’s transformation into a market economy. Some indicated that by including Vietnam in the GSP program, U.S. companies would have a feasible alternative to locating manufacturing facilities in China, which would improve their competitiveness in the global market and potentially reduce the U.S. trade deficit with China. Others cautioned that the exclusion of Vietnam from the GSP program might hinder the ability of U.S. companies to compete for investment opportunities in Vietnam.

Three commentators—the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), the International Intellectual Property Alliance (IIPA), and the Pharmaceutical Research and Manufacturers of America (PhRMA)—pointed out problems or issues with Vietnam’s compliance with the GSP eligibility criteria, but did not directly state their opposition to adding Vietnam to the program. The AFL-CIO’s criticisms focused on its assessment that “much more needs to be done to bring its [Vietnam’s] labor laws and practices in line with internationally recognized worker rights.”³⁴ In particular, the AFL-CIO cited continuing problems with Vietnamese workers’ freedom of association, their right to organize and bargain collectively, restrictions on the ability to strike, and problems in working conditions (minimum wage enforcement, excessive working hours, and unsafe working conditions).

The IIPA’s comments centered on Vietnam’s compliance with the intellectual property rights (IPR) standards and market access requirements for GSP eligibility.³⁵ On IPR protection, the IIPA maintained that 90% of business software and 95% of records and music in Vietnam are pirate

(...continued)

Mark E. Manyin, William H. Cooper, and Bernard A. Gelb.

³² Ibid.

³³ Ibid.

³⁴ Comments by AFL-CIO and other organizations on Vietnam’s GSP Application, submitted to USTR on August 4, 2008.

³⁵ Ibid.

copies. In addition, the IIPA stated that Vietnam continues to restrict foreign access to its motion picture, home video, broadcast, and music/sound recording markets. Despite their apparent misgivings about Vietnam's GSP application, the IIPA suggests that it be granted one year of eligibility, with renewal subject to a review of Vietnam's progress on IPR protection.

The submission by PhRMA also focused on the issue of IPR protection in Vietnam, but with an emphasis on its application to pharmaceuticals.³⁶ Specific topics raised by PhRMA in its comments included IPR enforcement, data exclusivity, trademark infringement, counterfeiting, and "trade dress" violations.³⁷ PhRMA also expressed concern about market access and pricing restrictions in Vietnam's pharmaceuticals market.

There were two submissions to USTR—one by the U.S. Committee to Protect Vietnamese Workers (CPVW) and another by the U.S. producers of polyethylene carrier bags—that opposed GSP for Vietnam. The U.S. Committee to Protect Vietnamese Workers was established by a group of overseas Vietnamese "to protect the rights and interests of all Vietnamese workers."³⁸ In their comments to USTR, the CPVW indicated that it supported acceptance of Vietnam into the GSP program "in principle," but opposed the acceptance in practice because "Vietnam has not met even the basic GSP criteria on labor." The CPVW maintained that Vietnam failed to meet the eligibility criteria for the right of association, the right of assembly, the right to organize and bargain collectively, the prohibition of forced or compulsory labor, minimum age requirements and child labor, working conditions, and compensation requirements. The CPVW concluded their comments with a list of seven specific conditions to be met before granting GSP eligibility to Vietnam.

The comments in opposition by the U.S. producers of polyethylene carrier bags focused on the reputed damage to their industry from the recent rapid increase in plastic bag imports from China, Malaysia, and Thailand. According to their submission, antidumping duties on plastic bag imports from those three countries have slowed import growth, but have also led to a relocation of operations to Vietnam. Based on their reported experience, the U.S. producers requested that "Vietnam be precluded from seeking GSP treatment" for polyethylene carrier bags.

Human Rights in Vietnam

The human rights conditions in a country do not legally prevent the President from designating a country as eligible to receive GSP status. However, the issue of human rights in Vietnam has been an important factor in every previous case when the United States has considered strengthening bilateral trade relations.

It is difficult to make country-wide generalizations about the state of human rights in Vietnam. On the one hand, the VCP has permitted the growth of an independent press, so long as its criticism of the government is limited to issues such as corruption, economic policy, nature conservation and environmental pollution. Similarly, the Vietnamese government has generally allowed the freedom of worship, regardless of faith, so long as the religious organization registers

³⁶ Ibid.

³⁷ "Trade dress" refers to the physical appearance—color, shape, textile, graphics, and/or size—of a product.

³⁸ Quote from the organization's home page—<http://www.protectvietworkers.com/>.

with the authorities. As of 2006, Vietnam was no longer listed as a “country of particular concern” (CPC) in the State Department’s *International Religious Freedom Report*.

There are, however, signs that the Vietnamese government is tightening its controls on dissidents.³⁹ As opposed to a massive suppression, the Vietnamese government’s actions appear to be selective, targeting specific individuals and organizations who have called for the institution of democratic reforms and/or publicly criticized government policy on sensitive issues, such as policy toward China. For example, lawyer Cu Huy Ha Vu was sentenced in 2011 to seven years in prison for violating article 88, a national security provision of Vietnam’s criminal code that prohibits distribution of propaganda against the state. Vu is notable because he is a former Foreign Ministry official whose father, Cu Huy Can, was one of Vietnam’s most famous poets who served as Agriculture Minister and Minister of Culture under Ho Chi Minh. It is unclear to what extent the deterioration in conditions is a function of high-level political jockeying in the Vietnam Communist Party, or whether economic crisis and uncertainty—linked to corruption and inequality—have fueled social dissatisfaction and unrest, which the Vietnamese government wants to contain.

Trans-Pacific Partnership Negotiations

Another important factor that could influence Vietnam’s inclusion in the U.S. GSP program is the potential outcome of the ongoing U.S. Trans-Pacific Partnership (TPP) negotiations. On September 22, 2008, then-President Bush notified Congress of his intention to negotiate with the existing TPP members – Brunei, Chile, New Zealand, and Singapore. On December 30, 2008, he announced negotiations with three other potential members – Australia, Peru, and Vietnam. After a period of review, President Obama decided to continue to pursue TPP negotiations. U.S. Trade Representative Ron Kirk notified Congress of the intention to include Mexico and Canada in the TPP talks on July 9 and 10, 2012, respectively.

If Vietnam becomes a member of the Trans-Pacific Partnership, and the TPP is approved by Congress and subsequently enacted, any TPP implementation legislation may contain language precluding Vietnam from being a beneficiary developing country with respect to the GSP. Although not specifically required in the GSP statute, U.S. practice has been to exclude developing countries with which the United States has entered into an FTA from being (or continuing to be) a beneficiary country under the GSP program.

For example, Section 201(a)(2) of the United States-Colombia Trade Promotion Agreement (P.L. 112-42) provided that Colombia should be “removed from the enumeration of designated beneficiary developing countries eligible for the benefits of the Generalized System of Preferences (GSP).”⁴⁰ P.L. 112-42 also removed Colombia from eligibility under the Andean Trade Preferences Act (ATPA) and the Andean Trade Promotion and Drug Eradication Act (ATPDEA). Similarly, Peru, another potential TPP member, was removed from GSP eligibility in

³⁹ For more information on Vietnam’s recent treatment of dissidents, see CRS Report R40208, *U.S.-Vietnam Relations in 2012: Current Issues and Implications for U.S. Policy*, by Mark E. Manyin.

⁴⁰ See also Proclamation 8818 of May 14, 2012, “To Implement the United States-Colombian Trade Promotion Agreement, and for Other Purposes,” 77 *Federal Register* 29519, May 18, 2012.

2009 based on Section 201(a)(2) of P.L. 110-138, the United States-Peru Trade Promotion Agreement Implementation Act.⁴¹

Arguably, however, the potential long-term trade benefits that Vietnam could receive as a party to any potential TPP agreement may be greater than those it could receive as a GSP beneficiary, and the United States could also benefit as a result of reciprocal, as opposed to unilateral, trade concessions.

Potential Impact on U.S. Trade

Projecting the impact of Vietnam becoming a BDC under the U.S. GSP program on its bilateral trade with the United States is difficult for a variety of technical reasons.⁴² Scholarly studies of both the U.S. and EU GSP programs on developing countries' exports have come to differing conclusions. However, the rapid rise in bilateral trade following the U.S. extension of NTR to Vietnam may indicate that Vietnam's exports to the United States will increase if it becomes a BDC. The impact on U.S. exports to Vietnam is less certain.

Scholarly studies have also come to conflicting conclusions of the impact of the GSP program on international trade flows. Depending on the methodology used and the assumptions made, the studies have estimated the trade effect for GSP-eligible products as ranging from being negligible to increasing by over 60%.⁴³ For example, a 2006 study of EU trade preference programs estimated that the EU GSP program "does not significantly increase exports" for beneficiary countries.⁴⁴ Most of the studies calculated a less than 20% increase in GSP-eligible product exports.

Although studies differ on the trade effects of GSP programs, recent bilateral trade figures provide some evidence that the liberalization of U.S. trade relations with Vietnam does foster greater trade flows, particularly an increase in U.S. imports. Following the December 10, 2001 grant of NTR status to Vietnam, official U.S. trade statistics indicate that U.S. total merchandise trade with Vietnam doubled from \$1.5 billion in 2001 to \$3.0 billion in 2002 (see **Figure 1**). During that same time period, U.S. imports from Vietnam rose from \$1.1 billion to \$2.4 billion. By comparison, the increase in U.S. imports between 2000 and 2001 was just over \$230 million. U.S. exports to Vietnam, by contrast, rose only slightly—increasing by less than \$120 million—a comparable amount to the increase between 2000 and 2001. While acceptance into the U.S. GSP program is not as dramatic a shift in trade status as NTR, the growth in post-NTR trade flows indicates that granting Vietnam BDC status under the Generalized System of Preferences should increase its exports to the United States.

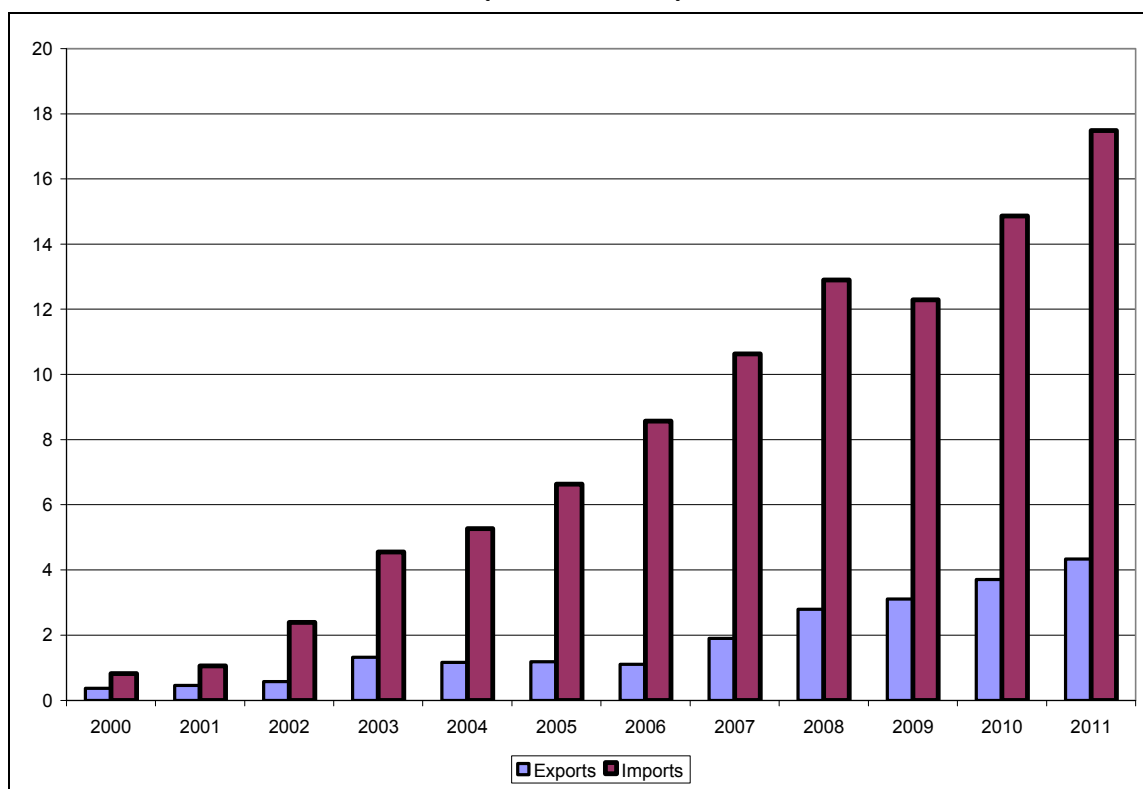
⁴¹ See also Proclamation 8341 of January 16, 2009, "To Implement the United States-Peru Trade Promotion Agreement, and for Other Purposes," 74 *Federal Register* 4105, January 22, 2009.

⁴² For an explanation of the technical problems of conducting such a projection, see Craig R. MacPhee and Victor Iwuagwu Oguledo, "The Trade Effects of the U.S. Generalized System of Preference," *Atlantic Economic Journal*, December 1991, Vol. 19, No. 4, pp. 19-26.

⁴³ MacPhee and Oguledo, op. cit.

⁴⁴ Maria Persson and Fredrik Wilhelmsson, "Assessing the Effects of EU Trade Preferences for Developing Countries," Working Papers, Lund University, Department of Economics, 2006:4.

**Figure 1. U.S. Merchandise Trade with Vietnam, 2000-2011
(U.S. \$ Billions)**



Source: U.S. International Trade Commission.

Determining which Vietnamese exports will increase if the United States approves Vietnam’s GSP application is also difficult. It would be logical to assume that most of Vietnam’s export growth will occur among the GSP-eligible products. An examination of recent trade data, however, reveals that many of Vietnam’s top exports are not GSP-eligible.

Table 1. Top U.S. Imports from Vietnam in 2011

Category	Value	Percentage of Total
Knitted or Crocheted Clothing (61)	\$3,782,039,083	21.6%
Non-knitted or Crocheted Clothing (62)	\$2,773,678,734	15.9%
Footwear (64)	\$2,045,757,378	11.7%
Furniture (94)	\$1,844,465,471	10.5%
Total Imports	\$17,485,178,553	

Source: U.S. International Trade Commission. Numbers in parentheses refer to HTS chapter.

According to U.S. trade statistics, over 37% of U.S. imports from Vietnam in 2011 were articles of apparel, which are generally not GSP-eligible (see **Table 1**). Footwear is also an import category that is largely excluded from the GSP program. Similarly, only a select group of

furniture items are GSP-eligible—mostly light fixtures and mattresses. Therefore, Vietnam’s top four exports to the United States are not likely to benefit from duty-free access under GSP.

Some of Vietnam’s fastest growing exports to the United States, however, may benefit from duty-free access under GSP. Among Vietnam’s top exports—product categories that provided more than 1.0% of U.S. imports from Vietnam—the growth leaders between 2000 and 2011 were: articles of rubber (HTS⁴⁵ chapter 40), articles of leather (42), articles of iron and steel (73), machinery (84), and electrical machinery (85). A comparison of these five product categories to the current list of GSP-eligible items reveals that of these product categories, articles of rubber, machinery, and electrical machinery are generally GSP-eligible, implying a greater likelihood of growth. Most articles of iron and steel are already imported duty-free and those that are not, are generally GSP-eligible, implying potential for more growth under GSP. Articles of leather are not typically eligible for GSP benefits, so there is less chance of trade gains in these product categories.

The possibility of GSP eligibility may have the greatest implication for Vietnam’s machinery and electrical machinery industries, since the Vietnamese government has been actively promoting its nation to overseas investors as a good location for machinery and electrical machinery operations. In addition, rising production costs in other parts of Asia—especially in China—are leading manufacturers to explore alternative locations for their Asian operations. Chinese companies, in particular, facing rising labor costs and the strengthening of the renminbi (RMB) against the U.S. dollar, may find the added bonus of GSP eligibility an incentive to relocate their final assembly operations to Vietnam. Such a shift could partially offset the general rise in the U.S. bilateral trade deficit with China, but would also increase the U.S. bilateral trade deficit with Vietnam. However, all of these trade effects would be limited in size by the competitive need limits (CNLs).

Vietnam’s designation as a BDC under the GSP is likely to have little effect on U.S. producers of import-competing products, because domestic producers are largely shielded from severe economic impact under the preference due to the CNLs and other restrictions. Furthermore, if U.S. manufacturers of a product are adversely impacted by imports under GSP, they may petition that the product be removed from GSP eligibility.

U.S. exports to Vietnam may increase if Vietnam is designated as a BDC, but not as quickly as imports. Since the GSP is a non-reciprocal program, acceptance of Vietnam as a BDC will not provide similar duty-free treatment for U.S. exporters. In 2011, the United States exported about \$4.3 billion in goods to Vietnam, up from approximately \$368 million in 2000. In many cases, a significant portion of some of the leading U.S. exports to Vietnam – machinery, cotton, polypropylene, and scrap iron and steel—return to the United States as parts or components of imports from Vietnam. In addition, many U.S. manufacturers use imports under GSP (such as wiring harnesses, brake and ignition parts, spectacle lenses, and insulated electrical conductors) as inputs for finished products that could later be exported to Vietnam and other GSP beneficiaries.

⁴⁵ Harmonized Tariff Schedule.

Issues for Congress

The GSP statute provides the President with the authority to designate any country a beneficiary developing country, provided the country complies with the conditions described in the law. Therefore, Congress does not need to act to approve GSP status for Vietnam. The President is required to notify Congress of his intention, however.⁴⁶

Congress could authorize or instruct the President to designate—or *not* to designate—Vietnam as a BDC, either as part of the legislation to extend the GSP program or in separate legislation. For example, in the 112th Congress, the Fostering Rights through Economic Engagement in Vietnam (“FREE Vietnam”) Act (H.R.5157) would prohibit the granting of GSP status unless the President certifies that Vietnam has met certain human rights and other conditions. In addition, Congress could pass legislation stipulating additional criteria for the President to consider when deciding to confer BDC status to Vietnam. Such legislation could also include specific restrictions on GSP-eligible products for Vietnam.

Over the past decade, Congress has debated a number of issues with respect to U.S.-Vietnam relations, particularly Vietnam’s growing and increasingly liberalized economy and its human rights record. The United States also has a sizeable and growing foreign assistance program in Vietnam, and the two countries are expanding their strategic relations. All these issues may factor into the debate over GSP membership.

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⁴⁶ Under the provisions of 19 U.S.C. 2462(f)(1), the President must notify Congress 60 days prior to the designation of a least-developed BDC; no time period is specified for BDC designation.