

**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF THE U.S. TRADE REPRESENTATIVE**

U.S. Generalized System of Preferences (GSP)

**LIST OF PUBLIC COMMENTS
for
SOCIALIST REPUBLIC OF VIETNAM COUNTRY ELIGIBILITY REVIEW**

(In Response to Federal Register Notice in Vol. 73, No. 120, Friday, June 20, 2008, Page No. 35173.)

August 4, 2008

<u>Date</u>	Documents from the Government of Socialist Republic of Vietnam	
1. 5-9-2008	Government of Socialist Republic of Vietnam	Letter Requesting GSP Status
2. 5-9-2008	Government of Socialist Republic of Vietnam	Statement re Supporting Documentation (English)
3. 5-9-2008	Government of Socialist Republic of Vietnam	Statement re Supporting Documentation (Vietnamese)

<u>Date</u>	<u>Comments Submitted By:</u>
1. 6-10-2008	GE Southeast Asia
2. 6-19-2008	US-ASEAN Business Council – Letter to Ambassador Schwab
3. 7-19-2008	Vietnomics – US-Vietnam Partnership Advisors
4. 7-21-2008	Carrix Inc.
5. 7-22-2008	National Retail Federation (NRF)
6. 7-22-2008	TOTO USA, Inc.
7. 7-30-2008	Vietnam Chamber of Commerce and Industry (VCCI)
8. 7-31-2008	Fuji Denso Vietnam Company
9. 8-1-2008	Alcoa, Inc.
10. 8-1-2008	Andre Sauvageot, Colonel, U.S. Army (Retired)
11. 8-1-2008	Lockheed Martin Corporation
12. 8-4-2008	AFL-CIO
13. 8-4-2008	U.S. Committee to Protect Vietnamese Workers (CPVM-USA)
14. 8-4-2008	International Intellectual Property Alliance (IIPA)
15. 8-4-2008	Mechanix Wear, Inc. ("MW")
16. 8-4-2008	PhRMA – Pharmaceutical Research and Manufacturers of America
17. 8-4-2008	PRCB Producers: Genpak Corporation; Grand Packaging Incorporated; Hilex Poly Co., LLC; Roplast Industries, Inc.; Superbag Corporation; and Unistar Plastics LLC
18. 8-4-2008	Retail Industry Leaders Association (RILA)
19. 8-4-2008	U.S. Association of Importers of Textiles and Apparel (USA-ITA)
20. 8-4-2008	U.S. Chamber of Commerce – International Division – Asia Department
21. 8-4-2008	US-ASEAN Business Council – Letter to Chairman, GSP Subcommittee
22. 8-4-2008	Yazaki North America, Inc. (YNA)

Vietnam Eligibility Review
GE Southeast Asia
Letter of June 10, 2008

Submission regarding Vietnam's GSPFrom: Frenkel, Orit (GE, Corporate,
consultant) [orit.frenkel@ge.com]
Sent: Monday, July 21, 2008 6:00 PM **LETTER OF JUNE 10, 2008**
To: FN-USTR-FR0711
Subject: Submission regarding Vietnam's GSP

Many thanks for your consideration of Vietnam's petition for GSP status.
Attached is a letter of support from GE.

Orit Frenkel
General Electric Company
1299 Pennsylvania Ave., NW, Suite 900W
Washington DC 20004
T: 202-637-4273
F: 202-637-4300



GE Southeast Asia

Stuart L. Dean

President

Level 6 & 7 1 Sentral Jalan Travers Kuala Lumpur Sentral 1 Sentral Level 8

Kuala Lumpur, 50470 Malaysia

Tel: 603-2270-5300

Fax: 603-2273-7988

stuart.dean@ge.com

June 10, 2008

Ambassador Susan Schwab
The Honorable Ed Schafer
The Honorable Carlos M. Gutierrez
The Honorable Elaine Chao
The Honorable Condoleezza Rice
The Honorable Henry Paulson

I am writing on behalf of the General Electric Company to express our support for Vietnam's designation as a Beneficiary Developing Country (BDC) under the Generalized System of Preferences (GSP) program.

GE has been a strong supporter of US-Vietnam trade relations for many years. The company started selling medical equipment in Vietnam in the early 1990s, under a humanitarian exception to the embargo, progressing to our establishment of an office in Hanoi in 1993. Today, GE has offices in both Hanoi and Ho Chi Minh City, and all of GE's major businesses are operating in Vietnam. GE has benefited as ties between the United States and Vietnam have strengthened, and as Vietnam has entered the global trading system with its accession to WTO. As a company doing business in Vietnam, we can attest to the tremendous economic reforms and significant market liberalizations that Vietnam has undertaken. Becoming a beneficiary developing country under GSP would be a natural progression in Vietnam's relationship with the United States, and would provide Vietnam the added support it needs, as a developing country entering the world economy.

Vietnam has demonstrated its commitment to rule of law, bringing its legal regime into compliance first with the U.S.-Vietnam Bilateral Trade Agreement and now with World Trade Organization rules. We have every reason to believe that it would similarly comply with GSP conditions, and that participation in the GSP will give the U.S. another avenue to discuss additional issues, such as IPR and labor rights, that are part of the requirements to maintain GSP status.

We believe that as a developing country, Vietnam qualifies for GSP status, and that it has shown its ability and willingness to step up to the international rules governing the international trading regime. As such, we urge you to respond positively to Vietnam's request for designation as a BDC under GSP. Many thanks for your consideration of this matter.

Sincerely,

**Vietnam Eligibility Review
US-ASEAN Business Council
Letter of June 19, 2008,
to Ambassador Susan Schwab**

MessageFrom: Sandler, Marideth
Sent: Thursday, June 19, 2008 4:28 PM
To: Teeter, Regina; FN-USTR-FR0711
Cc: Bisbee, David F.
Subject: FW: US-ASEAN Business Council Letter in Support of GSP

Importance: High

Please

-----Original Message-----

From: Lan Mai Ha [mailto:mha@usasean.org]
Sent: Thursday, June 19, 2008 3:52 PM
To: Sandler, Marideth
Subject: US-ASEAN Business Council Letter in Support of GSP
Importance: High

Dear Ms. Marideth Sandler,

Please find attached the US-ASEAN Business Council's letter in support of GSP for Vietnam.

Thank you,

Mai-Lan Ha

Manager - Vietnam
US-ASEAN Business Council
1101 17th Street, NW
Suite 411
Washington, DC 20036
202-416-6710



June 19, 2008

Ambassador Susan Schwab
U.S. Trade Representative
600 17th Street, NW
Washington, DC 20508

Dear Ambassador Schwab:

The Council recently concluded business missions to Thailand, Cambodia, and Vietnam. During our May 5 – 7 mission to Vietnam, we had particularly interesting and productive sessions with the leaders of the Vietnamese government and were enthusiastically welcomed at all levels of government.

During the course of our meetings, the leaders of the Vietnamese government, including Prime Minister Nguyen Tan Dung expressed that Vietnam's designation as a Beneficiary Developing Country (BDC) under the Generalized System of Preferences (GSP) program would be of great importance in the development of Vietnam's private sector and overall economic development.

The Council and its members, as supporters of stronger Vietnam – United States relations, view GSP as a natural progression in the growth of relations that leads to economic reform and modernization. Since the resumption of diplomatic relations in 1995, Vietnam and the United States have become close partners in Vietnam's development and integration into the world economy. Vietnam has made great strides in transitioning towards a market economy, joining the World Trade Organization and assuming economic liberalization as a responsible and reliable participant in the global trading system.

The Council strongly endorses including qualifying products of Vietnam under this important program. Importantly, GSP is a poverty reduction program, encouraging the development of trade and self-sufficiency in place of aid. We are impressed that Vietnam to date has been able to distribute the benefits of growth widely throughout the country.

The participation of products of Vietnam in the GSP program also offers mutual bilateral benefits, helping Vietnam to meet its economic potential while creating new opportunities and consumers for U.S. manufacturing and service companies and for U.S. investment. Through its annual review process and closer economic integration, GSP further supports development in priority areas for US business and leads to broader economic freedoms on such issues as adequate and effective protection of intellectual property rights and promotion of internationally recognized worker rights.

For all these reasons, the US-ASEAN Business Council urges the Administration to respond positively to Vietnam's request.

Please let me know if we can be of any assistance to you and your colleagues now and in the future.



Sincerely,

A handwritten signature in blue ink that reads "Matthew P. Daley".

Matthew P. Daley
President
US-ASEAN Business Council

On behalf of:

The General Electric Company – Chairman of the US-Vietnam Committee of the US-ASEAN Business Council

ConocoPhillips – Vice Chair of the US-Vietnam Committee of the US-ASEAN Business Council

The Boeing Company

Chevron

Discovery Communications

The Dow Chemical Company

Exxon Mobil

General Motors Corporation

Hewlett Packard

Johnson & Johnson

J.Ray McDermott

Nike

Time Warner

The United Technologies Corporation

Vietnomics

US-Vietnam Partnership Advisors

Vietnam Eligibility Review
Vietnomics - US-Vietnam Partnership Advisors

From: Jeff Browne [jbrowne@vietnomics.com]
Sent: Monday, July 21, 2008 10:41 AM
To: FN-USTR-FR0711
Subject: Designation of the Socialist Republic of Vietnam as a GSP
Beneficiary Country.

*Ref: Letter in support of designation of Socialist Republic of Vietnam as a
GSP Beneficiary Country: FR Doc. E8-14017.*

**To the Chair of the GSP Subcommittee of the Trade Policy Staff Committee
(TPSC):**

Attached please find my letter to the Office of the United States Trade
Representative in support of the designation of the

Socialist Republic of Vietnam as a Beneficiary Developing Country.

Sincerely,

Jeff Browne
President
Vietnomics
12555 Green Meadow
Elm Grove, WI 53122
262-641-0737 -- Cell: 262-271-7330
Email: jbrowne@vietnomics.com
Internet: www.vietnomics.com

July 19, 2008

Ms. Marideth J. Sandler, Chair
GSP Subcommittee, Trade Policy Staff Committee
U.S. Trade Representative
600 17th Street, NW
Washington, DC 20508
United States of America

Ambassador Susan Schwab, U.S. Trade Representative
The Honorable Ed Schafer, Secretary, Department of Agriculture
The Honorable Carlos M. Gutierrez, Secretary, Department of Commerce
The Honorable Elaine Chao, Secretary, Department of Labor
The Honorable Condoleezza Rice, Secretary, Department of State
The Honorable Henry Paulson, Secretary, Department of Treasury

*Ref: Letter in support of designation of Socialist Republic of Vietnam as a GSP Beneficiary
Country: FR Doc. E8-14017.*

Dear Ms. Sandler and members of the GSP Subcommittee:

I am writing to you as the founder of one of the few American businesses that focuses exclusively on building bridges between Vietnam and the United States, and as the adoptive father of two children who were born in Vietnam and have birth families there that are struggling.

As you know, the USTR mission begins with the idea that trade policy can create higher living standards for families. In this spirit, I hope you will help millions of Vietnamese families, including those of my sons, by encouraging President Bush to grant BDC status to their nation.

Because your committee is charged with considering the designation of the Socialist Republic of Vietnam as a beneficiary developing country (BDC) for purposes of the GSP program, your favorable recommendation to the President will be a significant contribution toward an increasingly healthy long-term relationship between Vietnam and the United States. In the long run, this will pay significant dividends for both countries.

My understanding is that, in designating countries as BDCs, the President must take several factors into consideration. Those are listed below (*in italics*) along with my comments as to their applicability to Vietnam's current economic and social situation:

1. *An expression by such country of its desire to be so designated.* Vietnam has expressed great interest in being designated as a beneficiary developing country, and for good reason: BDC designation would encourage diversification of Vietnam's export trade and likely benefit Vietnam's sales of ceramics, electronics, wiring, precious metal, tableware, pens, golf equipment, gaskets, jewelry, baskets, flour and many other products. And of course BDC designation would not affect import sensitive industries.
2. *The level of economic development of such country, including its per capita gross national product, the living standards of its inhabitants, and any other economic factors which the President deems appropriate.* I can report from first-hand experience that the living standards of millions of Vietnamese families are very low, and these families would benefit greatly from favorable trade treatment from the United States where appropriate. Beyond that, the average income for Vietnam's 87 million people is well under \$1,000 and as recently as 2006 was reported at \$690. Moreover, there are wide variations in income within the country, where nearly one third of the population lives in poverty and more than one quarter of the children are malnourished. Poverty in many rural areas is much higher, and in some communities exceeds 50%.
3. *Whether or not other major developed countries are extending generalized preferential tariff treatment to such country.* Beneficiary Developing Country status for Vietnam would be consistent with the preferential treatment many other countries have offered the country and would put the United States in the company of Europe and developed countries in three other continents. Specifically, Vietnam receives benefits from Canada, Japan, Australia, New Zealand, Norway, Turkey, Switzerland, and Russia. Also, as you know, 132 countries have GSP status, and many of those countries are more developed economically and have considerably higher per capita incomes than does Vietnam.
4. *The extent to which such country has assured the United States that it will provide equitable and reasonable access to the markets and basic commodity resources of such country and the extent to which such country has assured the United States that it will refrain from engaging in unreasonable export practices.* Over nearly a quarter century, Vietnam has gradually moved toward a free market economic system that is meeting the expectations of the international community. The county has made particularly significant strides in recent years as a result of negotiations related to – and the ultimate approval of – two trade pacts: (1) the Bilateral Trade Agreement between the United States and Vietnam and (2) membership in the World Trade Organization. In addition, Vietnam has earned the enthusiastic support of the US-ASEAN business council, which recommends a positive response to Vietnam's request.

5. *The extent to which such country is providing adequate and effective protection of intellectual property rights.* Vietnam has been making important progress toward protection of intellectual property rights in the global arena, although progress still needs to be achieved. Beginning with the negotiations that led to the BTA and WTO membership, Vietnam's progress has been steady as the country undertook a public education mission to emphasize the important of intellectual property protections. In addition, Vietnam has become an active supporter of several international property rights entities and compacts. Moreover, Vietnam's progress in creating and strengthening a domestic legal framework for intellectual property protections is expected to continue as the country seeks to improve its credibility on the world's economic stage.
6. *The extent to which such country has taken action to reduce trade distorting investment practices and policies (including export performance requirements); and reduce or eliminate barriers to trade in services.* Vietnam's movement toward free trade meeting international standards beginning in the 1980s has included significant policies to reduce trade barriers. This movement accelerated since 2000 with the Bilateral Trade Agreement between the United States and Vietnam and membership in the World Trade Organization, and its membership in several other international trade partnerships.
7. *Whether or not such country has taken or is taking steps to afford to workers internationally recognized worker rights of association; to organize and bargain collectively; prohibit compulsory labor; provide a minimum age for the employment, and ensure acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.* My understanding is that Vietnam has taken action in the above areas. The Vietnam government ensures workers the right of association, the right to organize and bargain collectively, freedom from compulsory labor, minimum age for the employment of children, and work conditions that include minimum wages, limits on working hours and protections of occupational safety and health. In addition, Vietnam works with international organizations, including the International Labor Organization, the United Nations, and the World Bank to promote worker rights and internationally recognized labor rights. The Vietnam Labor Code guarantees workers' right to strike, minimum wages, maximum working hours, maternity leave and overtime pay.

Overall, Vietnam has made steady progress meeting the expectations and requirements of the international community when it comes to free trade issues. However, as a developing country with significant challenges to overcome, Vietnam needs and would greatly benefit from the Generalized System of Preferences program.

Beyond the documented evidence that Vietnam qualifies for and would benefit from its designation as a BDC, I believe there is a great deal of social capital at stake in this decision. For citizens of Vietnam and the United States, including Vietnamese Americans, the Vietnam War remains a fresh memory and a source of intense emotional attachments. Both nations need to continue doing all they can to heal the wounds of recent history and strengthen the economic and cultural bridges between the two countries. Designation of Vietnam as a beneficiary developing country will be an important step in the right direction.

Thank you for your consideration and for helping build bridges to Vietnam.

Sincerely,

Jeffrey C. Browne
President

**Vietnam Eligibility Review
Carrix Inc.**

Designation of the Socialist Republic of Vietnam as a GSP Beneficiary
CountryFrom: Mark Johnson [Mark.Johnson@SSAMarine.com]
Sent: Monday, July 21, 2008 3:31 PM
To: FN-USTR-FR0711
Subject: Designation of the Socialist Republic of Vietnam as a GSP Beneficiary
Country

Our comments are attached.

Mark Johnson
SSA Marine
1850 M Street, N.W.
Suite 910
Washington, DC 20036
(202) 463-2517

<<Ambassador Schwab.pdf>>



Carrix

1131 SW Klickitat Way
Seattle Washington
98134

800/422-3505 tel
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July 21, 2008

The Honorable Ambassador Susan Schwab
U.S. Trade Representative
600 17th Street, NW
Washington, DC 20508

Re: Designation of the Socialist Republic of Vietnam as a GSP Beneficiary Country

Dear Ambassador Schwab:

I am writing to urge your favorable consideration in support of Vietnam's request that it be designated as a Beneficiary Developing Country (BDC) under the Generalized System of Preferences (GSP).

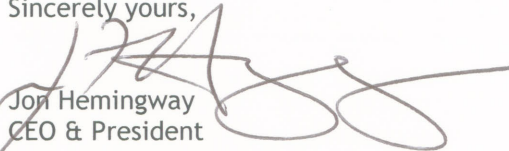
My company, Carrix Inc., is headquartered in Seattle, Washington, and is the parent corporation to affiliates such as SSA International, SSA Marine, Tideworks Technology, and Rail Management Services (RMS). We are the world's largest US owned, privately-held marine container and rail terminal operator and serve more than 120 locations worldwide.

The Administration's favorable consideration to Vietnam's BDC request promises to greatly assist our current effort to develop two state-of-the art marine container facilities in their country. GSP encourages the development of job creating industries such as ours in BDC designated nations and, of course, our port activities will act as a conduit to directly enhance trade between Vietnam and the United States. Although my company is owned by U.S. citizens, it is important to emphasize our policy and preference to partner with a Vietnamese company and integrate Vietnamese personnel into our management and operations, thus meeting one important objective associated with BDC designation.

There is no statutory or regulatory timeline to designate Vietnam as a BDC. However, I would urge your timely consideration prior to the expiration of the President's term. Vietnam's designation as a BDC is separate and distinct from the renewal of GSP by Congress, which expires at the end of this year. Our intent is to work with Members of Congress to extent GSP and have therefore copied Members of the Washington delegation to this letter.

Thank you for your time and consideration of our views. Congress approved normal trade relations (NTR) for Vietnam in 2006 and Vietnam became a member of the WTO in 2007. In my opinion, Vietnam's designation as a BDC is consistent with progress it has made to transition to a market-based, global economy. GSP benefits to Vietnamese eligible products strikes me to be the appropriate mechanism to allow Vietnam to transition to the next level of its development.

Sincerely yours,


Jon Hemingway
CEO & President

cc: Agency GSP Subcommittee Members
The Honorable Patty Murray
The Honorable Maria Cantwell
The Honorable Adam Smith
Ambassador Le Cong Phung

**Vietnam Eligibility Review
National Retail Federation (NRF)**

Designation of the Socialist Republic of Vietnam as a GSP Beneficiary
CountryFrom: Autor, Erik [autore@NRF.com]
Sent: Tuesday, July 22, 2008 4:49 PM
To: FN-USTR-FR0711
Subject: Designation of the Socialist Republic of Vietnam as a GSP Beneficiary
Country

<<Vietnam GSP - NRF Cmnts 2 TPSC 04Aug08.pdf>>

Erik O. Autor
National Retail Federation
325 7th Street, NW
Suite 1100
Washington, DC 20004
(202) 626-8104



July 22, 2008

Marideth J. Sandler
Executive Director of the GSP Program,
Chairman, GSP Subcommittee of the Trade Policy Staff Committee
Office of the U.S. Trade Representative
600 17th Street, NW
Washington, DC 20508

Re: Generalized System of Preferences (GSP) – Comments on Consideration of Vietnam as a Beneficiary Country Under the GSP Program

Dear Ms. Sandler:

Pursuant to the Federal Register notice of June 20, 2008 (73 Fed. Reg. 35,173-35,174), the National Retail Federation (NRF) submits these comments on behalf of its member companies in the U.S. retail industry with respect to the above referenced matter.

NRF is the world's largest retail trade association, with membership that comprises all retail formats and channels of distribution including department, specialty, discount, catalog, Internet, independent stores, chain restaurants, drug stores and grocery stores as well as the industry's key trading partners of retail goods and services. NRF represents an industry with more than 1.6 million U.S. retail companies, more than 25 million employees - about one in five American workers - and 2007 sales of \$4.5 trillion. As the industry umbrella group, NRF also represents over 100 state, national and international retail associations.

NRF and American retailers strongly support granting GSP benefits to Vietnam, just as we have supported past initiatives to normalize political and economic relations between the United States and Vietnam. Designating Vietnam as a GSP beneficiary developing country (BDC) is a logical next step in the 20-plus year process of expanding trade and investment with Vietnam, which in the recent past has included a U.S.-Vietnam bilateral market access treaty, Vietnam's accession to the World Trade Organization (WTO), and legislation granting Vietnam permanent normal trade relations (PNTR).

Liberty Place
325 7th Street NW, Suite 1100
Washington, DC 20004
800.NRF.HOW2 (800.673.4692)
202.783.7971 fax 202.737.2849
www.nrf.com

Retailers and GSP

The GSP program is already an important component of American retailers' global sourcing strategies, particularly with respect to consumer products sold at lower price points to price sensitive U.S. consumers. In 2007, more than \$9 billion worth of goods sold typically by retailers entered the United States duty free under the GSP program, including:¹

- \$3.2 billion of jewelry;
- \$1.6 billion of food products and beverages;
- \$1.4 billion in household goods (e.g., furniture, kitchenware, appliances, etc.);
- \$1.4 billion in lumber and other building materials;
- \$515 million in apparel, footwear, and fabric household goods;
- \$374 million in recreational equipment, and
- \$222 million in home entertainment equipment.

The significant tariff savings under the GSP program improve the cost competitiveness of BDCs relative to major non-GSP eligible suppliers, and accordingly provide retailers an opportunity to diversify product sourcing. Diversification in product sourcing in turn allows retailers to provide their customers, American families, with greater value and selection for their shopping dollar, a particularly important consideration in tough economic times.

Vietnam's GSP Potential

Vietnam is a small but growing supplier to the U.S. market. In 2007, Vietnam ranked 30th among all countries with \$10.5 billion worth of shipments to the United States – behind Angola and Iraq and ahead of Spain and the Philippines.² Vietnam's top exports to the United States are almost exclusively consumer goods, including furniture, footwear, apparel, coffee, and seafood.

As a result, Vietnam has become an important sourcing option for American retailers. However, its apparel- and footwear-driven exports mean that Vietnam faces much higher-than-average tariffs on its most important products. In 2007, Vietnamese products faced tariffs of \$934 million – higher than all other countries except China, Japan, Germany, and Italy. However, few of these important products would be eligible for GSP benefits were Vietnam to become an eligible BDC.

¹ U.S. Bureau of the Census.

² U.S. Bureau of the Census.

**Top 10 U.S. Imports from Vietnam, 2007
(millions)**

<i>Apparel and household goods-cotton</i>	\$2,572.8
<i>Apparel and household goods-other textiles</i>	1,673.0
<i>Furniture, household items, baskets</i>	1,206.9
<i>Sporting and camping apparel, footwear and gear</i>	782.5
<i>Fish and shellfish</i>	692.2
<i>Crude oil</i>	446.3
<i>Footwear of leather, rubber, or other materials</i>	387.3
<i>Green coffee</i>	305.2
<i>Nuts and preparations</i>	222.7
<i>Computer accessories, peripherals and parts</i>	217.7
Total, Top 10	8,506.5
<i>Other</i>	2,034.6
Total	\$10,541.2

Source: U.S. Bureau of the Census

Nevertheless, the value of the U.S. imports from Vietnam of products that would be eligible for GSP has also increased dramatically over the last several years. In 2007, the United States imported nearly \$640 million worth of goods that could have qualified for duty-free free treatment if Vietnam were designated as a GSP BDC. Instead, U.S. importers and consumers paid more than \$26 million in duties to import those goods.

**Value of GSP-Eligible Imports Vietnam, 2004 - 2007
(Millions)**

	2004	2005	2006	2007
Value	\$201.1	\$256.3	\$410.6	\$638.5
Tariffs Assessed	9.2	11.4	17.8	26.7

Source: Derived from U.S. Bureau of the Census data

A variety of products of interest to retailers could benefit if Vietnam received GSP benefits, including:

- Ceramic and porcelain homewares (HTS 69139050, 69101000);
- Speakers (HTS 85184020, 85182200, 85182980);
- Precious metal and imitation jewelry (HTS 71131950, 71171990);

- Sporting equipment (HTS 42032120, 62160046, 95063100, 95063900);
- Wooden tableware (HTS 44190080), and
- Office/school supplies (HTS 96091000, 96082000).

Granting duty-free benefits to these products would save American retailers millions of dollars and provide new incentives to import more of these products from Vietnam. In particular, it would increase the competitiveness of Vietnamese goods vis-à-vis similar products from China. China is currently the leading source for 12 of those 14 products and, in the case of golf clubs (HTS 95063100), accounts for 94 percent of total U.S. imports.

Vietnam and the GSP Eligibility Criteria

The Federal Register notice cites seven criteria upon which Vietnam's eligibility status will be judged. NRF would like to comment on several of those criteria, including Vietnam's level of economic development; the extent to which Vietnam has reduced or eliminated barriers to trade in services, has assured it will provide equitable access to its markets, and refrain from unreasonable export practices; and whether or not other countries extend GSP benefits to Vietnam.

Although Vietnam has shown remarkable growth of the last 20 years, it still has a long way to go before it can be considered a developed country. According to the United Nations Development Program's Human Development Report 2007/2008, a comparative measure of life expectancy, literacy, education, and standards of living, Vietnam ranks 105th out of 175 countries.³ Vietnam fares even worse when looking at the World Bank's per capita gross national income (GNI). According to the most recent World Bank report, Vietnam's per capita GNI of only \$790 ranks it 170th of all countries (bottom quintile) and classifies it as "low income."⁴

How do those statistics relate to current GSP criteria and other GSP beneficiaries? Vietnam's GNI per capita is just 1/14 of the statutory GSP "graduation" level, and all but two of the 35 countries that rank below it – Laos and Tajikistan – currently receive GSP benefits. Numerous countries with higher GNI per capita receive GSP benefits, including 13 countries classified as "least developed" BDCs (LDBDCs), which receive duty-free access to the U.S. market for an additional 1,400 tariffs lines. There is relatively little question that Vietnam's level of economic development justifies preferential market access under a program like GSP, and, indeed, even as a least-developed BDC.

³ See <http://hdr.undp.org/en/>.

⁴ See <http://go.worldbank.org/K2CKM78CC0>.

LDBDCs with a Higher GNI Per Capita than Vietnam

<i>Angola</i>	<i>Kiribati</i>	<i>Sao Tome and Principe</i>
<i>Bhutan</i>	<i>Lesotho</i>	<i>Vanuatu</i>
<i>Cape Verde</i>	<i>Mauritania</i>	<i>Yemen, Rep. of</i>
<i>Djibouti</i>	<i>Samoa</i>	<i>Zambia</i>
<i>Equatorial Guinea</i>		

Source: Based on data from the World Bank and the Office of the U.S. Trade Representative

Vietnamese efforts to open its market to U.S. trade in goods and services also qualify it for GSP beneficiary status. In 2001, Vietnam and the United States signed a Bilateral Trade Agreement that covered six major areas: market access for industrial and agricultural goods, protection of intellectual property, market access for services, investment protection, business facilitation, and transparency. The 2001 agreement set the stage for two further milestones in 2006 that NRF and American retailers strongly supported: a bilateral market access agreement as part of the process to complete Vietnam's accession to the World Trade Organization (WTO) and Congressional legislation granting Vietnam PNTR. These agreements address several of the criteria for GSP eligibility:

- Barriers to trade in services—Vietnam agreed to open its distribution services market by January 1, 2009 under the 2006 market access agreement. That commitment will allow U.S. retailers to open and wholly own stores and other retail operations in Vietnam essentially without restriction.
- Reasonable market access—Vietnam agreed to significantly reduce its bound tariffs on imported products to an average of 15 percent as part of its WTO accession. Not only will that commitment help U.S. exporters; it will make it easier for U.S. retailers operating in Vietnam to provide their Vietnamese customers with consumer products made in the United States.
- Trade-distorting export practices—Vietnam agreed to reduce export duties on non-ferrous and steel scrap and eliminate WTO prohibited industrial subsidies. Vietnam also agreed to stop subsidy disbursements to Vietnam's textile and garment industries and terminate all WTO-prohibited subsidies to these industries on accession to the WTO, which occurred in early 2007.

As a result of the advances made by Vietnam over the last several and the success of past bilateral engagement, President Bush and Prime Minister Nguyen Tan Dung announced in June 2008 that the two countries would launch negotiations for a bilateral investment treaty.

The fact that numerous other developed – and developing – countries extend GSP benefits to Vietnam is yet another reason the United States should do the same. As a result of Vietnam's low level of economic development, it already receives duty-free or reduced tariff benefits under multiple GSP programs, including those in Australia, Canada, the European Union, Japan, New Zealand, Norway, and Switzerland. Even Russia and Turkey, themselves recipients of duty-free access to the U.S. market under the GSP program, extend similar benefits to Vietnam. In fact, the United States is the only major developed country with a GSP program that does not extend these benefits to Vietnam. It is time for the United States to recognize that Vietnam does belong among the more than 130 countries and territories that receive preferential access to the U.S. market.

In conclusion, NRF strongly supports Vietnam's inclusion in the GSP program. Granting GSP benefits for Vietnam would help retailers diversify sourcing and lower prices for American families, all while supporting and promoting development in a very poor, yet growing, country. Providing these benefits creates a win-win situation at home and abroad. NRF appreciates the opportunity to offer our views on behalf of our member companies.

Sincerely,

A handwritten signature in dark ink that reads "Erik O. Autor". The signature is written in a cursive, slightly slanted style.

Erik O. Autor
Vice President, Int'l Trade Counsel
National Retail Federation
325 7th Street, NW
Suite 1100
Washington, DC 20004
(202) 626-8104
autore@nrf.com

Vietnam Eligibility Review
TOTO USA, Inc.

From: Wing, Frances [fwing@totousa.com]
Sent: Tuesday, July 22, 2008 9:43 AM
To: FN-USTR-FR0711
Subject: GSP and Vietnam

I am in favor of Vietnam becoming a GSP country.

Frances Wing
Export/Import Manager
TOTO USA, INC.
7700 Spence Road
Fairburn, GA 30213
678-466-1300 Ext. 1282
E-fax: 678-466-1334
Email: fwing@totousa.com

**Vietnam Eligibility Review
Vietnam Chamber of Commerce and Industry (VCCI)
Letter of July 30, 2008**

From: Trang VCCI [trangnt@vcci.com.vn]
Sent: Friday, August 01, 2008 5:17 AM
To: FN-USTR-FR0711; FN-USTR-ContactUSTR
Cc: Tran Huu Huynh; nghiabt@vcci.com.vn; VCCI HN- Nguyen TT Trang
Subject: Designation of the Socialist Republic of Vietnam as a GSP Beneficiary
Country

Nguyen Thi Thu Trang
Legal Department
Vietnam Chamber of Commerce and Industry
9 Dao Duy Anh - Hanoi - Vietnam
Tel: 0084-4-5742022 (ext 356)
Fax: 0084-4-5771459
www.chongbanphagia.vn; www.antidumping.vn

Transmittal Message

To: The US Trade Representative;
The Chairman of the GSP
Subcommittee of the Trade Policy Staff Committee (TPSC)

Attached: Letter to the US Trade Representative on the Designation of the Socialist Republic
of Vietnam as a GSP Beneficiary Country

From: Mr. Vu Tien Loc
Chairman and President of Vietnam Chamber of Commerce and Industry (VCCI) –
Member of Vietnam National Assembly
Contact:
VCCI Headquarter:
9, Dao Duy Anh Street
Hanoi, Vietnam
Tel: (844) 5742022 - Fax: (844) 5742020, 5742030 - E-mail: vcci@fmail.vnn.vn



VIETNAM CHAMBER OF COMMERCE AND INDUSTRY

Head Office : international Trade Center - 9 Dao Duy Anh Str., Hanoi

Tel : (844) 5742022 - Fax : (844) 5742020, 5742030

E-mail : vcci@fmail.vnn.vn - Web : www.vcci.com.vn

Hanoi, July 30th 2008

Ambassador Susan Schwab
U.S Trade Representative
600 17th Street, NW
Washington, DC 20508

Dear Ambassador Schwab,

On behalf of Vietnam business community, the Vietnam Chamber of Commerce and Industry (VCCI) would like to express our thanks and high appreciation of your USTR's goodwill, cooperation and contribution to the impressive development of Vietnam - United States bilateral trade relation in recent years.

We are very pleased to learn that the United States Administration is now considering designating Vietnam as a Beneficiary Developing Country (BDC) under the Generalized System of Preferences (GSP) program and hope that the United States President will approve this designation very soon.

We do believe that the designation of Vietnam as a BDC under the United States GSP program will constitute an important factor for accelerating the trade growth between our two countries and bring in significant mutual benefits.

With the current remarkable trade flow between Vietnam and the United States, if being designated as a BDC of the United States GSP program, Vietnam would have another crucial advantage to improve its competitiveness, enhance the private sector and foster the economy. At the same time, the GSP program granted to Vietnam would also create significant opportunities for American importers, consumers, investors in Vietnam, etc.

Having been member of WTO since 11 January 2007, concluded and implemented more than 200 bilateral and/or regional trade agreements with almost all trade partners around the world, Vietnam is trying its best to integrate into the global economy in line with market rules and trade liberalization. Also, by adopting crucial new legal texts and establishing respective implementing mechanisms, Vietnam has undertaken important and thorough reforms to create a favorable business environment and level playing field where ownership of investors is respected, fundamental rights of workers recognized, systems to protect intellectual properties set up, etc. This fact is highly appreciated by Vietnam and foreign business communities, including American investors.

These efforts of Vietnam may generate even more positive fruits in leveling up the modest income of Vietnamese workers and in strengthening the competitive capacity of Vietnamese enterprises, which is still unsustainable and vulnerable to changes if Vietnam is designated as beneficiary of GSP program by important trade partners such as the United States.

For the above reasons, Vietnam business community and VCCI respectfully request the United States to designate Vietnam as a BDC under GSP program.

Thank you very much for your cooperation.

Sincerely,

Vu Tien Loc

Chairman and President of Vietnam Chamber of Commerce and Industry
Member of the Vietnam National Assembly

**Vietnam Eligibility Review
Fuji Denso Vietnam Co., Ltd.**

From: Fuji Denso Vietnam [fujidensouvn@hcm.vnn.vn]
Sent: Thursday, July 31, 2008 10:37 PM
To: FN-USTR-FR0711
Subject: Designation of the Socialist Republic of Vietnam as a

Dear Sirs,

Greetings from Fuji Denso Vietnam!

We would like to join in a petition as attached for Designation of Socialist Republic of Vietnam as a GSP Beneficiary Country: FR Doc. E8-14017.

We hope that US-Vietnam trade relations will develop stronger and stronger for mutual benefits.

Thank you very much for your kind attention.

Best regards,

Andoh Masatoshi
Managing Director

Fuji Denso Vietnam Co., Ltd.
Factory I : DT744 An Tay, Ben Cat,
Binh Duong Province, Vietnam
Tel : 84-650-580-667
Fax : 84-650-580-671
Factory II : Lien Xa St., An Dien, Ben Cat,
Binh Duong Province, Vietnam
Tel : 84-650-579-027
Fax : 84-650-580-976
Email : fujidensouvn@hcm.vnn.vn

July 31, 2008

Chairman, GSP Subcommittee
Trade Policy Staff Committee
Office of the U.S. Trade Representative
1724 F Street, NW., Room F-220,
Washington, DC 20508

**RE: Designation of Socialist Republic of Vietnam as a GSP Beneficiary
Country: FR Doc. E8-14017**

Dear Chairman of the GSP Subcommittee:

In response to the June 20 Federal Register notice soliciting public comment, Fuji Denso Vietnam Co. is pleased to express its strong support for designation of Vietnam as a beneficiary developing country (BDC) under the U.S. Generalized System of Preferences (GSP) program.

We are member of Amcham Hochiminh as a foreign invested manufacturer of furniture in provincial area in the South of Vietnam. We have been operating for 6 years and our main market is the United States ever since.

GSP is a win-win for the United States and Vietnam. Duty-free entry into the United States for qualifying eligible products helps make U.S. manufacturers more competitive and consumer goods more affordable for Americans. At the same time, it makes Vietnamese products more competitive and helps Vietnam reach its full economic potential by diversifying its market and becoming more globally competitive in non-traditional products. That economic success also should reinforce support within Vietnam for continued economic and legal reform, which is essential for U.S. companies doing business in or with Vietnam. In addition, as more workers in Vietnam earn more, sales of American goods and services will expand in Vietnam.

More specifically, with Vietnam-made products eligible for GSP treatment, Fuji Denso Vietnam Co. as well as others in the industry can expand our export market. We all will be able to offer competitive price on a fair basis with Chinese manufacturers. It becomes now a phenomenon that more and more US wholesalers, retailers and traders of furniture have shifted from China to Vietnam to source for

various pieces of furniture. US customers foresee Vietnam as a potential market to supply quality furniture at affordable price to meet US market demands.

Aside from the economic benefits, Fuji Denso Vietnam Co. stands to gain from enhanced trade ties, it is clear that Vietnam meets each of the mandatory and discretionary eligibility criteria for designation as a GSP beneficiary. The United States is one of few developed countries that have yet to extend GSP to Vietnam. The European Union, Australia, New Zealand, Canada, and Japan, among others, all have conferred GSP benefits on Vietnam, recognizing that Vietnam's economic development falls well below that of most other nations in East Asia and would benefit significantly from the GSP program. Recent rampant inflation in Vietnam has exacerbated poverty in Vietnam, with more people unable to earn enough to pay for essential goods and services, and making it that much more important that additional measures, such as GSP benefits, be made available to increase Vietnam's competitiveness in the global market.

Vietnam has made great strides over the past decade to modernize and transform itself into a market economy, repeatedly demonstrating its sincere commitment to become a responsible stakeholder in the global trading system. The GSP program would continue and build on that progress. In 2001, the U.S. and Vietnam signed a Bilateral Trade Agreement, under which Vietnam committed to widespread market reforms and agreed to provide most-favored-nation and national treatment to U.S. products. Most recently, in 2006, Vietnam acceded to the World Trade Organization. As a result, Vietnam has dramatically revamped its intellectual property, investment, agriculture and services laws to meet its obligations under the WTO. In June, Vietnam agreed to enter into negotiations with the United States on a Bilateral Investment Treaty, although it already has a record of respecting arbitral awards as a member of the New York Convention.

This same commitment and effort is evident in the reforms of Vietnam's labor law, including in the area of worker rights, an issue of tremendous importance to Fuji Denso Vietnam Co., which upholds strict corporate codes of conduct around the globe. Vietnam has demonstrated steady progress on domestic legal protections relating to the right of association, the right to organize and bargain collectively, prohibitions on the use of any form of forced or compulsory labor, a minimum age for the employment of children, acceptable conditions of work, and a prohibition on the worst forms of child labor. It has signed and implemented five of the eight core International Labor Organization conventions relating to compulsory labor, income equality, discrimination in the workforce, minimum age of labor and worst forms of child labor. It is working in tandem with

the ILO and international donors to ensure that these commitments are fully implemented.

Vietnam clearly has demonstrated a deep commitment to and a record of accomplishment in meeting the GSP eligibility criteria. Through its annual review process, the GSP program will provide an avenue for continued bilateral dialogue and leverage on all of these important trade-related issues.

For all these reasons, Fuji Denso Vietnam Co. strongly supports designation of Vietnam as a BDC under the GSP program.

Sincerely,

Andoh Masatoshi
Managing Director

**Vietnam Eligibility Review
Alcoa Inc.
Letter of August 1, 2008**

From: Wisor, Russell C. [Russell.Wisor@alcoa.com]
Sent: Thursday, July 24, 2008 9:31 AM
To: FN-USTR-FR0711
Subject: Designation of the Socialist Republic of Vietnam as a GSP
Beneficiary Country

The submission of Alcoa Inc. on the captioned subject is attached.

<<Alcoa Filing on Vietnam GSP Status.doc>>

Russell C. Wisor
Vice President
Government Affairs
Alcoa
1909 K Street, NW
Suite 750
Washington, DC 20006
202.956.5306
Russell.Wisor@Alcoa.com

**Submission of Alcoa Inc.
To the
Office of the United States Trade Representative
In Support of
Designating the
Socialist Republic of Vietnam
As a
GSP Beneficiary Country
August 1, 2008**

**Submitted on Behalf of Alcoa By
Russell C. Wisor
Vice President
Government Affairs
Alcoa
1909 K Street, NW
Suite 750
Washington, DC 20006
202.956.5306
Russell.Wisor@Alcoa.com**

Alcoa is the world leader in the production and management of primary aluminum, fabricated aluminum and alumina combined, through its active and growing participation in all major aspects of the industry. Alcoa serves the aerospace, automotive, packaging, building and construction, commercial transportation and industrial markets, bringing design, engineering, production and other capabilities of Alcoa's businesses to customers. In addition to aluminum products and components including flat-rolled products, hard alloy extrusions, and forgings, Alcoa also markets Alcoa® wheels, fastening systems, precision and investment castings, and building systems. The Company has 97,000 employees in 34 countries.

Alcoa supports the designation of the Socialist Republic of Vietnam GSP status. Vietnam meets several of the eligibility criteria to be granted GSP status, including having expressed its desire to receive this designation.

As economic and trade ties continue to strengthen and grow between the United States and Vietnam, the granting of GSP status will be one more positive step in furthering a strong and necessary bond between the two countries, and will create a more favorable environment for US direct investment in Vietnam.

Of particular interest to Alcoa is the fact that Vietnam is inviting foreign investors to participate in developing its natural resources, specifically bauxite that is needed by the aluminum industry.

On June 24, 2008 Alcoa signed an agreement with Vietnam's leading minerals company, Vietnam National Coal-Minerals Industries Group (Vinacomin) for cooperation in developing the aluminum industry there. Under the agreement, we will conduct due diligence on the acquisition of a 40 percent interest in the Nhan Co bauxite mine and alumina refinery in Dak Nong Province. In addition, we have agreed to conduct a joint feasibility study with Vinacomin on developing the Gia Nghia bauxite mine and alumina refinery project also located in Dak Nong Province.

In addition to the business opportunity that these investments represent to Alcoa, there will be significant potential for involvement of other US corporations when the projects proceed into the implementation stage.

Alcoa believes that granting Vietnam GSP status will facilitate additional investment opportunities for US companies similar to many of the projects already underway. We urge favorable consideration and action in this important matter.

Vietnam Eligibility Review
Andre Sauvageot, Colonel, U.S. Army (Retired)

From: Andre Sauvageot [andresrvusa@gmail.com]
Sent: Friday, August 01, 2008 11:52 AM
To: FN-USTR-FR0711
Subject: GSP for Vietnam

1 August 2008

Andre Sauvageot
Colonel, U.S. Army (retired)
Independent Contractor

1915 Buckthorn Lane
Reston, Virginia 20191
Tel: (703) 620-1380 (USA)
Tel: (011) 84 91 263-1226 (VN)

Ambassador Susan Schwab
U.S. Trade Representative
600 17th Street, NW
Washington, DC 20508

Dear Ambassador Schwab:

I am a retired U.S. Army officer, with 9 tours (years) of duty in wartime Vietnam, followed by post-war U.S. Government service to do political analysis of Vietnam and assist with the MIA/POW issue. Following this, I helped American companies (General Electric and Oracle) develop markets in Vietnam and create jobs for American workers, in strict compliance with U.S. policy. And am currently encouraging other companies (American and foreign) to get enter Vietnam's market and advising them how to do it.

Designation of Vietnam as a Beneficiary Developing Country (BDC) this year, while the current GSP authorization is still in effect, would greatly encourage both the American and Vietnamese business communities because this designation would remain valid even if the GSP program is not renewed by the 110th Congress. In addition, this should be a bi-partisan issue on which President Bush, both the Democratic and Republican presumptive nominees would probably agree, as well as most members of Congress.

In more general terms, please consider: (1) U.S. and Vietnam (SRV) have full diplomatic relations; (2) U.S. has granted Vietnam PNTR status in compliance with our respective WTO membership; (3) U.S. now Vietnam's single largest export market, with implicit leverage to work cooperatively toward shared objectives; (4) SRV is one of the 21 most trade dependent nations (trade as % of GDP) in the world--North Korea is the least; (5) SRV plays an increasingly important role in ASEAN in which it is the second most populous member and among the most politically stable; (6) the U.S. & SRV have shared geopolitical interests in a prosperous, peaceful region in which critical sea lanes are not dominated by East Asia's emerging giant; (7) Vietnam maintains a secular state--a natural ally against terrorism generated by Islamic (or any) extremism; (8) SRV cooperates with the U.S. against trafficking in drugs and people.

In addition, designating Vietnam quickly as a BDC is the next logical step in a relationship which has seen steady growth since the U.S. lifted the trade embargo in 1994 and both countries reestablished diplomatic relations in 1995.

BDC designation reinforces Vietnam's already enlightened social, economic policies such as the elimination of hunger and reduction of poverty, which has been praised by the UNDP for its efficacy in comparison with many other developing countries. Because GSP encourages poverty reduction via increased self sufficiency.

Finally, expeditious designation of Vietnam as a BDC will help certain U.S. businesses gain or maintain a competitive edge in Vietnam.

Foreign Governments and parliaments naturally work to persuade Vietnam's leadership that they present the best opportunities for Vietnam's continued growth. Other developed economies which have already extended GSP benefits to Vietnamese products include: the European Community, Canada, Australia, New Zealand, Norway, Turkey, Switzerland and Russia. Hopefully, we will do no less.

Sincerely,

Andre Sauvageot
Colonel, U.S. Army (retired)
Independent Contractor
Member American Chamber of Commerce, Hanoi Chapter
Currently Representative for Bombardier Regional Aircraft in Vietnam and
Member, U.S. Indonesian Society

**Vietnam Eligibility Review
Lockheed Martin Corporation
Letter of Aug. 1, 2008**

Designation of the Socialist Republic of Vietnam as a GSP Beneficiary Country -
LOCKHEED MARTIN PROPRIETARY INFORMATIONFrom: Baca, Diana L
[diana.l.baca@lmco.com]
Sent: Monday, August 04, 2008 3:53 PM
To: FN-USTR-FR0711
Subject: Designation of the Socialist Republic of Vietnam as a GSP Beneficiary
Country

<<M Sandler 08-1-08.pdf>>

Diana Baca

Lockheed Martin Corporation

Government & Regulatory Affairs

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E-mail: gerald.musarra@lmco.com



Gerald Musarra
Vice President
Government and Regulatory Affairs

August 1, 2008

Ms. Marideth Sandler
Executive Director, GSP Program and
Chairman, GSP Subcommittee, Trade Policy Staff Committee
Office of the United States Trade Representative
Room F-220, 1724 F Street, NW
Washington, DC 20508

RE: Request for Public Comments per Federal Register Notice dated June 20, 2008 (Volume 73, Number 120, pp. 35173-35174).

Lockheed Martin Corporation principally researches, designs, develops, manufactures, integrates, operates and sustains advanced technology systems and products, and provides a broad range of management, engineering, technical, scientific, logistics and information services. We serve both domestic and international customers with products and services that have defense, civil and commercial applications, with our principal customers being agencies of the US Government.

Lockheed Martin hereby offers comments in response to the Notice and solicitation of public comment issued by the Office of the US Trade Representative concerning Initiation of a Review to Consider the Designation of the Socialist Republic of Vietnam as a Beneficiary Developing Country under the Generalized System of Preferences (GSP).

As commercial ties between the US and Vietnam have expanded in recent years, Lockheed Martin has begun to explore a range of potential opportunities. Some of these have begun to bear fruit. For example, Lockheed Martin built Vietnam's first telecommunications satellite, VINASAT I, which was launched in April, representing a major step forward in the development of the country's telecommunications infrastructure. The Government of Vietnam now is considering deployment of a second satellite, and we believe there is a reasonable possibility they would turn to Lockheed Martin to build it. Additionally, through its subsidiary, Pacific Architects and Engineers (PAE), Lockheed Martin is helping to design a number of regional airports and a major commercial project in Vietnam. Finally, Lockheed Martin also is exploring other infrastructure projects, to include air and vessel tracking systems, as well as potential sales of non-lethal defense equipment.

In light of these favorable experiences, Lockheed Martin would like to associate itself with the comments reflected in the attached letter, dated June 19, 2008, from the US-ASEAN Business Council to Ambassador Schwab. We support Vietnam's designation as a beneficiary developing country under the GSP program, and urge the Administration to respond favorably to Vietnam's request for this designation.

Sincerely,

A handwritten signature in black ink that reads "Gerald Musarra".

Gerald Musarra



BUILDING U.S. COMPETITIVENESS IN SOUTHEAST ASIA

1101 17th Street, NW, Suite 411
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Tel: (202) 289-1911
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E-mail: mail@usasean.org
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June 19, 2008

Ambassador Susan Schwab
U.S. Trade Representative
600 17th Street, NW
Washington, DC 20508

Dear Ambassador Schwab:

The Council recently concluded business missions to Thailand, Cambodia, and Vietnam. During our May 5 – 7 mission to Vietnam, we had particularly interesting and productive sessions with the leaders of the Vietnamese government and were enthusiastically welcomed at all levels of government.

During the course of our meetings, the leaders of the Vietnamese government, including Prime Minister Nguyen Tan Dung expressed that Vietnam's designation as a Beneficiary Developing Country (BDC) under the Generalized System of Preferences (GSP) program would be of great importance in the development of Vietnam's private sector and overall economic development.

The Council and its members, as supporters of stronger Vietnam – United States relations, view GSP as a natural progression in the growth of relations that leads to economic reform and modernization. Since the resumption of diplomatic relations in 1995, Vietnam and the United States have become close partners in Vietnam's development and integration into the world economy. Vietnam has made great strides in transitioning towards a market economy, joining the World Trade Organization and assuming economic liberalization as a responsible and reliable participant in the global trading system.

The Council strongly endorses including qualifying products of Vietnam under this important program. Importantly, GSP is a poverty reduction program, encouraging the development of trade and self-sufficiency in place of aid. We are impressed that Vietnam to date has been able to distribute the benefits of growth widely throughout the country.

The participation of products of Vietnam in the GSP program also offers mutual bilateral benefits, helping Vietnam to meet its economic potential while creating new opportunities and consumers for U.S. manufacturing and service companies and for U.S. investment. Through its annual review process and closer economic integration, GSP further supports development in priority areas for US business and leads to broader economic freedoms on such issues as adequate and effective protection of intellectual property rights and promotion of internationally recognized worker rights.

For all these reasons, the US-ASEAN Business Council urges the Administration to respond positively to Vietnam's request.

Please let me know if we can be of any assistance to you and your colleagues now and in the future.



BUILDING U.S. COMPETITIVENESS IN SOUTHEAST ASIA

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www.usasean.org

Sincerely,

A handwritten signature in black ink that reads "Matthew P. Daley".

Matthew P. Daley
President
US-ASEAN Business Council

On behalf of:

The General Electric Company – Chairman of the US-Vietnam Committee of the US-ASEAN Business Council
ConocoPhillips – Vice Chair of the US-Vietnam Committee of the US-ASEAN Business Council
The Boeing Company
Chevron
Discovery Communications
The Dow Chemical Company
Exxon Mobil
General Motors Corporation
Hewlett Packard
Johnson & Johnson
J.Ray McDermott
Nike
Time Warner
The United Technologies Corporation

Vietnam Eligibility Review
AFL-CIO

From: Jeff Vogt [Jvogt@aflcio.org]
Sent: Monday, August 04, 2008 4:23 PM
To: FN-USTR-FR0711
Subject: Designation of the Socialist Republic of Vietnam as a
GSPBeneficiary Country

**BEFORE THE UNITED STATES
TRADE REPRESENTATIVE**

**COMMENTS CONCERNING THE APPLICATION OF VIETNAM TO BE
DESIGNATED AS AN ELIGIBLE BENEFICIARY DEVELOPING COUNTRY
UNDER THE GENERALIZED SYSTEM OF PREFERENCES (GSP)**

filed by

**THE AMERICAN FEDERATION OF LABOR &
CONGRESS OF INDUSTRIAL ORGANIZATIONS (AFL-CIO)**

AUGUST 4, 2008

Required Contact Information:

Jeff Vogt, Global Economic Policy Specialist,
AFL-CIO,
815 16th Street, N.W.,
Washington, DC 20006
(202) 637-3904
jvogt@aflcio.org

A. *Introduction*

The AFL-CIO supports trade with Vietnam, and particularly supports efforts in the context of trade to improve the living standards and working conditions of Vietnamese workers. In recent years, Vietnam has made some improvements on this front, but much more needs to be done to bring its labor laws and practices in line with internationally recognized worker rights.

The U.S. Trade Representative (USTR) could play a constructive role in Vietnam by encouraging the government to strengthen its labor laws as they relate to the internationally recognized worker rights in the context of the nation's bid to receive preferential trade treatment under the Generalized System of Preferences (GSP). These efforts would reinforce the commitment that the government of Vietnam has already undertaken, as a member of the International Labor Organization (ILO), to respect, promote, and realize the core labor rights. Further, the move makes good economic sense. It is well established that countries that observe the core labor standards can raise skill levels, which increases efficiency and promotes innovation and higher productivity.

The adoption and effective enforcement of internationally recognized worker rights is absolutely necessary if the workers of Vietnam are to reap a fair share of the potential rewards of expanded trade with the United States. The USTR must also enforce the law on this issue in a fair and consistent manner across the board.

Below are descriptions of the labor laws that fall short of the internationally recognized worker rights. The sources for much of this information are the regular reports of the International Labor Organization (ILO), the U.S. State Department, and the International Trade Union Confederation (ITUC).

B. *Freedom of Association*

1. All labor unions must affiliate to the state-controlled Vietnam General Confederation of Labor (VGCL) in order to operate legally.

The U.S. State Department has repeatedly observed, "Workers are not free to join or form unions of their choosing. The Communist Party of Vietnam (CPV) controls the single trade union, the VGCL, an umbrella organization that approves and manages a range of subsidiary

labor unions organized according to location and industry.”¹ Indeed, under Article 1(1) of the Trade Union Law, a union is by definition an organization of the Communist Party of Vietnam. The right of freedom of association cannot be said to exist where workers are unable to affiliate with or form an organization of their own choosing, and one that is free from political control.² Although some independent labor organizations have been formed, they do not have the legal rights of officially recognized unions.

2. Employers are required to facilitate the establishment of enterprise level unions, which may diminish union independence from management.

Article 153 of the Labor Code of Vietnam provides that the local and industry trade union shall establish an enterprise-level trade union organization within six months of commencement of operation of a new enterprise. The employer is required to “facilitate the early establishment of trade union organizations.” Article 154(2) also states that the employer must “co-operate closely with trade unions.” In foreign enterprises, enterprise level labor unions are paid by management. Article 2 of ILO Convention No. 98 establishes the total independence of workers' organizations from employers in exercising their activities. In the case of direct payments to the union, such direct employer support most likely diminishes their independence and effectiveness as advocates for workers. The obligation to facilitate and cooperate closely with a union also has some potential to limit the union's independence.

Despite the requirement that enterprise level unions be formed within six months, the ITUC reported that Ministry of Labor officials “publicly admitted on numerous occasions during the year that many enterprises, particularly those owned by foreign investors, have no union presence.”³

C. *Right to Organize and Bargaining Collectively*

1. The right to bargain collectively is limited to VGCL-affiliated unions.

The ITUC has observed that only VGCL affiliated unions have the right to bargain collectively on behalf of all workers in an enterprise. Moreover, the ITUC noted that, “The VGCL's ability to effectively bargain with management is handicapped by the fact that at many enterprises, VGCL representatives are also the firm's human resources officials.”⁴

The number of collective agreements is relatively limited, and in most cases management deals directly with workers and signs short-term individual labor agreements. In the Export Processing Zones (EPZs), the ITUC observed that, “Only about ten per cent of workers have

¹ U.S. State Department, Country Report on Human Rights Practices (Vietnam), March 2008.

² The right of workers to establish organizations of their own choosing implies, in particular, the effective possibility of forming, in a climate of full security, organizations independent both of those which exist already and of any political party. See ILO Committee on Freedom of Association, Digest of Decisions (2006)(hereinafter referred to as “CFA Digest”) ¶ 273.

³ ITUC, Annual Survey of Violations of Trade Union Rights (2007), Vietnam (hereinafter referred to as “Annual Survey”).

⁴ Id.

long-term employment contracts. The remainder are on ‘definite term’ contracts of between one to three years, or seasonal contracts of one year’s duration which are not legally permitted for a job which is ‘regular.’ Both types of contracts help employers avoid the legal requirement to set up a union in enterprises with ten employees or more.”⁵

2. Excessive Requirements for Strike Vote

The ITUC recently observed, “Thresholds for workers to approve a decision to strike are excessive. The new sections of law state that at least 50 per cent of the workers in an enterprise with less than 300 workers must vote for the strike. For enterprises with 300 workers or more, the requirement increases to 75 per cent.”⁶ See Article 174b of the Labor Code of 2006.⁷ The ILO has repeatedly criticized requirements that the majority (or more) of all workers in an enterprise need to support a strike before it may be legally called.⁸

3. Strikes Improperly Banned in Numerous Economic Sectors

The State Department noted that, “The law prohibits strikes in 54 occupational sectors and businesses that serve the public or are considered by the government to be important to the national economy and defense.”⁹ See Article 175 of the Labor Code of 2006.¹⁰ These enterprises include those involved in electricity production; post and telecommunications; railway, maritime, and air transportation; banking; public works; and the oil and gas industry. The ILO has held that “The right to strike may be restricted or prohibited: (1) in the public service only for public servants exercising authority in the name of the State; or (2) in essential services in the strict sense of the term (that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population).”¹¹

⁵ Id.

⁶ Id.

⁷ Article 174b. 1. The grassroots trade union executive committee or the representative of the labor collective shall issue a written decision on strike and make a written petition when over 50% of total laborers in an enterprise or a section of an enterprise with under 300 laborers agree to go on strike or over 75% of the number of consulted persons in an enterprise or a section of an enterprise with 300 laborers or more.

⁸ See CFA Digest ¶556 (The requirement of a decision by over half of all the workers involved in order to declare a strike is excessive and could excessively hinder the possibility of carrying out a strike, particularly in large enterprises.); CFA Digest ¶ 557 (The requirement that an absolute majority of workers should be obtained for the calling of a strike may be difficult, especially in the case of unions which group together a large number of members. A provision requiring an absolute majority may, therefore, involve the risk of seriously limiting the right to strike.); CFA Digest ¶ 558 (The Committee requested a government to take measures to amend the legal requirement that a decision to call a strike be adopted by more than half of the workers to which it applies, in particular in enterprises with a large union membership).

⁹ U.S. State Department, Country Report on Human Rights Practices (Vietnam), March 2008.

¹⁰ Article 175. Strikes are not allowed in enterprises providing public services and products and enterprises that are essential for the national economy or national security and defense as stipulated by the Government. State management agencies shall organize periodical dialogues with representatives of labor collectives and labor users of these enterprises in order to provide timely assistance and deal with their legitimate concerns and demands. Collective labor disputes arising in these enterprises shall be settled by the labor arbitration council. Either or both of the parties to a dispute has or have the right to request settlement by a People's Court if it/they does/do not agree with the decision of the labor arbitration council.

¹¹ CFA Digest ¶ 576

Moreover, the ILO has specifically found that railway, maritime, air transportation, banking and the oil and gas industry do not constitute essential services.¹²

The State Department also observed, “The law also grants the Prime Minister the right to suspend a strike considered detrimental to the national economy or public safety.” See Article 176 of the Labor Code.¹³ Again, such authority is contrary to the right of freedom of association, except in those limited circumstances where the Prime Minister could claim that a strike would endanger the public safety of whole or part of the population. In those cases where a strike may lawfully be limited or banned, the government has an obligation to provide “adequate, impartial and speedy conciliation and arbitration proceedings in which the parties concerned can take part at every stage and in which the awards, once made, are fully and promptly implemented.”¹⁴

4. Additional Restrictions on the Right to Strike

Both the State Department and the ITUC observed that strikes that do not arise from an interest-based collective labor dispute are illegal.¹⁵ See Article 173(1) of the Labor Code.¹⁶ The ILO has held that strikes may be maintained for reasons other than conflicts over interests. “The right to strike should not be limited solely to industrial disputes that are likely to be resolved through the signing of a collective agreement; workers and their organizations should be able to express in a broader context, if necessary, their dissatisfaction as regards economic and social matters affecting their members’ interests.”¹⁷

The ITUC also took note that “sectoral/industrial strikes are effectively banned by a new provision of the law which states that any strike that involves more than one enterprise is illegal.”¹⁸ The ILO has also held that strikes may be legally undertaken at levels superior to the enterprise.

5. Excessively Long Procedures Create Obstacles to Legal Strikes

As the ITUC noted, “The July 2007 amendments to the Labor Law will significantly change legal procedures for strikes in Vietnam. Disputes will be divided into disputes over rights (compliance with the law) and disputes over interests (demands beyond what the law

¹² CFA Digest ¶ 587

¹³ Article 176. When the Prime Minister sees that the strike may seriously endanger the national economy and public interests, he/she may decide to postpone or suspend a strike and assign a competent state agency or organization to settle it. The Government shall provide regulations postponement or suspension of strikes and settlement of the interests of labor collectives.

¹⁴ CFA Digest ¶ 596.

¹⁵ See U.S. State Department, Country Report on Human Rights Practices (Vietnam), March 2008; ITUC Annual Survey. Article 157(3) of the Labor Code defines an interest-related collective labor dispute as “one over the collective’s claim for the establishment of new labor conditions not yet prescribed by the labor law, collective labor agreements or labor rules...or other regulations and lawful agreements in an enterprise emerging from the process of negotiation between the labor collective and labor user.

¹⁶ Article 173 - A strike is considered illegal if conducted in the following cases:

1. It does not arise from an interest-related dispute;
2. It is not organized by laborers in one enterprise;

¹⁷ CFA Digest ¶ 531.

¹⁸ ITUC Annual Survey

provides), setting out different procedures for both. The law sets out an extensive process of mediation and arbitration that must be followed before a strike can legally take place.”¹⁹

For rights related disputes, meaning “a dispute over violations in the implementation of the provisions of the labor law, collective labor agreements or labor rules,” the parties must bring the conflict before a grassroots conciliation council or labor conciliator. The grassroots conciliation council is a standing body that consists of an equal number of worker and employer representatives from the enterprise. Conciliation lasts for a maximum of three days. If that is unsuccessful, the parties must then appear before the president of the district People's Committee. The president of this Committee has five days to resolve the dispute from the date of the receipt of the complaint. If that process fails, the dispute will be brought before a People's Court. The decision of the People's Court ends the rights-related collective dispute. No union may engage in an industrial action over a rights-related dispute.

For interest-related disputes, meaning “a dispute over the collective labor collective's claim for the establishment of new labor conditions not yet prescribed by the labor law, collective labor agreement or labor rules,” the parties must appear before grassroots conciliation councils or labor conciliators and, if unsuccessful, a labor arbitration council. An arbitration council is standing body established by a People's Committee and together consists of no more than seven persons representing government, the employer, the union and the local lawyers' association. The arbitration council has a maximum of seven working days for receipt of the request to resolve the dispute. If the dispute is not resolved, then either party may resort to industrial action. Neither party may resort to industrial action before or during the conciliation and arbitration process.

The 2007 reforms shortened the length of each step of the process for the resolution of a collective labor dispute. However, the process remains unduly cumbersome and will likely continue to frustrate the right of workers to conduct a legal strike.²⁰ It is too early to know how these new procedures are functioning in practice. Further, workers had previously faced numerous obstacles to pursuing their claims because the institutions designated to resolve them, such as the enterprise conciliation council and arbitration committee at the district and provincial level, simply did not exist. It is unclear whether the institutions designated under the new procedures exist or function fully. The impartiality of the institutions under the previous procedures, particularly at the initial stages of conflict resolution, was also suspect due to employer and government domination.

D. Acceptable Conditions of Work

Wages

According to the State Department:

“The law requires the government to set a minimum wage, which is adjusted for inflation and other economic changes. In November the government raised minimum wages across

¹⁹ Id.

²⁰ The ILO has found that a strike may be temporarily restricted by law until procedures such as conciliation and arbitration have been exhausted. However, any such restriction must be accompanied by adequate, impartial and speedy proceedings. See CFA Digest ¶ 551.

all categories and locations, in part to account for rising inflation. Effective January 1, 2008, the official monthly minimum wage for unskilled laborers at foreign-invested joint ventures and foreign and international organizations was set to be \$62 (one million VND) in the urban districts of Hanoi and Ho Chi Minh City; \$56 (900,000 VND) in the suburban districts of Hanoi, Ho Chi Minh City, and several other industrial districts and towns; and \$50 (800,000 VND) elsewhere. The government may temporarily exempt certain joint ventures from paying the minimum wage during the first months of an enterprise's operations or if the enterprise is located in a very remote area, but the minimum monthly wage in these cases can be no lower than \$50 (800,000 VND). The official monthly minimum wage for unskilled labor in the state sector was \$34 (540,000 VND) in the provinces and \$39 (620,000 VND) in the urban districts of Hanoi and Ho Chi Minh City, an increase of 38 percent. Nevertheless, this amount remained inadequate to provide a worker and family a decent standard of living. State-owned enterprises consistently paid more than the state-sector minimum wage. The number of workers who received government-subsidized housing decreased. Many workers received bonuses and supplemented their incomes by engaging in entrepreneurial activities. Households frequently included more than one wage earner.”²¹

Hours of Work

With regard to hours of work, the State Department observed:

“The government sets the workweek for government employees and employees of companies in the state sector at 40 hours, and it encouraged the private business sector and foreign and international organizations that employ local workers to reduce the number of hours in the workweek to 40 hours but did not make compliance mandatory. The law also sets normal working hours at eight hours per day, with a mandatory 24-hour break each week. Additional hours require overtime pay at one and one-half times the regular wage, two times the regular wage for weekdays off, and three times the regular wage for holidays and paid leave days. The law limits compulsory overtime to four hours per week and 200 hours per year but provides for an exception in special cases, where this maximum can be up to 300 overtime hours worked annually, subject to approval by the government after consulting with VGCL and employer representatives. The law also prescribes annual leave with full pay for various types of work.”²²

The State Department explained that it could not ascertain how strictly the government enforced those provisions. However, there is little doubt that these provisions are not adequately enforced, especially in foreign-owned footwear and apparel manufacturers.

Conditions of Work

In its 2007 Country Report, the U.S. State Department observed, “The labor law requires the government to promulgate rules and regulations that ensure worker safety...but enforcement was inadequate because of low funding and a shortage of trained enforcement personnel.”²³

²¹ U.S. State Department, Country Report on Human Rights Practices (Vietnam), March 2008.

²² Id.

²³ Id.

The 2006 Human Rights Report also noted, “The VGCL reported that there were 300 labor inspectors in the country but that at least 600 were needed. On-the-job injuries due to poor health and safety conditions in the workplace were a problem.”²⁴ The 2006 report also cited Ministry of Labor statistics regarding industrial accidents: 3,691 injuries and 473 fatalities resulting from 4,050 work related accidents in 2005 alone.

²⁴ U.S. State Department, Country Report on Human Rights Practices (Vietnam), March 2007.

Vietnam Eligibility Review
U.S. Committee to Protect Vietnamese Workers (CPVW-USA)

From: khai nguyen [khaiqnguyen@yahoo.com]
Sent: Monday, August 04, 2008 5:01 PM
To: FN-USTR-FR0711
Subject: GSP program for Vietnam

Dear Sir:

Please find attached comments and recommendation of the U.S. Committee to Protect Vietnamese Workers on the GSP criteria.

Khai Quoc Nguyen
Chair, U.S. Committee to Protect Vietnamese Workers (CPVW-USA)
Member, Coalition to Abolish Modern-Day Slavery in Asia (CAMSA)

U.S. Committee to Protect Vietnamese Workers
(CPVW-USA)
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Bread and Liberty
(Com Áo và Tự Do)



August 4, 2008

Chairman of the GSP Subcommittee
Trade Policy Staff Committee
Office of the U.S. Trade Representative
Washington, DC 20004
(202) 378-9573

Ref: Comment on Vietnam's eligibility under the Generalized System of Preferences (GSP) program.

Dear Mr. Chairman:

We understand that your GSP Subcommittee is considering the designation of the Socialist Republic of Vietnam as a beneficiary developing country (BDC) for the purpose of the GSP program. We thank your subcommittee for offering us an opportunity to comment on Vietnam's eligibility.

This letter focuses on labor issues and criteria set forth in section 502(c) of the Trade Act of 1974, as amended (19 U.S.C. 2462(c)).

In principle, CPVW-USA strongly supports this designation to enhance trade between the U.S. and Vietnam, to strengthen our relationship with a country strategically located in Southeast Asia, and to help Vietnamese farmers, workers,

and manufacturers to raise their living standards by allowing thousands of Vietnamese products to enter the U.S. markets, free of import duties.¹

However, CPVW-USA has to acknowledge that Vietnam has not met even the basic GSP criteria on labor. Vietnam has not and is not taking steps to honor and respect internationally recognized labor rights as defined in section 507(4) of the Trade Act of 1974, as amended, (19 U.S.C. 2467).

Article 53 of the 1992 Constitution of Vietnam stipulates that “The citizen has the right to participate in the administration of the State and management of society, the discussion of problems of the country and the region; he can send petitions to State organs and vote in referendums organized by the State.”

Article 69 of the 1992 Constitution of Vietnam asserts that “The citizen shall enjoy freedom of opinion and speech, freedom of the press, the right to be informed, and the right to assemble, form associations and hold demonstrations in accordance with the provisions of the law.”

In reality, Vietnamese citizens do not have rights to any of the above, including the right of association and assembly.

A. The right of association

Vietnam has GSOs (government-sanctioned organizations) but no NGOs (Non-Government Organizations). All GSOs in the country including religious organizations - except a few who are being subject to constant harassment by public security agents due to their struggle for staying independent² - must belong to the government or must be affiliated to the government.

In fact, Vietnam has not ratified the U.N. Convention of 1948 (C87) concerning Freedom of Association and Protection of the Right to Organize.

In November 2006, one week after the International Conference on Labor was organized by overseas Vietnamese from 11 countries including Russia, and other Eastern European countries, in Warsaw, Poland, the United Workers – Farmers Association of Vietnam (UWFAV) was formed in Vietnam. After the APEC summit meeting in Hanoi was over and Vietnam was acceded to the World Trade Organization (WTO), all four UWFAV leaders were arrested and sentenced to 18 months to 3 years in prisons by the Communist authorities. Mr. Nguyen Tan Hoanh, one of four UWFAV leaders, was released last May after fully serving his

¹ Office of the U.S. Trade Representative, Executive office of the President, “U.S. Generalized System of Preferences Guidebook,” Washington-DC, February 2007.

² Well-known cases include the Unified Buddhist Church of Vietnam (UBCV), Hoa Hao Buddhist Church, Dalat group, Bloc 8406, The Vietnam Progress Party, the Vietnam Reform Party, the People’s Democratic Party, the Democratic Party of Vietnam, the Vietnam Populist Party, and the United Workers–Farmers Association of Vietnam, the Independent Labor Union of Vietnam.

term. During his detention, he was beaten by prison officials and kept in isolation and darkness most of the time.

Mr. Nguyen Khac Toan, former journalist, founded the Independent Labor Union of Vietnam (ILUV) in late October 2006, one week before the Warsaw Conference, to protect workers' rights. The Hanoi government continues to outlaw the ILUV. Mr. Nguyen Khac Toan remains under strict surveillance.

B. The right of assembly

In Vietnam, citizens have no right of assembly. Any gathering of five people or more requires permission from local authorities. Article 5.2 of Decree 38/2005/NĐ-CP on public order, which was signed on March 18, 2005, asserts that "Gatherings of large numbers of people in the street, on the pavement, in front of buildings of State agencies and mass organizations, venues of international conferences, National Assembly and People's Councils' sessions and other important political activities of the Party, State, the Vietnam Fatherland Front (VFF) and other socio-political organizations are prohibited."

Under Article 8 of the Decree, "organizers of public gatherings must apply for and attain permission from relevant people's committees in advance. The applicant must declare activities to be carried out, the purpose, the time, the venue, the route and the estimated number of people taking part in the gathering."

The Decree also prohibits public gatherings that obstruct the normal operation of State agencies, socio-political and economic organizations, and the leaders of the Communist Party of Vietnam (CPV), the State and the VFF leaders or on-duty officials.

Article 4.1 of Circular No. 09/2005/TT-BCA signed by the Minister of Public Security General Le Hong Anh on September 5, 2005 stipulates further that Gatherings of five people or more are ruled by Decree 38/2005.

In summary, the Vietnamese Government legalizes its abuse of authoritarian power to ban all peaceful demonstrations of "victims of injustice" (dân oan)³ as well as worker strikes.

C. The right to organize and bargain collectively

Vietnamese workers have no rights to organize and bargain collectively. All worker strikes in Vietnam are spontaneous. They are not supported by any formal groups or the Vietnamese government. Therefore, workers' collective bargaining power is very weak.

³ Victims of illegal confiscations of land and private property by government or party officials in the name infrastructure development.

The Vietnam General Confederation of Labor (VGCL) is the sole national trade union in Vietnam. All trade unions in Vietnam are required to affiliate with the VGCL which is one of the mass movements of the Vietnamese Fatherland Front. VGCL leaders on national and local levels are communist party members. They are also highly-paid. They serve company owners and protect the interest of the CPV rather than those of workers.

Any labor strikes must get approval from VGCL. However, VGCL has never initiated, organized, or supported any worker strikes. Therefore, all worker strikes in Vietnam are considered illegal. Recently, the Vietnamese government has issued an anti-labor decree to require workers who participate in illegal strikes to compensate company owners for any loss arisen from the strikes.⁴

At a recent conference in June 2008 on labor in Saigon, officials and union representatives said that “weak labor unions have failed to gain the trust of Vietnamese workers, who prefer to stage illegal walkouts rather than negotiate labor disputes through the unions.” As companies’ union officials are on company payroll, most of them would rather not risk losing their salaries to lead strikes, said participants at the meeting in Ho Chi Minh City Friday.⁵

D. Prohibition on the use of any form of forced or compulsory labor

The latest report of the U.S. Department of State on Human Rights dated March 11, 2008 states that “The law prohibits forced and compulsory labor, including by children; however, there were reports that such practices occurred. Prisoners routinely were required to work for little or no pay. They produced food and other goods used directly in prisons or sold on local markets, reportedly to purchase items for their personal use.”⁶

E. Minimum age for employment and child labor

Vietnam ratified two ILO conventions regarding child labor and minimum wage for employment in 2000 and 2003, respectively: (1) Convention 182: Prohibition on the worst forms of child labor; (2) Convention 138: Minimum age for employment. However, child labor is still a problem. Children remain to be at risk of economic exploitation.

The laws requires the minimum age for employment at 18. However, children between the ages of 15-18 can work, if employers get permission from parents and Ministry of Labor, Invalids, and Social Affairs (MOLISA). However, MOLISA has very limited resources to enforce the laws. While education is

⁴ Decree No. 11/2008/NĐ-CP, January 30, 2008.

⁵ WorkerFreedom, “Workers Prefer Illegal Strikes To Impotent Labor Unions,” June 24, 2008.

⁶ The U.S. Department of State, “Country Reports on Human Rights Practices – 2007,” released by the Bureau of Democracy, Human Rights, and Labor, March 11, 2008.

compulsory and free through the age of 14, government officials did not always enforce the requirement.

In June 2006, MOLISA reported that about 30 percent of children between the ages of 6-17 were engaged in some type of work. However, observers believed that the actual figure was much higher, since most of the children work in rural areas on family farms and in family businesses, which are not affected by the laws.

On the one hand, the Bureau of Democracy, Human Rights, and Labor (BDHL) at the U.S. State Department reported that "Migration from rural to urban settings exacerbated the child labor problem, because unauthorized migrants were unable to register their households in urban areas. This meant that their children could not attend public schools and families had less access to credit."⁷

On the other hand, child labor situation in Vietnam has been somewhat reduced by positive factors: (a) The Vietnamese culture highly values education; (b) The Vietnamese economy provides abundant labor force; (c) Globalization reduces child labor in Vietnam;⁸ (d) Rising food prices are associated with declines in child labor in Vietnam;⁹ (e) An increase in income reduces child labor. However, its effect on fertility is ambiguous.¹⁰

According to BDHL, Vietnamese children were trafficked domestically and to foreign destinations, most notably to Cambodia for sexual exploitation. Domestic trafficking also included incidents of child beggars and flower-selling rings, especially in Ho Chi Minh City and Hanoi. Other children were trafficked from Cambodia into Ho Chi Minh City.¹¹

F. Working condition and compensation

Just like the 1992 Constitution of the Socialist Republic of Vietnam, which guarantees all fundamental rights to citizens, the labor laws of Vietnam provide full protection to workers as in any developed country. However, in practice, most of Vietnamese workers suffered tremendously from low wages, long work days, no overtime pay, unhealthy working conditions, no insurances, and no pensions.

⁷ The U.S. Department of State, "Country Reports on Human Rights Practices – 2007," released by the Bureau of Democracy, Human Rights, and Labor, March 11, 2008.

⁸ Eric Edmonds and Nina Pavcnik, "Does Globalization Increase Child Labor? Evidence from Vietnam," NBER Working Paper No. 8760, January 2002.

⁹ Eric Edmonds and Nina Pavcnik, "The Effect of Trade Liberalization on Child Labor," Department of Economics, Dartmouth College, May 28, 2003.

¹⁰ Furio Camillo Rosati, Zafiris Tzannatos, "Child Labor in Vietnam," Universita di Roma 'Tor Vergata' and the World Bank, Pacific Economic Review, No. 11:1, 2006.

¹¹ The U.S. Department of State, "Country Reports on Human Rights Practices – 2007," released by the Bureau of Democracy, Human Rights, and Labor, March 11, 2008.

Workers went on strike 400 times in 2006 and 600 times in 2007. The number of strikes is expected to be larger and the degree of intensity to be higher this year. Vietnam has experienced rising inflation of over 25% in recent months and spreading labor strikes in many parts of Vietnam in recent years. Rapid increases of consumer prices have further squeezed workers at the bottom of the income scale.

The average Vietnamese factory worker must work at least 10 hours a day and 6 days a week. Working environments in many cases are not acceptable. However, they make only about US\$50 a month. With that income and at that inflation level, workers are finding it very difficult to feed their family.

In February of this year, Boat People SOS and the Coalition to Abolish Modern-Day Slavery in Asia (CAMSA) rescued nearly 200 Vietnamese sweatshop workers, all women except four, in Jordan from being beaten, overworked, and cheated out of wages.

Again in February 2008, Boat People SOS and CAMSA successfully fought for 2,600 foreign workers' rights in Malaysia, including 1,300 Vietnamese. They were victims of exploitation and mistreatment. These workers were supposed to be paid US\$245 per month. However, they get as low as less than US\$3 every two weeks. We decided to abolish a law suit after corporate owners agreed to fully compensate workers' loss and to respect original contracts.

The Vietnamese government did nothing to protect their workers in these cases. On the contrary, Vietnamese officials arriving in Amman, Jordan from Cairo and Hanoi threatened to punish Vietnamese workers if they quit their jobs. Public security agents even contacted workers' relatives in Vietnam to urge them to end their strikes.

G. Recent development

Mr. Mai Duc Chinh, VGCL Vice Chairman, at a conference in Hanoi on June 16-17, 2008 reported that a total of 330 strikes have been recorded so far this year and all of them were illegal because they were not led by VGCL and did not follow the law. Despite anti-labor environments, the number of illegal strikes has continued to increase since the amended Labor Code took effect on July 1, 2007.

He also admitted that under the current regulations, only trade unions affiliated with VGCL have the right to organize strikes, but this regulation is unrealistic because trade union leaders are not protected under the existing system and most employers do not cooperate with trade unions.

Under the current law, workers must bring the conflict to court. They can go on strike only if conflicts of interest are not solved by negotiations. Workers must compensate their employers if the court finds that their strikes were illegal.

The rules on compensating companies for losses caused by illegal strikes are not feasible. Recently, a company in Saigon, Vietnam, filed a case in court but its complaint was denied because it was unable to define the major subject of the lawsuit among 10,000 participants in the strike.^{12 13}

Recommendation:

I respectfully urge the Office of U.S. Trade Representative to request the Hanoi government to fulfill the following requirements in order to be admitted the GSP program.

- (1) Immediately and unconditionally release all UWFAV prisoners: Tran Thi Le Hong (aka Nguyen Thi Le Hang), Nguyen Thi Tuyet, Doan Van Dien (aka Hoang Thanh Thuy), Tran Quoc Hien (lawyer, UWFAV spokesman), and Phung Quang Quyen.¹⁴
- (2) Disclose the fate of Le Tri Tue, a labor activist, who escaped and reported to the U.N. office in Phnom Penh, Cambodia. He has been missing since May 6, 2007. It is widely feared that he was kidnapped and brought back to Vietnam by security agents.
- (3) Legalize the UWFAV and the ILUV and allow workers to form their own trade unions.
- (4) Ratify the ILO Convention of 1948 (C87) concerning Freedom of Association and Protection of the Right to Organize. These rights are recognized in the Universal Declaration of Human Rights.
- (5) Abolish Decree 38/2005/NĐ-CP and Circular No. 09/2005/TT-BCA on public order, banning all gatherings of five people or more.
- (6) Transform VGCL into a national research institute on labor.
- (7) Commit sufficient resources to enforce the labor laws to protect workers in the country and abroad from exploitation and trafficking by diverting manpower, equipment, and financial resources used to oppress people and to protect the Communist Party of Vietnam to the MOLISA.

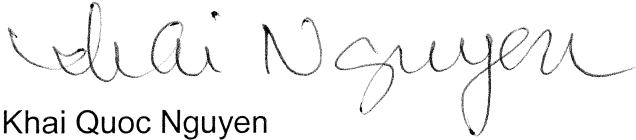
The United States of America stand ready to defend the values of human kind and support workers all over the world in their fight for “Bread & Liberty.”

¹² WorkerFreedom, “330 Illegal Strikes in Six Months,” June 21, 2008.

¹³ Decree No. 11/2008/NĐ-CP, January 30, 2008 and Circular No. 07/2008/TTLT-BLDTBXH-BTC, May 30, 2008.

¹⁴ Doan Huy Chuong (aka Nguyen Tan Hoanh, UWFAV founder) was released in May 13, 2008 after serving an 18-month sentence.

Sincerely,



Khai Quoc Nguyen
Chairman, CPVW-USA

CC:

- * Congressman Frank Wolf, Congressman Tom Davis, Congressman Chris Smith, Congresswoman Loretta Sanchez, Congresswoman Zoe Lofgren, Congressman Ed Royce, Congressman Dana Rohrabacher, Senator Jim Webb.
- * James F. Jeffrey, NSC, Washington, DC.
- * Catherine L. Kuchta-Helbling, NSC, Washington, DC.
- * Ellie Larson, Executive director, the American center for International Labor Solidarity, Washington, DC.

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CPVW-USA is a private and non-partisan organization registered in the State of Virginia. It has applied for federal non-profit and tax-exempt status. We promote free and independent trade unions, defend the rights of workers, and farmers in Vietnam, and oppose any form of labor trafficking.

CPVW-USA joined the Coalition to Abolish Modern-Day Slavery in Asia (CAMSA). Other members include Boat People SOS (BPSOS), International Society for Human Rights (ISHR), Germany, and Vietnamese Canadian Federation (VCF).

CAMSA recently rescued nearly 200 Vietnamese guest workers in Amman Jordan (W&D Apparel) in February 2008. We successfully reached an agreement in February 2008 with Esquel Group to fully restore labor rights in accordance with original legal contracts for 2,600 guest workers in Penang, Malaysia, including 1,300 Vietnamese. CAMSA is being in the process to wrap up a civil and criminal case against Polar Twin Case (PTA) also in Malaysia.

**Vietnam Eligibility Review
Internat'l Intellectual Property Alliance (IIPA)**

From: schlesingerm@gtlaw.com
Sent: Monday, August 04, 2008 4:54 PM
To: FN-USTR-FR0711
Subject: Designation of the Socialist Republic of Vietnam as a GSP Beneficiary Country

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August 4, 2008

By Electronic Mail (FR0711@USTR.EOP.GOV)

Chairman of the GSP Subcommittee
of the Trade Policy Staff Committee (TPSC)
United States Trade Representative
600 17th Street, N.W.
Washington, DC 20508

Re: Designation of the Socialist Republic of
Vietnam as a GSP Beneficiary Country, 73
Fed. Reg. 35173 (June 20, 2008)

To the GSP Subcommittee of the Trade Policy Staff Committee (TPSC):

The Office of the United States Trade Representative (USTR) published in the June 20, 2008 Federal Register a notice under the title “Generalized System of Preferences (GSP): Initiation of a Review To Consider the Designation of the Socialist Republic of Vietnam as a Beneficiary Developing Country Under the GSP.” The notice announces USTR’s initiation of a review and its solicitation of “public comments on whether Vietnam meets certain eligibility criteria for designation as a BDC,” noting, “[i]nterested persons are invited to submit comments on whether Vietnam meets the eligibility criteria set forth below and in section 502(c) of the Trade Act of 1974, as amended (19 U.S.C. 2462(c)) (the ‘Act’).” *See* 73 Fed. Reg., at 35174. USTR will then “make a recommendation to the President as to whether Vietnam meets the eligibility criteria of the GSP statute,” and “[a]fter considering the recommendation, the President is authorized to, and may, designate Vietnam as a BDC for purposes of the GSP program.”

The International Intellectual Property Alliance (IIPA) hereby submits its comments on whether Vietnam meets the eligibility criteria set forth below and in section 502(c) of the Trade Act of 1974, as amended (19 U.S.C. 2462(c)) (the ‘Act’). Specifically, while IIPA does not oppose granting Beneficiary Developing Country status to Vietnam under the Generalized System of Preferences trade program, IIPA notes several areas in which Vietnam may not fully meet the eligibility criteria. IIPA requests that one year after the President designates Vietnam as a BDC for the purposes of the GSP program, a review be scheduled to determine whether Vietnam has made progress in fully meeting its eligibility criteria sufficient to continue to enjoy GSP benefits.



Submission of the International Intellectual Property Alliance (IIPA)
to the Chairman of the GSP Subcommittee
of the Trade Policy Staff Committee (TPSC)
Re: Designation of the Socialist Republic of Vietnam
as a GSP Beneficiary Country, 73 Fed. Reg. 35173 (June 20, 2008)
August 4, 2008, page 2

Interest of the IIPA

The International Intellectual Property Alliance (IIPA) is a private sector coalition formed in 1984 to represent the U.S. copyright-based industries in bilateral and multilateral efforts to improve international protection of copyrighted materials. IIPA comprises seven trade associations, each representing a significant segment of the U.S. copyright community. These member associations represent over 1,900 U.S. companies producing and distributing materials protected by copyright laws throughout the world—all types of computer software, including business applications software and entertainment software (such as videogame CDs, DVDs and cartridges, personal computer CD-ROMs and multimedia products); theatrical films, television programs, home videos and digital representations of audiovisual works; musical compositions, records, CDs, and audiocassettes; and textbooks, trade books, reference and professional publications and journals (in both electronic and print media).

On January 30, 2007, the IIPA released an economic report entitled *Copyright Industries in the U.S. Economy: The 2006 Report*, the eleventh study written by Stephen Siwek of Economists Inc. This report details the economic impact and contributions of U.S. copyright industries to U.S. Gross Domestic Product, employment, and trade. The latest data show that the “core” U.S. copyright industries¹ accounted for an estimated \$819.06 billion or 6.56% of the U.S. gross domestic product (GDP) in 2005. These “core” industries were responsible for 12.96% of the growth achieved in 2005 for the U.S. economy as a whole (this means that the growth contributed by these core industries (12.96%) was almost double their current dollar share of GDP (6.56%)). In addition, the “core” copyright industries employed 5.38 million workers in 2005 (4.03% of U.S. workers) in 2005. And the report, for the first time, provides data on the estimated average annual compensation for a worker in the core copyright industries: \$69,839 in 2005, which represents a 40% premium over the compensation paid the average U.S. worker. Finally, estimated 2005 foreign sales and exports of the core copyright industries increased to at least \$110.8 billion, leading many other major industry sectors, including chemicals and related products; motor vehicles, parts and accessories; aircraft and associated equipment; food and live animals; and medicinal and pharmaceutical products.

The health and competitiveness of the U.S. economy thus depends on a thriving copyright sector that creates jobs and exports. It is essential to the continued growth and future competitiveness of these industries that our trading partners provide not only free and open markets, but also high levels of protection for copyright, and effective policies to enforce that protection. To meet the constantly evolving threats to copyright worldwide, our country’s response must remain flexible, innovative and committed.

¹ The “total” copyright industries include the “core” industries plus those that, under conservative assumptions, distribute such products or other products that depend wholly or principally on copyrighted materials. The “core” copyright industries are those that create copyrighted materials as their primary product. *The 2006 Report* is posted on the IIPA website at <http://www.iipa.com>.



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GSP Eligibility Criteria on Intellectual Property Rights and Market Access

The Generalized System of Preferences (GSP) program of the United States provides unilateral, non-reciprocal, preferential duty-free entry for over 4,650 articles from 131 designated beneficiary countries and territories for the purpose of aiding their economic development through preferential market access. The GSP program was instituted on January 1, 1976, and authorized under the Trade Act of 1974 (19 U.S.C. 2461 et seq.) for a 10-year period. It has been renewed periodically since then, most recently in 2006, when President Bush signed legislation that reauthorized the GSP program through December 31, 2008.² IIPA has supported a multi-year extension of this program to support the use of the GSP program as a tool to protect the interests of U.S. copyright owners around the world.

The June 20, 2008 Federal Register notice states,

“The trade benefits of the GSP program are available to any country that the President designates as a BDC for purposes of the GSP program. In designating countries as BDCs, the President must consider among other factors, the criteria in section 502(c) of the Act.”

Section 502(c) provides, in relevant part,

“In determining whether to designate any country as a beneficiary developing country under this subchapter, the President shall take into account—

...

- (4) the extent to which such country has assured the United States that it will provide equitable and reasonable access to the markets ... of such country ... ;
- (5) the extent to which such country is providing adequate and effective protection of intellectual property rights;³

² See Office of the United States Trade Representative, Generalized System of Preferences, at http://www.ustr.gov/Trade_Development/Preference_Programs/GSP/Section_Index.html

³ The provisions tying intellectual property protection to trade benefits were first added by virtue of the Trade and Tariff Act of 1984, also known as the Generalized System of Preferences Renewal Act of 1984, Title V, Pub. L. No. 98-573 (1984), *codified at* 19 U.S.C. 2461-2465, Section 501(b)(9)(B). Title V of the Act renewed the GSP Program and added the express condition that developing countries provide “adequate and effective means under its laws for foreign nationals to secure, to exercise and to enforce exclusive rights in intellectual property, including patents, trademarks, and copyrights.” While there has been a minor change in the statutory language between the GSP Renewal Act of 1984 and the GSP Renewal Act of 1996, the GSP provisions as related to IPR remain essentially the same as in 1984. See GSP Renewal Act of 1996, Title I, Subtitle J, of the Small Business Job Protection Act of 1996, Pub. L. No. 104-188, *codified at* 19 U.S.C. 2462(c)(5) (the language of the IPR discretionary criterion for GSP eligibility in Section 502(c)(5) was simplified slightly and now requires the President to take into account “the extent to which such country is providing adequate and effective protection of intellectual property rights”). The legislative history of the 1984



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(6) the extent to which such country has taken action to—

...

(B) reduce or eliminate barriers to trade in services..."

Designation of the Socialist Republic of Vietnam as a GSP Beneficiary Country

IIPA does not oppose granting Beneficiary Developing Country status to Vietnam under the Generalized System of Preferences trade program. However, IIPA notes below several areas in which Vietnam may not fully meet the eligibility criteria. IIPA requests that one year after the President designates Vietnam as a BDC for the purposes of the GSP program, a review be scheduled to determine whether Vietnam has made progress in fully meeting its eligibility criteria sufficient to continue to enjoy GSP benefits.

Vietnam's Compliance with the Eligibility Criteria on Intellectual Property Rights and Market Access

IIPA appends to this submission (as Appendix A) its Vietnam country report from the IIPA 2008 Special 301 Report, as a statement of issues related to intellectual property rights protection (the Eligibility Criterion of Section 502(c)(5)) as well as market access and barriers to trade in copyright-related services (the Eligibility Criterion of Section 502(c)(4) and (c)(6)(B)). As that report was released in February 2008, it was current as of that date, but IIPA notes important developments have occurred since that time. Most notably,

- The Supreme People's Court, The Supreme People's Procuracy, The Ministry of Public Security, and The Ministry of Justice issued "Joint Circular No. 01/2008/TTLT-

Renewal Act is instructive on the important link between GSP benefits and strong IPR protection, as well as market access. The Senate Finance Committee Report explained that:

To determine whether a country provides "adequate and effective means," the President should consider the extent of statutory protection for intellectual property (including the scope and duration of such protection), the remedies available to aggrieved parties, the willingness and ability of the government to enforce intellectual property rights on behalf of foreign nationals, the ability of foreign nationals effectively to enforce their intellectual property rights on their own behalf and whether the country's system of law imposes formalities or similar requirements that, in practice, are an obstacle to meaningful protection.

See S. Rep. No.98-485, 98th Cong., 2d Sess. At 11 (1984). The Senate Report also noted,

Where valid and reasonable complaints are raised by U.S. firms concerning a beneficiary country's market access policy or protection of intellectual property rights, for example, it is expected that such interests will be given prominent attention by the President in deciding whether to modify duty-free treatment for that country.

Id. at 12-13.



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TANDTC-VKSNDTC-BCA-BTP of February 29, 2008, Guiding the Examination of Penal Liability for Acts of Infringing Upon Intellectual Property Rights” (Official Gazette, Issue Nos. 1-2, *Công Báo No. 179-180*, March 18, 2008). The Circular confirmed improvements in the provision of criminal liability for copyright infringements from the previous Circular. In particular, it is now clear that “committing violations” of Section 28 or 35 of the IP Code “on a commercial scale and for commercial purposes” shall constitute a crime in Vietnam. The Circular sets the stage for “adequate and effective protection” of copyright in Vietnam, notwithstanding that it is less than ideal in at least two respects.⁴ First, the requirement that the violation be “for commercial purposes” in addition to “on a commercial scale” causes some uncertainty as to the acts which will be criminalized. Second, the criminal thresholds for higher level criminal penalties remain too high.

In addition to the Appendix (and subject to a more complete analysis of and without prejudice to our views on Vietnam’s WTO commitments and BTA commitments in the areas of market access and services), IIPA makes the following comments regarding three relevant Eligibility Criteria.

“...the extent to which such country is providing adequate and effective protection of intellectual property rights...”

The government of Vietnam has made some progress on promises made in the area of protection of intellectual property rights. Signs of progress in 2007 included an agreement by the government to procure legal software, actions taken by administrative authorities against unauthorized use of software by businesses and in government agencies, reductions in signal theft due to the removal of pirated international channels from local operator VTC, and continued consideration of modifications to Vietnam’s judicial system, administrative regulations, and criminal regime to deal with IP infringements.

Nonetheless, the Vietnamese market remains largely closed due to high copyright piracy rates, including 90% piracy of business software, and 95% piracy of records and music. There remains, overall, a lack of enforcement against copyright piracy. An organized campaign, including stiff deterrent criminal remedies against large-scale producers and distributors of pirate product, is needed in order to provide adequate and effective protection of copyright in Vietnam. We also recommend that Vietnam undertake to accede to and deposit the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), since Vietnam’s

⁴ In addition, the meaning of the phrase “if their act involves all other crime-constituting elements” remains unclear, although we understand from discussions with government officials that this language does not impose any unforeseen threshold requirements other than those expressly stated in the Circular.



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law substantially complies with the major treaties' provisions.⁵ Further, the government of Vietnam has drafted a decree to deal with an acknowledged serious CD/DVD piracy problem. IIPA recommends that effective regulations be put into place this year, and we understand that the government has received assistance in this area, including assistance to implement APEC agreed-upon effective practices for the regulation of optical disc production. Prior to (or in the absence of) enactment of optical disc regulations, however, the government should now employ other laws (including business license laws, the IP Code, etc.) to immediately halt such blatantly infringing activities. Finally, but not least, Internet-based piracy has become an increasingly serious problem in Vietnam, with websites known to the government, or even connected in some manner to the government or operated by government employees, causing great harm to copyright owners. The Vietnamese government should ensure that its employees or agencies do not use illegal copyright materials or engage in activities that are in any way connected with infringements of copyright,⁶ and the government should continue to take steps to cooperate with right holders in shutting down or ordering the shut down of infringing services.

“the extent to which such country has assured the United States that it will provide equitable and reasonable access to the markets ... of such country ...”

As is noted in the Appendix, various market access barriers exist in Vietnam today, the most serious being limitations and prohibitions on foreign companies' setting up subsidiaries to produce or distribute “cultural products,” including IIPA members' products. This leaves right holders no choice but to license Vietnamese companies (which often refuse to license due to the prevalence of piracy, continuing the vicious cycle of high piracy rates and little to no market access). Various other content restrictions, such as the proposed 67% film distribution quota, effectively keep foreign right holders out of the market in Vietnam, leaving it open to pirates who offer uncensored, untaxed products and do not reinvest in cultural industry as our right holders invariably do. The following describes in slightly greater detail than in the Appendix the market access barriers our audiovisual and recording industries face.

⁵ Vietnam joining the WCT and WPPT would also accord with the APEC 2002 Leaders' Declaration which stated, “Economies will ratify and fully implement the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty as soon as possible,” and subsequent APEC statements to the same effect.

⁶ Ensuring that all government entities, employees, and contractors use only legal copyright materials, including in the online environment, accords with the “APEC Economic Leaders' Declaration” of 2002 in Los Cabos, Mexico, which stated, “Economies will ensure through adequate oversight mechanisms that their government entities use only legal software or other content,” and “Economies will to the largest extent possible ensure that the internet and e-commerce does not facilitate trade in infringing and counterfeit goods, and will put into place appropriate regulatory and enforcement systems aimed at curtailing these activities,” and subsequent APEC statements to the same effect.



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Audiovisual Sector: Theatrical

- **Foreign Investment Restrictions in Theatrical Motion Picture Business:** Foreign investment restrictions allow only joint ventures in theatrical exhibition of motion pictures. Under Vietnam's WTO market access offer, foreign shareholding in joint ventures or business cooperation contracts is limited to 49% of the legal capital. This limitation will increase to 51% after three years from the date of Vietnam's accession, subject to any agreed extension.
- **Quantitative Restrictions on Foreign Films Imported for Theatrical Distribution:** Under current regulations, there are no explicit screen quotas or restrictions on the number of imported films. However, under the market liberalization measures offered by Vietnam in conjunction with its bid to gain WTO accession, the number of cinematographic films *imported* each year may not exceed two-thirds of those domestically produced, which is a major restriction on the number of imported films allowed, given how few Vietnamese films are produced each year. Also, the number of foreign films *projected* by each cinema would only be allowed to reach two-thirds of the total projected films in any given year. Since the domestic films industry is underdeveloped and the number of domestic films produced has generally ranged between 10 and 15 films or less per year, these proposed restrictions would pose a significant barrier to the import and theatrical distribution of foreign films in Vietnam.
- **Restrictions on Entity Type for Importation of Foreign Films:** Foreign investors are now investing in cinema construction and operation through joint ventures with local Vietnamese partners, but these are subject to government approval. Only cinema exhibitors are allowed to import foreign films into Vietnam, but under the Cinema Law (Article 13(2)), foreign organizations and individuals and Vietnamese residing overseas may establish and manage "film distribution enterprises" and "film projection enterprises" in Vietnam, apparently with no ownership restrictions.⁷

Audiovisual Sector: Home Video

- **FAFILM Monopoly Control Over Video Importation/Distribution:** Vietnam Film Import-Export and Distribution Company (FAFILM) maintains a monopoly over home video importation and distribution as well as control of domestic duplicating facilities, leading to lack of competition, some evidence of undue influence, and other problems for the foreign audiovisual sector.

⁷ This is in contrast to "film production" in which the Director or Director General must be Vietnamese.



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Audiovisual Sector: Broadcast

- **Monopoly Control Over Broadcasting:** The Vietnamese government controls and owns all television stations in the country. It does not allow foreign-owned TV stations and does not appear to be receptive to loosening its control of the television sector. Foreign investment in broadcast stations is simply not permitted.
- **Programming Import Restrictions/Censorship of Broadcasting:** VTV is the sole authorized importer of television programming and is also responsible for censorship. As an additional burden, according to Television Asia, foreign production companies must provide fully financed programs with sponsorship and advertising for the state broadcasters.

Audiovisual Sector: Censorship

- **Censorship Process:** The Ministry of Culture & Information (MOCI) maintains strict censorship of the content of films, television and home video, including foreign content. Because of the broad discretion delegated to the reviewing authority resulting in unpredictable and arbitrary results, the process inevitably becomes highly dependent on personal relationships.

Music/Sound Recording Sector

Onerous Vietnamese restrictions are preventing U.S. record companies from engaging in vertically integrated production, publishing, distribution and marketing of sound recordings in physical and electronic form. Vietnam maintains investment barriers, many of which are of a discriminatory nature, against foreign sound recording companies, both pre- and post-establishment. Vietnam made no commitments with respect to production, publication and distribution of sound recordings under GATS as part of its WTO accession.

Vietnamese restrictions on the business of making and selling music, apart from the content itself, are also stifling the development of the Vietnamese music industry, including the participation of US companies in the market. The lack of a meaningful commercial presence of U.S. record companies in Vietnam also inhibits our members' anti-piracy efforts – the effectiveness of which is further hampered by restrictions on the ability of our industry to investigate the activities of pirates in Vietnam. This leaves it incumbent upon the Vietnamese government to enforce intellectual property rights of U.S. content largely on its own.

Under present rules in Vietnam and in the absence of bilateral or multilateral commitments, the ability of foreign sound recording companies to set up subsidiaries to produce or distribute "cultural products" is unclear. It appears that they must license a Vietnamese



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company. Vietnamese companies have not been interested in licensing legitimate product from American companies given that pirated versions of these products are already available in the Vietnamese market. Thus, right holders in sound recordings (and musical compositions), especially with respect to physical product, are largely excluded from the market. U.S. right holders should be permitted to establish wholly owned subsidiaries in Vietnam that are permitted to engage in all industry activities, including but not limited to creation, manufacture, sale, promotion, publication, distribution, and advertising.

It is especially important that foreign-owned enterprises be permitted to invest in Vietnam for the purpose of importing and distributing recorded music for online and mobile distribution to the public. Vietnam's failure to make any significant commitments to market access for U.S. and other foreign record companies within the framework of the WTO accession agreement is, we believe, a major mistake that prejudices both U.S. and Vietnamese interests. Consumers in markets around the world demand and get access to popular cultural materials, with the only question being whether such access will be provided by legitimate or illegitimate means. If major record companies can not do business in Vietnam, then pirates will form a unique pirate supply chain for consumers. This is what has happened in other markets – like that in China – which results in harming U.S. right holders, but also local artists.

“the extent to which such country has taken action to ... reduce or eliminate barriers to trade in services”

In general, the Vietnamese government has done little do date to reduce or eliminate barriers to trade in services related to the copyright industries. The following are some examples of services for which the Vietnam government imposes restrictions and has taken no or few efforts to reduce or eliminate barriers to foreigners engaging in such services.

- **Restrictions on Trading Rights for Films and Distribution Services:** Importation (trading rights) and distribution services as to foreign films is limited to cinemas and business entities that own or have the right to operate a qualified cinema for at least five years and have a license from the Ministry of Culture and Information (MOCI). The import plan and the contents of foreign films must also be pre-approved by the Ministry of Culture and Information (MOCI).
- **Restrictions on Satellite Television Services:** Local households are prohibited from owning satellite dishes for receiving foreign satellite TV channels. Satellite dish ownership is banned except in approved government buildings, institutions, hotels and foreign compounds.



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The International Intellectual Property Alliance (IIPA) appreciates the opportunity to
provide the GSP Subcommittee of the Trade Policy Staff Committee with these comments.

Sincerely,

Michael Schlesinger
International Intellectual Property Alliance

**APPENDIX A
COUNTRY REPORT FOR VIETNAM**

FROM

**IIPA 2008 SPECIAL 301 REPORT
ON COPYRIGHT PROTECTION AND ENFORCEMENT AROUND THE WORLD
SUBMITTED TO THE UNITED STATES TRADE REPRESENTATIVE
FEBRUARY 11, 2008**

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2008 SPECIAL 301 REPORT

VIETNAM

Special 301 Recommendation: Vietnam should remain on the Watch List.

EXECUTIVE SUMMARY

Having recently passed its one-year anniversary of accession to the World Trade Organization (January 11, 2007), the government of Vietnam has made some progress on promises made in the area of protection of intellectual property rights. Signs of progress in 2007 included an agreement by the government to procure legal software, actions taken by administrative authorities against unauthorized use of software by businesses and in government agencies, reductions in signal theft due to the removal of pirated international channels from local operator VTC, and continued consideration of modifications to Vietnam's judicial system, administrative regulations, and criminal regime to deal with IP infringements.

Nonetheless, the Vietnamese market remains largely closed due to high copyright piracy rates, overall lack of enforcement against copyright piracy, and market access barriers that make Vietnam one of the most restrictive markets in the world for U.S. content. An organized campaign, including stiff deterrent criminal remedies against large-scale producers and distributors of pirate product in Vietnam, and market opening measures, would send the message to foreign right holders that their investment in Vietnam's future is welcome.

PRIORITY ACTIONS FOR 2008

- **Commence Anti-Piracy Campaign:** While Vietnam made some improvements in enforcement of copyright, in the area of software in particular, the government should take stricter measures in 2008 to provide a "deterrent" against infringement by commencing an anti-piracy campaign against organized piracy activities in the country, including targeting sources of pirate production, like the optical disc plants in operation in Vietnam, pirate distribution warehouses, and pirate retail shops selling CDs, DVDs, and illegal reprints or photocopies of books. Remedies should include tough administrative fines, license revocations, and shop closures, and criminal penalties through targeted prosecutions.
- **Confirm Criminal Remedies for Copyright Piracy (TRIPS Requirement) and Lower Thresholds:** The Vietnamese government has failed to issue a long-promised Circular to confirm that at least willful infringements of copyright on a commercial scale, i.e., that are detrimental to the interests of right holders, and other violations of the IP law as deemed necessary to provide a deterrent, shall be subject to criminal remedies in Vietnam. In addition, as Vietnam looks to amend its Criminal Code in 2008, maintenance of the Circular's coverage should at least be maintained, and the relevant provisions should allow criminal prosecutions to be brought more easily, since, to date, very few if any copyright infringements have been handled criminally.
- **Afford U.S. Right Holders With Access to the Vietnamese Market:** Various market access barriers exist in Vietnam today, the most serious being the limitations on foreign companies' setting up subsidiaries to produce or distribute "cultural products." Various other content restrictions, such as the proposed 67% film distribution quota, effectively keep foreign right holders out of the market, leaving it open to pirates who offer uncensored, untaxed products and do not reinvest in cultural industry. Vietnam must eliminate existing foreign investment restrictions and other barriers to entry to allow foreign right holders to participate in the Vietnamese market with respect to the production, importation and distribution of physical product as well as the importation and distribution of digital

product via online and mobile networks in order to provide a legitimate alternative to pirate product. Foreign companies should be permitted to establish and/or establish in Vietnam for the purpose of importing and distributing copyrighted materials, including to license their content to Vietnamese internet or mobile content providers for sale to the public.

- **Pass Optical Disc License Regulation:** IIPA understands that a draft regulation on optical disc management has been under consideration by Vietnam for some time. Given that the OD piracy situation remains serious in Vietnam, such regulations should be passed forthwith. Vietnam now has between five and seven optical disc plants with capacity to produce that far outstrips any rational legitimate domestic demand. A comprehensive regulation on the licensing of optical disc manufacture is urgently needed that includes the mandatory use of source identification (SID) Codes (including on blank discs), government inspections of optical disc production facilities, revocations and suspensions for violating plants, and provisions prohibiting the unauthorized commercial burning of content onto CD-R.
- **Join the WIPO Internet Treaties, the WCT and WPPT:** Vietnamese government representatives have indicated they are still studying whether to join the WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty (WPPT). However, the 2005 IP Code includes the major implementing components for those treaties, so Vietnam should be encouraged to join its regional neighbors and join these important treaties as soon as possible.

VIETNAM Estimated Trade Losses Due to Copyright Piracy (in millions of U.S. dollars) and Levels of Piracy: 2003-2007 ¹										
INDUSTRY	2007		2006		2005		2004		2003	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Business Software ²	82.0	90%	53.0	88%	21.0	90%	30.0	92%	24.0	92%
Books	17.0	NA	18.0	NA	16.0	NA	16.0	NA	12.0	NA
Motion Pictures	NA	NA	NA	NA	NA	NA	10.0	NA	7.0	100%
Records & Music	NA	95%	NA	95%	NA	95%	NA	NA	NA	NA
Entertainment Software	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
TOTALS	99.0		71.0		37.0		56.0		43.0	

PIRACY AND ENFORCEMENT UPDATES IN VIETNAM

The Vietnamese government made some progress in the fight against business software piracy and pay TV signal theft in 2007. The efforts of the government are also reflected in an increasingly transparent modus operandi with respect to all aspects of copyright protection, including enforcement, through a comprehensive revamping of the website of the Copyright Office of Vietnam (<http://www.cov.org.vn/Vietnam/home.asp>) and the provision of most of the information in English translation (<http://www.cov.org.vn/English/home.asp>). In addition, a government Decision No. 51, contains goals for Vietnam to reduce its piracy rate to at least meet the level attained by other countries in the region.

The latest reporting from the website indicates that in the first nine months of 2007, the government of Vietnam oversaw the following enforcement results:

¹ The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in IIPA's 2008 Special 301 submission at www.iipa.com/pdf/2008spec301methodology.pdf. For information on the history of Vietnam under Special 301 review, see Appendix D at (<http://www.iipa.com/pdf/2008SPEC301USTRHISTORY.pdf>) and Appendix E at (http://www.iipa.com/pdf/2008SPEC301HISTORICAL_SUMMARY.pdf) of this submission.

² BSA's 2007 statistics are preliminary. They represent the U.S. software publishers' share of software piracy losses in Vietnam, and follow the methodology compiled in the Fourth Annual BSA and IDC Global Software Piracy Study (May 2007), available at <http://w3.bsa.org/globalstudy/>. These figures cover, in addition to business applications software, computer applications such as operating systems, consumer applications such as PC gaming, personal finance, and reference software. BSA's 2006 piracy statistics were preliminary at the time of IIPA's February 12, 2007 Special 301 filing and were finalized in June 2007 (see <http://www.iipa.com/statistics.html>) as reflected above.

- The Vietnamese government reported that the Inspectorate of the Ministry of Culture, Sports, and Tourism (formerly the Ministry of Culture and Information) and inter-agency inspection teams of local provinces and cities inspected 14,677 facilities doing business in cultural items and discovered and handled 4,952 facilities found to be in violation of the law. In all, 267 facilities were warned, 123 facilities had their business licenses suspended, and 43 facilities had their practicing certificates temporarily seized.
- The government reported that 802,990 disks and tapes of all types, 454,424 packages and labels, 14,603 books, 13 computers and 23 hard disks were seized. The total of all administrative fines was reported to be 15 billion VND (approximately US\$940,000) during the first nine months of 2007.

Industry reports that in 2007, the government began *ex officio* actions in the form of unannounced sweeps of shops dealing in pirated DVDs, VCDs and CDs.

Notwithstanding the increased activity in 2007, unfortunately, piracy levels in Vietnam for other sectors continued to rank among the highest in the world. The music/sound recording industries reported piracy rates of over 90%. Major piracy issues include optical disc piracy (both factory and burned), book piracy, and business software end-user piracy. One anecdote that typifies the situation involves the closure of a store selling pirate movies, at 12A Hai Ba Trung, in Hanoi. The reason for the store's closure was stated in big banners announcing that the shop moved to a bigger and better location.

Optical Disc Production and CD-R “Burning” in Vietnam: Technological advances in Vietnam and lax IP laws have made Vietnam an attractive place for pirate optical disc manufacture in recent years. Between five and seven optical disc plants operate in the country, and while some production is legitimate blank CD-R production due to migration from other locales,³ the estimated production capacity of at least 42 million discs per year (12 production lines as of January 2007) dwarfs any rational legitimate domestic demand. In addition to nearly 100% piracy rates domestically, Vietnamese-sourced pirate products have been found in other Asian countries,⁴ Canada, the Czech Republic, and Poland.

The industries have intelligence that syndicates outside Vietnam have established replication facilities in the Mekong River countries (Laos, Cambodia, Myanmar, Thailand, PRC and Vietnam) largely in response to Vietnam's booming economy. Apparently these underground plant operators are increasing production in order to respond to higher disposable income rates in Vietnam and a resulting desire among Vietnamese consumers for the latest western music and movies. Another indicator that physical piracy is growing stems from the number of CD/DVD/VCD players that are entering the country from China. The availability of these inexpensive players in the market place can be taken as an indicator of greater demand for music and movie products in the optical disc format.

Business Software End-User Piracy: Business software end-user piracy – the unauthorized use of software by businesses – remains the most damaging form of piracy in Vietnam for the business software sector. In 2006 the Vietnam authorities, including the IT Crime Unit of the Department of Economic Police of Vietnam, and the Inspectorate of the Ministry of Culture, Sports, and Tourism, began running raids against end-user piracy targets, as well as against hard-disk loading at retail, with some

³ See *Taiwanese Optical-Disc Makers Facing EU Anti-Dumping Probes Eye Vietnam*, at Investment & Trade Promotion Centre, Ho Chi Minh City, August 17, 2005, at http://www.itpc.hochiminhcity.gov.vn/en/business_news/business_day/2005/08/folder.2005-08-17.7878435323/news_item.2005-08-17.5001252474?b_start:int=20 (noting that “once EU adopts some anti-dumping sanctions that might hamper optical-disc exports from China, Vietnam is expected to become another rising production” for optical discs, and noting that Ritek already operates a plant in Vietnam, and that Gigastorage Corp. had investigated whether to move into the Vietnamese market).

⁴ *Bootleg DVD Movie Kingpin Jailed for Life*, The Standard Online, November 25, 2006, at http://www.thestandard.com.hk/news_detail.asp?we_cat=3&art_id=32633&sid=11044738&con_type=1&d_str=20061125 (a recent smuggling ring was uncovered in Guangxi Province, which borders Vietnam); one defendant was convicted to life in prison in China; the case was reported in Vietnam at <http://www.toquoc.gov.vn/vietnam/showPrint.asp?newsId=9385>).

success.⁵ Industry reported that in 2007, the government conducted four raids against end-user piracy.⁶ The government also reported that in the first five months of 2007, the MCST investigated eight facilities dealing in hard-disk loading of pirate software onto computers in Ho Chi Minh City, as well as Nghe An and Ha Tinh Provinces, resulting in removal of pirate software in 117 computers. However, in all of these software cases combined, the government meted out only 110 million VND (US\$6,900) in fines, and each individual case, even the one involving 6.5 billion VND (US\$408,000) worth of illegal software, the maximum fine is limited to only 100 million dong (about \$6,275). Fines generally have measured from 15-30 million VND, or about US\$940-1,880. This overall lack of deterrence remains a major problem in Vietnam which must be addressed in 2008. In addition, government actions have been undertaken primarily by the Economic Police and the Inspectorate of MOCST based in Hanoi. IIPA would like to see more actions taken by local authorities in major cities such as Ho Chi Minh City, Da Nang, and Hai Phong.

Government Legalization of Business Software and Other Copyright Materials:

Increasingly, as copyright markets evolve into the digital environment, losses due to unauthorized uses in the workplace mount for all the copyright industries; especially problematic is the unauthorized use by governments of business software. In many countries, government agencies, contractors, and employees – which can represent a large percentage of workplace users depending on the country – are not doing their part to ensure that uses of software and other copyright materials are legitimate. IIPA thus looks to governments to employ strategies to legalize use of business software and other copyright materials.

Book and Journal Piracy: Book and journal publishers continue to suffer from overwhelming piracy, in the form of illegal reprints, translations, and photocopies. Government-owned bookshops, roadside vendors and copyshops all sell illegal copies of bestselling trade books, travel books and academic textbooks, and unlicensed print overruns continue to plague foreign publishers who engage local production. The English language teaching market continues to be hard hit, with approximately 90% of this market (private-sector education and universities) being supplied by unauthorized reprints and adaptations.

Universities could take a more active role in ensuring that illegal reproduction is not happening on campuses. Some publishers report positive steps in this regard by particular universities in Hanoi. This type of responsiveness is to be commended. State-sector publishers also have an interest in making sure their licenses (such as those of the Ministry of Youth and the General Publishing House of Ho Chi Minh City) are not misused. This type of misuse hurts legitimate local and foreign publishers alike, resulting in distribution of unauthorized books through the mainstream state bookshops. Government publishing houses could help reduce piracy by ensuring that they lend their names and ISBN numbers only to works for which they have documented proof of legitimacy.

Internet and Digital Device Piracy: Vietnam has seen rapid growth in Internet usage as well as mobile device penetration; Vietnam now boasts over 18 million Internet users (21.4% Internet penetration),⁷ and has 106,772 individual web hosts (as of 2007)⁸ and 30,000 hosted websites.⁹

⁵ Specifically, the government conducted its first two administrative raids in Vietnam against end-user software piracy in 2006. On October 5, 2006, the MOCI and the Economic Police successfully raided a joint venture company in Hanoi. Forty-two computers were examined during the raid. The total value of pirated software used by the infringing company was estimated at about VND1 billion (approximately US\$62,750). In early December 2006, a ceramics company in Ho Chi Minh City was raided, and 30 computers containing unauthorized software applications were confiscated. The estimated total value of the illegal software found amounted to 1.5 billion VND (approximately US\$94,000).

⁶ Details of four end-user software piracy are as follows:

- On March 27, 2007, two companies in Ho Chi Minh City were inspected by authorities and infringing software was discovered, and 24 hard disks and 150 CDs containing pirated software were seized.
- On October 26, 2007, an inter-agency squad inspected a design company, and discovered 82 computers with unlicensed software amounting to over 6.5 billion VND (US\$408,000). A small administrative fine was issued in the case.
- On December 11, 2007, an inter-agency squad inspected a company in Ho Chi Minh City and discovered 17 computers with unlicensed software. Pirated software valued at US\$50,200 (800 million VND) was found at this site. An administrative fine was imposed in the case.

⁷ See Internet World Stats, at <http://www.internetworldstats.com/stats3.htm>. These statistics are up-to-date as of November 30, 2007, are based on Census Bureau data, while usage numbers come from various sources, mainly from data published by Nielsen/NetRatings, ITU, and other trustworthy sources.

According to VNNIC, as of the end of November 2007, there are over 1.2 million broadband Internet connections in Vietnam,¹⁰ a rapid expansion compared with previous years, so it is crucial that the government take proper steps to protect against illegal uses of copyright materials over the Internet and by digital and mobile devices. Internet and mobile device piracy is affecting more sectors, with new reports from the publishing industry this year of growing electronic piracy of textbooks and dictionaries, among other published products. Unauthorized deep-linking sites (in which the website contains links to pirate material hosted by third-parties), such as Socbay.com and Zing.vn, which make available infringing deep-links from third party illegal sites to the public, are becoming prevalent in Vietnam. These sites offer large number of infringing recorded music files including local, regional and international repertoire.

One way to make headway into damaging Internet piracy is to permit legitimate copyright owners to participate in the growing mobile and Internet markets for copyright materials. Namely, Vietnam should permit foreign copyright holders to license their content to Vietnamese Internet or mobile content providers, and foreign-owned enterprises should be permitted to invest in Vietnam to engage in the importation and distribution of copyrighted materials including for Internet and mobile users.

Signal Piracy: IIPA is pleased to report that Vietnam saw a “dramatic fall” in illegal connections as estimated industry losses declined from \$38 million in 2006 to \$10 million in the first ten months of 2007.¹¹ The improvement has been attributed largely to the removal of pirated international channels from local operator Vietnam Television Technology Investment and Development Company (VTC), operated by the Ministry of Posts and Telematics.

Courts and Judicial Reorganization: In Vietnam, there have been very few cases involving copyright reaching final court decision, thus the courts have not been well tested and lack clear direction on how to handle copyright cases. In one of the first reported copyright cases to make its way to the Supreme Court in Vietnam, the People’s Supreme Court in Hanoi issued a decision on the first major literature copyright lawsuit between two experts of the literature classic *Tale of Kieu* (the 3,254-verse epic work by Vietnam’s most revered poet, Nguyen Du), finding that Dao Thai Ton’s reproduction “in a faithful and comprehensive way” and use of the essays of Nguyen Quang Tuan “in their original versions” in his book titled *Tale of Kieu – Research and Discussion* was permissible under Vietnamese law (the case was brought prior to the adoption of the new IP Code) since the purpose was to provide commentary and criticism of Mr. Tuan’s interpretation. It appears that the new IP Code would not permit such wholesale copying of the essays without permission or license, would not meet the criteria of any exception under Vietnamese law, and would not meet Vietnam’s international commitments.

There have been no cases brought to IIPA’s knowledge under the Criminal Code involving copyright infringement in Vietnam. In order to truly tackle copyright piracy in Vietnam, it will be necessary for the current laws to be applied to their maximum extent. In addition, it is hoped that the amendment to the Criminal Circular will open the way for more availability of the criminal process in copyright cases.

Finally, IIPA understands that a process is underway to review and revamp the judiciary in Vietnam. Building IP expertise should be a part of this effort.

⁸ See World Factbook, Vietnam, at <https://www.cia.gov/library/publications/the-world-factbook/geos/vn.html>.

⁹ Vietnam News Service, *WTO Ushers Viet Nam Into World Economy*, Nov. 22, 2007.

¹⁰ See Internet World Stats, at <http://www.internetworldstats.com/asia.htm#vn>. These statistics are up-to-date as of November 30, 2007, are based on Census Bureau data, while usage numbers come from various sources, mainly from data published by Nielsen/NetRatings, ITU, and other trustworthy sources.

¹¹ *Pay-TV Piracy Deprives Industry of \$US1.54 Billion for 2007*, November 5, 2007, at <http://www.onscreenasia.com/article-2065-paytvpiracydeprivesindustryofus154billionfor2007-onscreenasia.html>.

TRAINING AND PUBLIC AWARENESS

The copyright industries remained engaged in training in Vietnam of Vietnamese IP officials and officers in 2007.¹²

- The Business Software Alliance (BSA) conducted a software asset management (SAM) seminar, on December 13 in Ho Chi Minh City. The seminar in Hanoi reached a total of about 170 attendees, and the session in Ho Chi Minh City reached about 320 attendees, from the public sector, small and medium enterprises, and multinational corporations.
- On May 15, 2007, the Vietnam National Software Association (VINASA), the Vietnam Informatics Association, the Ministry of Posts and Telecommunications, and the former Ministry of Culture and Information organized a seminar on software copyright in the international economy, attended by many government officials and local and foreign software company representatives. BSA spoke and participated in the event, which was organized under the “Program for Increasing Awareness on Software Copyright in the International Economic Integration” in accordance with Directive No. 04/2007/CT-TTG of February 22, 2007 of the Prime Minister on the Strengthening of Copyright Enforcement for Computer Programs, and Decision No. 51/2007/QĐ-TTĐ of the Prime Minister Approving the Program on the Development of Vietnam’s Software Industry Through 2010, issued on April 12, 2007.
- A representative of Vietnam’s Copyright office attended the WIPO ASIA - Pacific Regional Seminars on the Issues and Recent Developments of the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). Representatives from the governments of Bhutan, Brunei, Cambodia, Laos, Malaysia (the host), Myanmar, Nepal, Pakistan, Korea, Sri Lanka, Thailand, and Vietnam were in attendance. Industry representatives from IIPA, the Recording Industry of Malaysia (RIM), the International Federation of Phonographic Industries (IFPI), and the Motion Picture Association (MPA) were in attendance.

COPYRIGHT LAW AND RELATED ISSUES

Copyright Law and Implementing Regulations to IP Code: Copyright is governed by the “Intellectual Property Code,”¹³ effective July 1, 2006, and an Implementing Decree.¹⁴ In addition, the Civil Code still applies, as Article 5 of the IP Code retains a clause making the Civil Code supreme to the IP Code where inconsistent.

The law resulted in a number of advances in Vietnam’s copyright system. For example, it provided protection for temporary reproductions (Article 4(10)), and provided, for the first time in Vietnam, protection against circumvention of technological protection measures used by right holders to protect their works/subject matter in the digital environment (Articles 28(12) and 35(7)), as well as prohibitions against trafficking in circumvention devices (Articles 28(14) and 35(9)).

¹² Training activities in 2006 included Business Software Alliance (BSA) seminars on software asset management in March 2006 in Hanoi and Ho Chi Minh City, for 460 IT experts and specialists from various domestic and international businesses and organizations, a September 2006 BSA training for 25 officers from the IT Crime Unit of the Department of Economic Police and the former MOCI on identifying illegal software and the collection of evidence in end-user software piracy cases, and Motion Picture Association participation in the November 2006 ASEAN-PTO Workshop on IPR in broadcasting and effective practices in anti-piracy enforcement.

¹³ Law No. 50/2005/QH11, Pursuant to the Constitution 1992 of the Socialist Republic of Vietnam as amended and supplemented by the Resolution No. 51, 2001, QH10 of the 10th Section of the 10th National Assembly dated 25 December, 2001.

¹⁴ Decree Providing Detailed Provisions and Guidelines for the Implementation of the Civil Code and the Intellectual Property Law with Respect to Copyright and Related Rights, No. ____/2006/ND-CP March 31, 2006, effective.

However, the Law still contains some deficiencies, however, when evaluated on the basis of full TRIPS compliance and on the basis of the terms of the U.S.-Vietnam Bilateral Trade Agreement (BTA).¹⁵ The Vietnamese government should work to correct as many deficiencies as possible in the coming months. The following is a non-exhaustive list of issues outstanding:

Substantive Issues

- **Restrictions on IP Rights:** Article 7(2) gives the State unchecked power to decide when a right holder may exercise rights and under what circumstances, without taking into account the balance already created through exceptions to protection, e.g., in Article 25. Leaving Article 7(2) intact creates inconsistencies with the Berne Convention, the TRIPS Agreement and the WIPO Treaties. The second half of Article 7(3) violates Vietnam's current and future obligations by permitting the State to restrict the ability of a right holder to exercise lawful rights, and could even result in an open-ended compulsory licensing to use copyright materials seemingly without limitation or reason. The provision should be deleted. The first clause of Article 8 also runs afoul of Vietnam's bilateral commitments and would be Berne and TRIPS-incompatible since it establishes impermissible content-based restrictions of protection under copyright. That clause should be deleted.¹⁶
- **Civil Code Supremacy:** As mentioned above, the Civil Code is supreme to the IP Code, resulting in legal uncertainties and inconsistencies which endanger Vietnam's ability to fulfill its Berne, BTA and TRIPS obligations.
- **Unacceptable Hierarchy Between Works and Other Subject Matter:** Article 17(4) creates an unacceptable hierarchy of the rights of authors over related rights. The need for the authorization of the author does not cease to exist because the authorization of the performer or producer is also required, and vice versa. Article 35 of the implementing regulations reinforces the supremacy of copyright over related rights.¹⁷
- **Importation Right Not Provided (BTA Requirement):** Articles 20 and 30 fail to provide an "importation" right as required by BTA Articles 4.2(a) and 4.6(b).
- **Exceptions Overly Broad:** Certain exceptions, including Article 24(1) (personal use copy exception), (d)*bis* (library archive copies "for the purpose of research"), (g) ("[d]irectly recording and reporting performances for public information and educational purposes"), and (k) do not accord with the Berne Convention, TRIPS, and the BTA. For example, Article 24(1)(k) regarding personal use imports needs to be specifically narrowed in order to comply with TRIPS Article 60. Article 25((1)(e) is Berne and TRIPS-inconsistent, as it provides that it is permissible to put on stage "dramatic works and other forms of performing arts in cultural gatherings or in promotional campaigns" as long as there is no

¹⁵ See Agreement Between The United States of America and The Socialist Republic of Vietnam on Trade Relations, July 13, 2000 (BTA). The BTA required Vietnam to bring its copyright regime, including enforcement provisions, into compliance with the TRIPS Agreement by December 2003. Vietnam acceded to the Geneva Convention (the Convention for the Protection of Producers of Phonograms Against Unauthorised Duplication of their Phonograms) on July 6, 2005 and the Brussels Convention in late 2005. Vietnam was also planning to accede to the Rome Convention at the end of 2005. There are no plans to accede to WCT and WPPT although Vietnam acknowledges that its law will comply with these and that Vietnam will eventually accede. For a complete analysis of the copyright law and remaining deficiencies, please see IIPA's 2007 Special 301 country report on Vietnam, at <http://www.iipa.com/rbc/2007/2007SPEC301VIETNAM.pdf>.

¹⁶ We note that a new Article 24 was added just prior to passage of the Law, and it is unclear what its scope may be. It provides, "[t]he protection of the copyright to literary, artistic and scientific works referred to in Article 14.1 of this Law shall be specified by the Government." Article 14.1 enumerates the various subject matter of copyright (not including related rights). This provision could be innocuous; however, to the extent it coincides with Articles 7 and 8 to deny rights to authors or right holders or cede rights, it could be problematic.

¹⁷ Article 35 provides,

Protection of related rights without prejudice to copyright provided in paragraph 4 of Article 17 of the Intellectual Property Law means that organizations or individuals using works subject to copyright protection for performances, phonograms or broadcasting must guarantee personal rights and property rights as specified in Articles 19 and 20 of the Intellectual Property Law.

admission charge; however, the provision that performers may not be paid was struck in the bill that was passed into law. It was already believed that “cultural gatherings” and especially “promotional campaigns” could be read in an overly broad way, but with payments being made, this provision runs afoul of the Berne three part test.¹⁸ The implementing regulations worsen the situation, in that, under Article 25(2) of the implementing regulations, it appears the IP Code would allow the copying of a computer program “for archives in libraries for the purposes of research.” If this is what is intended by the implementing regulation, it would create a TRIPS-incompatible exception which must be remedied.

- **Impermissible Compulsory Licenses:** Article 25 enacts into law in Vietnam a broad broadcasters’ compulsory license as to all works except cinematographic works (excluded by the terms of Article 26(3)).¹⁹ Notwithstanding the attempt in Article 26(2) to limit the scope of the compulsory license to the three step test, it is hard to see how the compulsory license in clause 1 would not collide with the three step test in virtually all instances. If this provision applied to performers only, it might be acceptable, but as drafted, it creates a Berne- and TRIPS-incompatible compulsory remuneration scheme. Similarly, the Article 33 compulsory license (which is a last minute addition to this legislation) for use of sound recordings and video recording for commercial “broadcasting” is in violation of international standards; 33(1)(b) allows “[u]sing a published sound/video recording in ... business and commercial activities.” Again, the Vietnamese attempt to limit the scope of these compulsory license provisions with the Berne three part test language (Article 33(2)) fails, because this compulsory license, by its very nature, conflicts with a normal exploitation of the sound and video recordings, and unreasonably prejudices the legitimate interests of the right holders involved.
- **Duration Provisions Are BTA-Incompatible:** Articles 27(2)(a) (with respect to cinematographic works) and 34(2) (with respect to phonograms) do not comply with BTA Article 4.4 since they do not provide the term promised under that Agreement.²⁰

Enforcement Issues

- **No TRIPS/Berne-Compatible Presumption of Ownership, and Imposition of a Prohibited Formality:** Article 203 fails to provide a Berne and TRIPS-compatible presumption of copyright ownership, and could impose a Berne-prohibited formality by requiring a registration certificate in order to enforce copyright. Article 3.2 of the BTA provides, “[a] Party shall not ... require right holders to comply with any formalities or conditions ... in order to acquire, enjoy, *enforce* and exercise rights or benefits in respect of copyright and related rights.” Articles 208(1) (regarding provisional measures)

¹⁸ By contrast, Title 17, Section 110(4) of the U.S. Copyright Act permits “performance of a nondramatic literary or musical work otherwise than in a transmission to the public, without any purpose of direct or indirect commercial advantage and without payment of any fee or other compensation for the performance to any of its performers, promoters, or organizers” if there is “no direct or indirect admission charge” or if “proceeds, after deducting the reasonable costs of producing the performance, are used exclusively for educational, religious, or charitable purposes and not for private financial gain.” Section 110(4) also provides right holders with an opportunity to object to such performances. The Vietnamese provision is much broader in the subject matter (“dramatic works and other forms of performing arts”), the setting (“cultural gatherings or in promotional campaigns”) and the payment scheme (payments not prohibited).

¹⁹ The Article reads as follows:

Use of published works without obtaining permission but paying royalties, remuneration

1. Broadcasting organizations using published works for the purpose of carrying out broadcasting programs with sponsorship, advertisements or collection of money in any form shall not be liable for obtaining permission from, but shall be liable to pay royalties or remunerations to, the copyright owner in accordance with the Government regulations,

2. Organizations and individuals when using the works stipulated in paragraph 1 of this Article must not influence the normal exploitation of works and must not prejudice rights of authors or copyright owners, and must provide information about the name of the author and origin of the works.

3. The use of works referred to in clause 1 of this Article shall not apply to cinematographic works.

²⁰ BTA Article 4.4. provides,

Each Party shall provide that, where the term of protection of a work is to be calculated on a basis other than the life of a natural person, the term shall be not less than 75 years from the end of the calendar year of the first authorized publication of the work or, failing such authorized publication within 25 years from the creation of the work, not less than 100 years from the end of the calendar year of the creation of the work.

and 217(1)(a) (with respect to border measures), since they apply the same standard of proof, also violate international standards.

- **“Compelling Distribution or Use for Non-Commercial Purpose of Goods, Materials and Implements”:** Article 12.4 of the BTA provides that infringing goods, materials, equipment, implements, etc. be seized and disposed of outside the normal channels of commerce, and (in the case of goods) destroyed (if permissible constitutionally). Article 202(5) of Vietnam’s IP Law provides that one application of civil remedies could include “Compelling distribution or use for non-commercial purpose of goods, materials and equipment used for the production and business of IPR infringing goods.” This provision falls short of what the BTA (and TRIPS) would allow, notwithstanding that the drafters added “provided that such distribution and use does not affect the exploitation of rights by the intellectual property rights holder.” There remains no possibility of seizure or destruction of the infringing goods, materials or equipment used in the infringing activity. With regard to administrative remedies, Article 214(3)(a) is similarly too broad, providing for the possibility of “distribution and use of the [goods/implements] for non-commercial purpose provided that such distribution and use does not affect the IPR owner’s capacity to exploit his/her IPRs.”
- **Administrative Remedies Too Low to Deter Piracy:** At a seminar held in Ho Chi Minh City on December 13, 2007, organized by the Business Software Alliance, the Deputy Inspectorate of the Ministry of Culture, Sports and Tourism acknowledged that the current administrative penalties of 20 to 30 million VND (US\$1,250-1,876) are too low, and they have asked that the fine levels be increased to up to “five times the value of the infringed material.” IIPA agrees with this proposal by the Ministry.

Criminal Code of Vietnam: Article 14 of the BTA requires Vietnam to “provide criminal procedures and penalties to be applied at least in cases of ... infringement of copyrights or neighboring rights on a commercial scale,” and to provide that “penalties *available* include imprisonment or monetary fines, or both, sufficient to provide a deterrent, consistent with the level of penalties applied for crimes of a corresponding gravity.” These BTA provisions essentially restate the TRIPS Article 61 test, which Vietnam is now also obliged to follow.²¹ The IP Code unfortunately does not expressly provide for BTA or TRIPS-compatible criminal penalties. The Criminal Code (Article 131) is at best ambiguous, and the Supreme Court Circular on the Criminal Code establishes thresholds for criminal liability that make it unlikely that Vietnam could meet its TRIPS or BTA obligations without amendment/reinterpretation.

The Vietnamese government has been working since 2006 on a new draft Circular which it hopes will resolve the BTA and TRIPS issue. To date, agreement has been reached on providing that infringements/violations listed in Articles 28 of the IP Code would be subject to criminal penalties under the Vietnamese Criminal Code (Article 131), but no agreement has been reached to add related rights to that general statement. Further, the thresholds for criminal liability remain too strict, and not in compliance with the requirement to criminalize at least all copyright piracy carried out “on a commercial scale.”²² Resolution of these issues is crucial to Vietnam meeting its TRIPS and BTA commitments, and to establishing a copyright enforcement system capable of deterring infringement and ultimately legitimizing the market for copyright materials in Vietnam.

IIPA understands that the Criminal Code will be amended, as early as 2008. IIPA hopes that the progress made in addressing the deficiencies in the current Code and Circular will not be forgotten as the drafters proceed, and that a workable system enabling enforcement officials to weed out copyright piracy in the country will be established and/or maintained.

²¹ Article 14.2 of the BTA also requires Vietnam to “provide that, in appropriate cases, its judicial authorities may order the seizure, forfeiture and destruction of infringing goods and of any materials and implements the predominant use of which has been in the commission of the offense.”

²² It is reported that some government officials do not believe criminal enforcement for copyright infringement can be read into Article 131 of the Criminal Code, and that amendment of the Criminal Code is therefore required, but that relevant sectoral authorities have been given instructions to make renewed efforts to get the Circular issued.

Optical Disc Regulations: The Copyright Office has reportedly prepared a Draft Circular on Optical Disc Management, intended to regulate optical disc production. Effective prevention of optical disc piracy can only be achieved through targeted legislation or regulation and by the establishment of specific enforcement mechanisms. APEC Member Economies' Ministers endorsed a paper, "Effective Practices for Regulation of Optical Disc Production" in 2003, which contained many key aspects that are necessary features of an effective optical disc regulatory scheme. Vietnam should join other APEC Member Economies that have already enacted such legislation, and modernize its legislative framework to meet the challenge of optical disc piracy. Essential provisions for an effective optical disc regulatory scheme include:

- The establishment of a competent licensing authority to grant licenses to optical disc production facilities as well as to deny, suspend, or revoke a license if that should become necessary. In addition, commercial CD-R/DVD-R "burning" (i.e., for the purpose of sale, distribution, or other commercial dealing) of copyrighted materials onto recordable optical discs undertaken by traditional optical disc manufacturing plants or outside of such plants (the latter which is fast becoming a major problem) should be subject to registration to ensure that unregistered commercial conduct is punishable.
- The requirement to use SID Codes to trace pirate discs to their source of production.
- The establishment of licensee record-keeping requirements in the application process and after a license is granted, to provide governments with the means to judge whether an applicant qualifies for a license, and to provide maximum transparency after a license is granted (e.g., exemplars will be provided from each plant for every disc produced, allowing for transparent accounting of licensed production and forensic evidence should such be needed). CD-R burning registration should also entail record-keeping of orders.
- The ability to inspect plants (in addition to traditional search and seizure) and burning facilities, including nighttime inspections, to ensure that plants/facilities are engaging in legal activities.
- Government record-keeping of all plants/facilities and all actions taken with respect to them (e.g., inspections, searches).
- The establishment of adequate penalties for violations of a license (or burning without registering) including criminal penalties and possibility of plant/burning facility closure.
- To put into place controls to track the export of discs, and export and import of equipment and raw materials, including the masters or stampers which are the key components for producing pre-recorded content (an automatic license is one common approach).

MARKET ACCESS

Various market access barriers exist in Vietnam today, the most serious being limitations and prohibitions on foreign companies' setting up subsidiaries to produce or distribute "cultural products," including IIPA members' products. This leaves right holders no choice but to license Vietnamese companies (which often refuse to license due to the prevalence of piracy). Various other content restrictions, such as the proposed 67% film distribution quota, effectively keep foreign right holders out of the market in Vietnam, leaving it open to pirates who offer uncensored, untaxed products and do not reinvest in cultural industry as our right holders invariably do. Market access restrictions in Vietnam should be lifted to let foreign right holders avail themselves of this developing market.

Quantitative Restriction on Foreign Film and Other Restrictions Relating to Audiovisual Content: Under current regulations, there are no explicit screen quotas or restrictions on the number of imported films. However, under the market liberalization measures offered by Vietnam in conjunction with its bid to gain WTO accession, the number of cinematographic films imported each year may not exceed

two-thirds of those domestically produced, which is a major restriction on the number of imported films allowed. Also, the number of foreign films projected by each cinema would only be allowed to reach two-thirds of the total projected films in any given year. Since the domestic films industry is underdeveloped and the number of domestic films produced has generally ranged between 10 and 15 films or less per year, these proposed restrictions would pose a significant barrier to the import and distribution of foreign films in Vietnam.

In the television sector, foreign content is reportedly limited to 50% of broadcast time, although it is unclear whether this is enforced. In addition, foreign programming is not allowed during prime time viewing hours of 7:00 p.m. to 9:30 p.m.

Foreign investors are now investing in cinema construction and operation through joint ventures with local Vietnamese partners, but these are subject to government approval. Only cinema exhibitors are allowed to import foreign films into Vietnam, but under the Cinema Law (Article 13(2)), foreign organizations and individuals and Vietnamese residing overseas may establish and manage “film distribution enterprises” and “film projection enterprises” in Vietnam, apparently with no ownership restrictions.²³

Sound Recordings and Musical Compositions: Under present rules in Vietnam, the ability of foreign sound recording companies to set up subsidiaries to produce or distribute “cultural products” is unclear. It appears that they must license a Vietnamese company. In addition, Vietnamese companies have not been interested in licensing legitimate product from American companies given that pirated versions of these products are already available in the Vietnamese market. Thus, right holders in sound recordings (and musical compositions), especially with respect to physical product, are largely excluded from the market. U.S. right holders should be permitted to establish wholly owned subsidiaries in Vietnam that are permitted to engage in all industry activities, including but not limited to creation, manufacture, sale, promotion, publication, distribution, and advertising. It is especially important that foreign-owned enterprises be permitted to invest in Vietnam for the purpose of importing and distributing recorded music for online and mobile distribution to the public.

Vietnam’s failure to make any significant commitments to market access for U.S. and other foreign record companies within the framework of the WTO accession agreement is, we believe, a major mistake that prejudices both U.S. and Vietnamese interests. Consumers in markets around the world demand and get access to popular cultural materials, with the only question being whether such access will be provided by legitimate or illegitimate means. If major record companies can not do business in Vietnam, then pirates will form a unique pirate supply chain for consumers. This is what has happened in other markets – like that in China – which results in harming U.S. right holders, but also the local artists.

OTHER REGULATIONS ISSUED OR CONSIDERED IN 2007

In 2007, the Vietnamese government continued its active legislative and regulatory agenda, including in the area of IP. New regulations adopted in 2007 include:

- Directive No. 04/2007/CT-TTG dated 22 February 2007 of the Prime Minister on the Strengthening of Copyright Enforcement For Computer Programs. This directive instructs local governments to adopt measures to protect against copyright infringement of computer programs, and to budget funds annually for the purchase of software by government entities.
- Decision No. 51/2007/QD-TTG of the Prime Minister Approving the Program on the Development of Vietnam’s Software Industry Through 2010, issued on April 12, 2007.

²³ This is in contrast to “film production” in which the Director or Director General must be Vietnamese.

- Many local provinces and cities issued local directives relating to intellectual property infringements (in furtherance of the Plan of Action No. 168/CTHD/VHTT, KH & CN, NN & PTNT, TC, TM, CA on Cooperation in Preventing and Combating Intellectual Property Violations From 2006 – 2010, issued by six ministries on 19 January 2006), including, e.g., Directive No. 19/2007/CT-UBND dated 3 August 2007 on Strengthening and Encouraging Intellectual Property Activities in Hai Phong City. These directives instruct local departments to conduct activities to improve public awareness and to increase enforcement activities against IP infringement.

Several draft regulations or guidelines remain under consideration in Vietnam. We recommend that the government expedite the issuance of these regulations, including the following:

- Draft Decree of the Government on Punishing Administrative Violations Related to Copyright and Related Rights. This decree will prescribe administrative sanctions for violations under the law on intellectual property. The Ministry of Culture, Sports and Tourism has submitted this draft decree to the Prime Minister for consideration and promulgation.
- Draft Interministerial Circular Providing Guidelines on Applying a Number of Provisions of the Law on Intellectual Property in the Resolution of Disputes on Intellectual Property in the People's Courts. This draft was presented in early 2007, and was generally praised by a number of experts. The current status or timetable for issuance is unclear.
- Draft Interministerial Circular to be Issued by the Ministry of Culture, Sports And Tourism and the Ministry of Planning and Investment Providing Guidelines on the Implementation of the Provisions on Economics and Finance in the Law on Intellectual Property and Decree No. 100/2006/ND-CP dated 21 September 2006.
- Draft Circular on Computer Programs. IIPA understands that the authorities may be working on a draft circular specifically related to computer program issues, including copyright, and looks forward to reviewing a draft.
- Draft Circular on IP Evaluators. Vietnam's law on intellectual property provides a role for "IP evaluators," akin to expert witnesses, to participate in the adjudication of IP disputes. It is unclear whether these individuals or organizations will provide testimony, or will also participate in deciding cases. This draft Circular is forthcoming.

**Vietnam Eligibility Review
Mechanix Wear, Inc. (MW)**

From: Crawford, Reiko [rcrawford@mechanix.com]
Sent: Monday, August 04, 2008 1:58 PM
To: FN-USTR-FR0711
Subject: Vietnam GSP Letter

To Whom It May Concern:

Please forward this letter to the appropriate person.

Thank you,

Reiko Crawford
Purchasing

Mechanix Wear, Inc.
28525 Witherspoon Parkway
Valencia, CA 91355
800-222-4296 x260
rcrawford@mechanix.com
www.mechanix.com



August 4, 2008

Marideth J. Sandler
Chair, GSP Subcommittee
Trade Policy Staff Committee (TPSC)
Office of the United States Trade Representative
600 17th Street, N.W.
Washington, D.C. 20815

RE: Comments on Designating Vietnam as a GSP Beneficiary Country

Dear Ms. Sandler:

On behalf of Mechanix Wear, Inc. ("MW"), we submit these comments in support of designating the Socialist Republic of Vietnam ("Vietnam") as a Beneficiary Developing Country ("BDC") for the purposes of the Generalized System of Preferences ("GSP") as per the eligibility criteria under the Trade Act of 1974, as amended, 19 U.S.C. 2461 et seq. MW is a California company located at 28525 Witherspoon Pkwy, Valencia, CA 91390, and has been a designer, marketer, importer and distributor of high performance synthetic leather work gloves for over 16 years. MW has been importing gloves produced in Vietnam since November 2003.

The MW brand was established in 1992 to bring high quality, high dexterity, synthetic leather gloves to the US market. At the time, MW correctly identified a gap in the market that was not being addressed by any worldwide glove maker. We are the established and dominant market leader in the category and continue to grow at a fast rate. As such, our continued success is critically tied to reducing trade barriers between trading countries and continued low or zero import tariffs. Over the years, we have been successful through production efficiencies and a lowering of the tariff rate. In doing so, we've been able to pass on these savings to the U.S. consumer and give them more value for their spending dollars. Approval of Vietnam as a GSP country would continue this trend which will greatly benefit the U.S. consumer.

Pursuant to 19 U.S.C. § 2461, in determining whether to designate any country as a GSP BDC, the President is to consider the following factors:

- the effect such action will have on furthering the economic development of developing countries through the expansion of their exports;

While Vietnam's per capita GNP is small but growing, and living standards are poor by American standards, the Vietnamese government and inhabitants are eager to improve their standard of living. Both GNP and living standards would improve further if



Vietnam had preferential trade benefits and duty free access to American markets for its fledgling industries--including synthetic leather gloves.

In visits to glove factories in the Hanoi area, MW personnel have specifically noted the eagerness of the Vietnamese people to excel and prosper. This attitude was a big factor in our decision to encourage our suppliers to build and develop factories in the area. At the time, no glove manufacturing was known to us in the northern part of the country, although we believe there are some established gloves factories in the south.

Since establishing a single factory in the Hanoi region, our unaffiliated trading partner, Hyunjin Corp., has gone on to expand to a second factory approximately 15 kilometers closer to the port of Hai Phong. This expansion was driven by reliable production and continued growth of MW's business. Further growth and benefit to the Vietnamese people would be greatly enhanced if Vietnam was accepted as a duty free source for synthetic leather gloves.

- the extent to which other major developed countries are undertaking a comparable effort to assist developing countries by granting generalized preferences with respect to imports of products of such countries;

Virtually all of the major developed countries currently extend GSP benefits to Vietnam, including the European Union, Canada, Japan, Australia and Russia. Through the extension of GSP benefits from these countries, Vietnam has successfully been able to diversify its exports to these countries and reduce its over-dependency on single commodities. Extending GSP benefits from the United States will further this economic development and diversification and increase its per capita GNP.

- the anticipated impact of such action on United States producers of like or directly competitive products; and

There are no United States producers of a like or directly competitive product. No other domestic manufacturer produces synthetic leather work gloves. There are also no U.S. producers of the synthetic leather which is a major component of MW's synthetic leather work gloves. Virtually all synthetic leather gloves imported from Vietnam are imported by MW.

- the extent of the beneficiary developing country's competitiveness with respect to eligible articles

Vietnam's principal exports to other nations, including the European Union, include textile and footwear products, seafood, coffee and tea. Although the extension of GSP benefits by the EU to Vietnam has enabled Vietnam to develop its footwear industry, other industries in Vietnam are still in the process of development, including the synthetic leather glove industry. Accordingly, the extension of GSP benefits by the United States would allow Vietnam to further develop and diversify its other fledgling industries.



With respect to internationally recognized worker rights, MW and some of our customers, including Sears Holding Corp. ("SHC"), have established a Vendor Code of Conduct ("VCC") for our suppliers. The VCC addresses both environmental and ethical standards including worker's rights that meet requirements exceeding even local labor laws. In all cases we have found both the factories and the local laws to meet or exceed the standards established by the VCC. We feel that workers rights in Vietnam have come a long way in recent years and that further encouragement to enhance the standards by reducing trade barriers and increasing trade with the United States would be beneficial to the people of Vietnam.

In summary, extension of GSP benefits to Vietnam will allow the country to continue to diversify its economy. In addition, GSP benefits will promote U.S. trade and investment in Vietnam, furthering U.S. trade policy objectives.

Respectfully submitted,

A handwritten signature in blue ink, appearing to be 'JH', with a long horizontal stroke extending to the right.

James Hale
CEO and Founder
Mechanix Wear, Inc.

**Vietnam Eligibility Review
Pharmaceutical Research and
Manufacturers of America (PhRMA)**

From: Anthony Cino [ACino@phrma.org]
Sent: Monday, August 04, 2008 6:46 PM
To: FN-USTR-FR0711
Cc: Weisel, Barbara; Bisbee, David F.; Weisel, Barbara; Nancy Adams
Subject: PhRMA Vietnam GSP Comments

Dear USTR,

Attached please find PhRMA's comments on designating Vietnam as a beneficiary developing country for purposes of the GSP program. Please do not hesitate to contact us if you have any questions.

Sincerely,
Tony Cino

Anthony B. Cino
Assistant Vice President - Asia
Pharmaceutical Research and Manufacturers of America
Suite 300
950 F Street, NW,
Washington, DC 20004
PH: 202-835-3594
FAX: 202-715-7012
acino@phrma.org



Nancy Adams
DEPUTY VICE PRESIDENT
ASIA

August 4, 2008

Chairman, GSP Subcommittee
Trade Policy Staff Committee
Office of the U.S. Trade Representative
1724 F Street, NW, Room F-220
Washington, DC 20508

BY E-MAIL:
FR0711@USTR.EOP.GOV

**RE: Designation of Socialist Republic of Vietnam as a GSP Beneficiary Country:
FR Doc. E8-14017**

Dear Chairman:

In response to the June 20, 2008, Federal Register Notice soliciting public comment, the Pharmaceutical Research and Manufacturers of America (PhRMA) is pleased to submit these comments for consideration by the GSP Subcommittee as it deliberates the possible designation of Vietnam as a beneficiary developing country (BDC) under the U.S. Generalized System of Preferences (GSP) program.

PhRMA represents the country's leading pharmaceutical research and biotechnology companies, which are devoted to inventing medicines that allow patients to live longer, healthier, and more productive lives. PhRMA companies are leading the way in the search for new cures. PhRMA members alone invested an estimated \$44.5 billion in 2007 in discovering and developing new medicines. Industry-wide research and investment reached a record \$58.8 billion in 2007.

PhRMA and its member companies certainly recognize that Vietnam in recent years has achieved significant progress in opening its market and implementing a number of important economic reforms. As a result of the 2001 Bilateral Trade Agreement (BTA), and Vietnam's accession to the WTO in 2006, U.S. trade with Vietnam overall is growing in important new directions. At the same time, Vietnam's reform process remains incomplete, with some sectors, such as pharmaceuticals, outside of most of the norms characterizing the direction of Vietnam's economy as a whole. In light of the eligibility criteria for GSP beneficiary status, and because the GSP Subcommittee will be conducting a review of Vietnam's economic policies, we believe it is necessary to draw the GSP Subcommittee's attention to a number of issues that remain outstanding for the pharmaceutical sector.

While Vietnam has undertaken a series of commitments under the BTA and in its WTO accession to protect U.S. intellectual property, PhRMA and its member companies would like to see Vietnam implement these commitments fully, and in a consistent and integrated

Pharmaceutical Research and Manufacturers of America

manner. Moreover, there are obstacles that persist under Vietnam's regulations that prevent PhRMA member companies from gaining effective access to Vietnam's pharmaceutical market. While we are working hard with Vietnam to resolve these issues, we view the designation of Vietnam as a beneficiary of the U.S. GSP program as an important opportunity to make progress with Vietnam in defining how they will approach the remaining issues. As explained in the following sections, we believe that, in conjunction with the GSP Subcommittee's review of Vietnam's possible designation as a GSP Beneficiary Developing Country, Vietnam should take steps over the coming months to ensure that, by January 1, 2009, there is a "roadmap" in place *setting out specifically how and when* Vietnam will amend its regulations so as to allow PhRMA member companies to compete fully and effectively with Vietnam's domestic pharmaceutical firms. Only such an outcome would be consistent with Vietnam's designation as an eligible beneficiary of the U.S. GSP program. PhRMA representatives will be pleased to meet with members of the GSP Subcommittee to answer any questions the Subcommittee members may have about the details presented in this submission.

Adequate and Effective Protection of Intellectual Property Rights

Issues with the Provision of Data Exclusivity

It is a clear obligation for Vietnam to provide a period of "data exclusivity" for the confidential test data and other information developed by research-based pharmaceutical companies in obtaining marketing approval for new medicines. Despite the requirement under TRIPS Article 39.3 and paragraphs 5 and 6 of Article 9 of Chapter II of the *U.S.-Vietnam Agreement on Trade Relations*, Vietnam has delayed implementation of this protection. Moreover, the Vietnamese authorities are requiring pharmaceutical companies possessing such data to *request* such protection for the confidential data. Protection of this data, however, is an explicit obligation of the Government under both the cited agreements. To impose "procedures and formalities" as a condition of extending a period of data exclusivity is not consistent with Vietnam's obligations under either TRIPS or the Bilateral Trade Agreement.

The Government of Vietnam should make explicit its timetable for implementing data exclusivity. Any conditions applied to such protection, such as requiring the submitting party to request the protection, should be dropped. Data exclusivity should be automatic and comprehensive, covering the entire dossier.

We are encouraged that Vietnam has accepted an offer of assistance to provide training in data exclusivity processes.

Intellectual Property Enforcement Action Plan

PhRMA was encouraged by the adoption of an enforcement action plan for intellectual property by the Government of Vietnam earlier this year. We remain concerned, however, that certain aspects of the plan are deficient. In particular, certain fines for infringement based on the value of sales of infringing products are inadequate. The Government of Vietnam has

suggested that the administrative proceedings, which can result in fines, are designed to “supplement” existing civil and criminal procedures; however, significant obstacles exist to obtaining relief under the civil and criminal procedures. Therefore, the limited administrative proceedings are often the only effective and realistic path for obtaining meaningful relief. In particular, these proceedings may sometimes be used to stop a specific infringement. However, the level of fines that may be imposed is too low to deter future infringements by the infringer or others.

TRIPS Article 41 requires that WTO Members have in place procedures to prevent infringements and adequate remedies to deter future infringements. While Members are not required to implement administrative procedures to fulfill this requirement, they must at least have in place adequate and effective judicial procedures. Vietnam does not currently have in place either effective administrative or judicial procedures, as a result leaving little deterrent against future infringements. At a minimum, using the administrative proceeding as a means of imposing higher fines based on the value of sales of the “authentic” product would be a valuable step toward fulfilling Vietnam’s obligation to deter future infringements. Vietnam should implement such adjustments to its administrative proceeding as a condition of being named a GSP beneficiary.

Infringement of Registered Pharmaceutical Trademarks

PhRMA members report that state-owned drug companies under the supervision of Vietnam’s Ministry of Health routinely infringe these companies’ registered trademarks. These infringing actions confuse consumers and damage the reputations and business interests of the trademark holders. Given that the trademark infringers are often state-owned companies, these activities further give the impression that the Government of Vietnam condones the actions.

In past consultations with Vietnamese authorities, PhRMA has recommended that the National Office of Intellectual Property (NOIP) issue advisory opinions that the cited activities by the state-owned enterprises are indeed infringing. PhRMA believes that the Government of Vietnam should request that state-owned enterprises should abide by NOIP opinions on infringement. This would be the most efficient and expeditious way to stop consumer confusion, limit damages to owners of trademark registrations, and address the perception that the Government of Vietnam encourages such trademark infringement.

Trade Dress

While the Government of Vietnam argues that Article 130 of the Intellectual Property Code is adequate to prevent the misappropriation of trade dress for pharmaceutical products, PhRMA and its member companies nevertheless remain concerned that the Article is too broadly worded to accomplish this objective. Certainly, the provision has not acted as a barrier to preventing misappropriation of trade dress up to now. PhRMA requests that the Government of Vietnam agree to specific language and a timetable for clarifying and supplementing Article 130 in order to make it effective in prohibiting future misappropriation of trade dress

for pharmaceutical products. These actions should be completed before the designation of Vietnam as a GSP beneficiary becomes effective.

Counterfeiting

Vietnam officials have stated their intention to undertake more efforts to fight counterfeit goods, especially in the case of goods which can endanger human health, including medicines. PhRMA requests that specific actions to implement this laudable intention be included in the IP improvement roadmap with the Government of Vietnam.

Local Working Requirement

In response to PhRMA's previous questions about whether Vietnam's law recognizes importation as fulfilling the "working" requirement for an invention as required under TRIPS Article 27.1, the Government of Vietnam cited a 2006 Decree as evidence of compliance. The 2006 Decree states in part:

Where demands for national defense, security, disease prevention and treatment, nutrition for people and other urgent demands of the society are satisfied by imported products...the holder of exclusive patent rights shall not be required to perform the obligation of producing protected goods or to apply protected process.....

The provision appears to acknowledge importation as fulfilling the "working" requirement, but under only limited circumstances, a condition which does not fulfill Vietnam's obligations under TRIPS Article 27.1. The Government of Vietnam should agree to specific language to modify the 2006 Decree, and a timetable for implementing it as a condition of being designated a GSP beneficiary.

Market Access Concerns

The Government of Vietnam maintains several practices that, taken together, significantly impede market access for pharmaceutical products to the country. As a condition of Vietnam's eligibility for the U.S. GSP program, PhRMA requests that the GSP Subcommittee work closely with the Government of Vietnam to design an action plan for addressing these market impediments so that PhRMA's member companies can have full access to sell and distribute their products in the country within a reasonable timeframe.

Limitations on Marketing and Distribution Rights for Pharmaceuticals

Vietnam restricts pharmaceutical companies from having direct contact with physicians in the country. PhRMA's member companies would like to conduct responsible and ethical marketing activities, which would involve contact with physicians and other medical professionals, such as providing details to physicians about drugs and their properties; organizing continuing medical education activities; and organizing educational symposia. Companies' inability to provide physicians directly with scientific information about pharmaceutical products is a serious impediment to doing business in the market.

Multinational pharmaceutical firms are ethically obligated to ensure that possible health risks from medications are accurately presented to Vietnamese patients and that adverse events are monitored. The existing restrictions on direct contact with physicians make it impossible for PhRMA member companies to carry out these necessary obligations.

Vietnam agreed, as part of its WTO accession commitments, to extend trading rights (the right to import and export independent of government-approved channels) to pharmaceuticals and drugs, effective January 1, 2009. PhRMA requests the GSP Subcommittee to ensure that the Decree for implementing this obligation is in place prior to the January 1, 2009 implementation date. PhRMA also requests that the GSP subcommittee ensure that the Government of Vietnam responds in a timely and transparent manner to applications by companies for legal status in line with their WTO obligations.

In its WTO accession, Vietnam failed to extend distribution rights to pharmaceuticals and drugs. This circumstance leads to the illogical result that, as of January 1, 2009, PhRMA member companies will be able to import and export their products, but will have no ability to control the distribution of these items within the country. In the case of pharmaceutical companies without a local presence in the country, pharmaceutical products may only be distributed by a local Vietnamese company or national authorized to do so. It would be highly desirable for PhRMA member companies to have control over their complete supply chain – including the ability to distribute their products within Vietnam. PhRMA requests that the GSP Subcommittee work with Vietnamese authorities to develop a clear timetable and procedure through which pharmaceutical companies can gain access to distribution rights within the country as a condition of Vietnam becoming a GSP beneficiary.

Pricing Circular/Reference Pricing

Vietnam inappropriately uses CIF prices as a benchmark to compare prices for pharmaceuticals with neighboring countries. PhRMA and its member companies have discussed this issue at length with Vietnamese authorities, pointing out that Vietnam's unique import regime, which at the moment must rely on third party arrangements due to the lack of trading rights in the sector, results in inflated relative prices within Vietnam compared with other countries in the region, which do not impose similar importing restrictions.

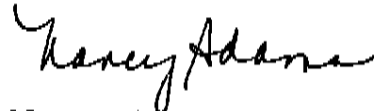
In the lead up to establishing trading rights for the pharmaceutical sector on January 1, 2009, it is premature and inappropriate for Vietnam's Ministry of Health to proceed with establishing a system of reference prices based on CIF prices. The GSP Subcommittee should insist that Vietnam defer its plans to institute this system as reflected in the draft Pricing Circular. If considering pharmaceutical pricing in neighboring markets, it is important to choose realistic values, such as the free market pricing in use in Singapore, Malaysia and Indonesia, and not use an artificially inflated benchmark such as CIF pricing. PhRMA and its member companies would prefer to have a system of regular consultations with the Ministry of Health and other concerned agencies to address Vietnam's healthcare goals, rather than have an unrealistic and unworkable reference pricing system imposed. Deferring the implementation of the CIF pricing system should be a condition of Vietnam's possible designation as a GSP beneficiary country.

Investment Restrictions

Vietnam modified its regulations for foreign representative and branch offices in Decree No. 72/2006/ND-CP of July 25, 2006. The decree spells out procedures for applying for and renewing applications for representative and branch offices, but is not sector-specific. The Ministry of Trade is responsible for developing the regulations under this Decree. However, in practice, we do not believe that any company has had success in opening a branch office or even establishing in Vietnam as a "legal entity". There needs to be greater transparency in the requirements and processes for these investment options. Greater transparency should be pursued as part of the recently announced Bilateral Investment Treaty (BIT) negotiations with Vietnam and also through the ongoing TIFA negotiations.

Thank you for the opportunity to submit these views.

Sincerely,



Nancy Adams
Deputy Vice President – Asia
International Affairs

**Vietnam Eligibility Review
PRCB Producers (U.S. Producers
of Polyethylene Retail Carrier Bags)**

From: Rivas, Paige [PRivas@KSLAW.com]
Sent: Monday, August 04, 2008 12:12 PM
To: FN-USTR-FR0711
Subject: Designation of the Socialist Republic of Vietnam as a GSP
Beneficiary Country

<<Vietnam GSP Opposition.pdf>>

Dear Chairman,

Attached are comments regarding whether or not to designate Vietnam as a GSP beneficiary country.

Thank you,

Paige

Paige Rivas
International Trade Consultant
King & Spalding
202-626-9119

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August 4, 2008

Marideth J. Sandler
Executive Director, GSP Program
Chairman, GSP Subcommittee of the Trade Policy Staff Committee
Office of the United States Trade Representative
1724 F Street, N.W.
Washington, D.C. 20506

**Re: Comments Regarding Vietnam's Eligibility For Designation As A
Beneficiary Developing Country For The Purposes Of The GSP
Program**

Dear Ms Sandler:

On behalf of the following U.S. producers of polyethylene retail carrier bags: Genpak Corporation, Grand Packaging Incorporated, Hilex Poly Co., LLC, Roplast Industries, Inc., Superbag Corporation, and Unistar Plastics LLC (collectively, the "PRCB Producers"), we are submitting this comment letter in response to the USTR's Federal Register notice regarding the initiation of a review to consider the designation of Vietnam as a beneficiary developing country under the Generalized System of Preferences ("GSP") Program. 73 Fed. Reg. 35173 (June 20, 2008). The PRCB Producers oppose the designation of Vietnam as a beneficiary developing country under the GSP.

The U.S. PRCB industry is highly import-sensitive and has been subjected to repeated efforts by low-priced imports to gain or increase access to the U.S. PRCB market. The PRCB industry operates on thin margins and has experienced an overall decline in revenue. Imports from Vietnam of non-reclosable polyethylene retail carrier bags - the HTS subheading that has been the target of unfair foreign trade practices, as described below - have grown significantly in the past several years, which has put the U.S. PRCB industry under increasing strain. From 2006 to 2007, PRCB imports from Vietnam increased by 273.8 percent. From January-May 2007 to

Marideth J. Sandler
August 4, 2008
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January-May 2008, PRCB imports from Vietnam increased an additional 70.4 percent. These import levels will increase even further if Vietnam is granted GSP beneficiary status.


The U.S. PRCB industry has been adversely impacted by imports of PRCBs. Indeed, on August 6, 2004, after an extensive investigation by the U.S. International Trade Commission ("ITC"), the ITC determined that the U.S. industry was being injured by imports of PRCBs from China, Malaysia, and Thailand. On June 18, 2004, the U.S. Department of Commerce determined that imports from those countries were being dumped in the U.S. market by margins ranging up to 122.88 percent and imposed antidumping duties at the U.S. border to counteract the effects of unfair trade. The U.S. Department of Commerce has continually reaffirmed its findings for the past 4 years.

As a result of the antidumping duties on imports of PRCBs from China, Malaysia, and Thailand, the growth in imports from those countries have slowed. Imports from Vietnam, however, have grown dramatically. Evidence has shown that countries such as China are easily able to relocate machinery and equipment to Vietnam in order to circumvent antidumping duties on PRCBs from China. Granting Vietnam GSP-beneficiary status would, in effect, be giving China duty-free access to the U.S. market. Because the U.S. market is so essential to the U.S. PRCB industry and the PRCB Producers have had to defend its industry many times against unfair foreign trade practices, the PRCB Producers are concerned about the ways in which the unfair foreign trade practices can be continued.

The GSP program is intended to offer temporary duty-free access for developing countries that cannot effectively compete without tariff preferences. GSP privileges would provide Vietnamese exporters with a significant advantage in gaining entry to the U.S. market. Vietnam, as evidenced by its growing imports, has shown that it can compete in the PRCBs market without the benefit of those privileges. At a time when the U.S. economy is facing decline, it is not appropriate or justifiable to grant duty-favored access to a U.S. market when the exporting country in question has seen enormous growth in that industry. In the event that Vietnam is granted GSP eligibility, we request that Vietnam be precluded from seeking GSP treatment on PRCBs, where they are already competitive in the product.

On behalf of the PRCB Producers, we thank you for the opportunity to comment on this issue. If you have any questions, please contact me at (202) 661-7847.

Sincerely,



Dan Schneiderman
Counsel to PRCB Producers

Vietnam Eligibility Review
Retail Industry Leaders Association (RILA)

From: Stephanie Lester [Stephanie.Lester@retail-leaders.org]
Sent: Monday, August 04, 2008 3:41 PM
To: FN-USTR-FR0711
Subject: Designation of the Socialist Republic of Vietnam as a GSP Beneficiary Country

Please find attached RILA's comments in support of designating Vietnam as a GSP beneficiary country.

Thanks,

Stephanie Lester

Stephanie Lester
Vice President, International Trade
Retail Industry Leaders Association
1700 N. Moore Street, Suite 2250
Arlington, VA 22209
Direct Dial: 703-600-2046
Fax: 703-841-1184
stephanie.lester@rila.org
To learn more about RILA, go to www.rila.org

August 4, 2008

Chairman, GSP Subcommittee
Trade Policy Staff Committee
Office of the U.S. Trade Representative
1724 F Street, N.W. Room F-220,
Washington, DC 20508

**RE: Designation of Socialist Republic of Vietnam as a GSP Beneficiary Country:
FR Doc. E8-14017**

Dear Chairman of the GSP Subcommittee:

On behalf of the Retail Industry Leaders Association (RILA), I am pleased to submit public comments to express strong support for designating Vietnam as a beneficiary developing country under the U.S. Generalized System of Preferences (GSP) program.

By way of background, RILA promotes consumer choice and economic freedom through public policy and industry operational excellence. Our members include the largest and fastest growing companies in the retail industry – retailers, product manufacturers, and service suppliers – which together account for more than \$1.5 trillion in annual sales. RILA members provide millions of jobs and operate more than 100,000 stores, manufacturing facilities and distribution centers domestically and abroad.

RILA believes that granting GSP eligibility to Vietnam would benefit both the United States and Vietnam. Duty-free entry into the United States for qualifying eligible products helps make U.S. manufacturers more competitive and allows retailers to provide consumer goods at more affordable prices for Americans. Similarly, GSP eligibility would help Vietnam to reach its full economic potential by diversifying its market and becoming more globally integrated. That economic success also should reinforce support within Vietnam for continued economic and legal reform, which is essential for U.S. companies doing business in or with Vietnam. In addition, as more workers in Vietnam earn more, sales of American goods and services will expand in Vietnam.

RILA believes that Vietnam meets each of the mandatory and discretionary eligibility criteria for designation as a GSP beneficiary. The United States is one of a few developed countries that has yet to extend GSP to Vietnam. The European Union, Australia, New Zealand, Canada, and Japan, among others, all have deemed Vietnam to be eligible for GSP benefits, recognizing that Vietnam's economic development falls well

below that of most other nations in East Asia and that economic development in the country would benefit significantly from the GSP program. According to the U.S. State Department, Vietnam's per capita income in 2006 (the last year for which they have data) was \$726. Recent rampant inflation in Vietnam has exacerbated poverty in the country, with more people unable to earn enough to pay for essential goods and services. The situation makes it that much more important that measures such as GSP benefits be made available to alleviate economic difficulties.

Vietnam's legal and regulatory environment has undergone profound change. Vietnam has made great strides over the past decade to modernize and transform itself into a market economy, repeatedly demonstrating its sincere commitment to become a responsible stakeholder in the global trading system. The GSP program would continue and build on that progress. In 2001, the United States and Vietnam signed a Bilateral Trade Agreement (BTA), under which Vietnam committed to widespread market reforms and agreed to provide most-favored-nation and national treatment to U.S. products. In January 2007, Vietnam officially joined the World Trade Organization (WTO). To implement the obligations of the BTA and WTO accession, Vietnam has dramatically revamped its intellectual property, investment, agriculture and services laws. Further, in June 2007, the United States and Vietnam signed a Trade and Investment Framework Agreement (TIFA) that serves as a platform on which to further expand and deepen bilateral trade and investment ties.

Vietnam's commitment and effort to reform is also evident in the changes to its labor law, including in the area of worker rights. Vietnam has demonstrated steady progress on domestic legal protections relating to the right of association, the right to organize and bargain collectively, prohibitions on the use of any form of forced or compulsory labor, a minimum age for the employment of children, acceptable conditions of work, and a prohibition on the worst forms of child labor. It has signed and implemented five of the eight core International Labor Organization (ILO) conventions relating to compulsory labor, income equality, discrimination in the workforce, minimum age of labor and worst forms of child labor. It is working in tandem with ILO and international donors to ensure that these commitments are fully implemented.

Vietnam has demonstrated a deep commitment to and a record of accomplishment in meeting the GSP eligibility criteria. Through its annual review process, the GSP program will provide an effective avenue for continued bilateral dialogue and leverage on all of these important trade-related issues.

RILA appreciates the opportunity to provide these comments. If you have any additional questions, please contact me by phone at (703) 600-2046, or by email at stephanie.lester@rila.org.

Sincerely,

A handwritten signature in black ink that reads "Stephanie Lester". The signature is written in a cursive style with a horizontal line at the end.

Stephanie Lester
Vice President, International Trade
Retail Industry Leaders Association
1700 N. Moore Street, Suite 2250
Arlington, VA 22209

To learn more about RILA, go to www.rila.org

**Vietnam Eligibility Review
U.S. Association of Importers of
Textiles and Apparel (USA-ITA)**

Designation of Socialist Republic of Vietnam as a GSP Beneficiary Country
From: Jacobs, Brenda A. [bjacobs@Sidley.com]
Sent: Monday, August 04, 2008 9:29 AM
To: FN-USTR-FR0711
Subject: Designation of Socialist Republic of Vietnam as a GSP Beneficiary Country

With the correct Subject line statement.

From: Jacobs, Brenda A.
Sent: Monday, August 04, 2008 9:27 AM
To: 'FR0711@ustr.eop.gov'
Cc: 'quota@aol.com'
Subject: USA-ITA letter on Vietnam GSP Designation.DOC

<<USA-ITA letter on Vietnam GSP Designation.DOC>>

Attached are the written comments of the U.S. Association of Importers of Textiles and Apparel (USA-ITA) in response to the Federal Register notice of June 20, 2008.

Should there be any problems with this transmission, or if additional information is needed, please contact the undersigned.

Thank you,
Brenda A. Jacobs
Sidley Austin LLP
1501 K Street, NW
Washington, D.C. 20005
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202-736-8711 fax
bjacobs@sidley.com

August 4, 2008
Page Two



**UNITED STATES
ASSOCIATION OF
IMPORTERS OF
TEXTILES AND
APPAREL**

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August 4, 2008

Chairman, GSP Subcommittee
Trade Policy Staff Committee
Office of the U.S. Trade Representative
1724 F Street, NW., Room F-220,
Washington, DC 20508

**RE: Designation of Socialist Republic of Vietnam as a GSP Beneficiary Country:
73 Fed. Reg. 35173 (June 20, 2008), FR Doc. E8-14017**

Dear Chairman of the GSP Subcommittee:

In response to the June 20 Federal Register notice soliciting public comment, the U.S. Association of Importers of Textiles and Apparel (USA-ITA) is pleased to express its strong support for designation of Vietnam as a beneficiary developing country (BDC) under the U.S. Generalized System of Preferences (GSP) program.

USA-ITA represents more than two hundred member companies, including apparel manufacturers, distributors, retailers, importers and related service providers, such as shipping lines and customs brokers. USA-ITA member companies make their livelihood, and provide good employment to millions of workers in the United States and globally, by responding to the demands of the consumer market. USA-ITA member companies source products from around the world, including the United States, the Western Hemisphere, Asia, Europe and Africa, based on a determination to offer the best quality product at the right price, at the right time, and under the right conditions. Not surprisingly, therefore, Vietnam is a growing source of supply for member companies.

Duty-free programs for qualifying eligible products, like the GSP program, help make U.S. companies more competitive and consumer goods more affordable for Americans. Many USA-ITA members include jewelry, accessories and decorative or home furnishings among the items they sell in the United States, in conjunction with their apparel lines. Vietnam has the potential to be a reliable source of supply for these non-apparel items. Providing GSP status to products of Vietnam would help Vietnam to develop that business, by making Vietnamese manufacturers more competitive.

In 2007, importers and retailers bought \$3.2 billion in jewelry from other countries under the GSP program, indicating the importance of the GSP program to the sourcing strategy for U.S. importers and retailers. The duty savings that would be achieved could mean a savings of millions of dollars for USA-ITA

August 4, 2008

Page Two

member companies and American consumers, a fact that is particularly important in the current time of economic uncertainty and rising consumer prices.

Not only does the GSP program present the opportunity for Vietnamese products to be more competitive, it would help Vietnam reach its full economic potential by diversifying its manufacturing and becoming more globally competitive in non-traditional products. Vietnam's economic success should reinforce support within Vietnam for continued economic and legal reform, which is essential for U.S. companies doing business in or with Vietnam. In addition, as more workers in Vietnam earn more, sales of American goods and services will expand in Vietnam.

It is clear that Vietnam meets each of the mandatory and discretionary eligibility criteria for designation as a GSP program beneficiary. It has normal trading relations status, is a member of the World Trade Organization and the International Monetary Fund, and in the experience of USA-ITA members, its policy of *doi moi* has meant that Vietnam has been consistently introducing and implementing economic and political reforms that promote market principles. Vietnam is also taking steps to afford internationally recognized worker rights.

The United States is the only developed country with a GSP program that has yet to extend the GSP program to products of Vietnam. The European Union, Australia, New Zealand, Canada, and Japan, among others, all have conferred GSP benefits on Vietnam, recognizing that Vietnam's economic development falls well below that of most other nations in East Asia and would benefit significantly from the GSP program. As USA-ITA member companies have seen first hand, recent rampant inflation in Vietnam has exacerbated poverty in Vietnam, with more people unable to earn enough to pay for essential goods and services, and making it that much more important that additional measures, such as GSP benefits, be made available to increase Vietnam's competitiveness in the global market.

Vietnam has made great strides over the past decade to modernize and transform itself into a market economy, repeatedly demonstrating its sincere commitment to become a responsible stakeholder in the global trading system. The GSP program would continue and build on that progress. In 2001, the U.S. and Vietnam signed a Bilateral Trade Agreement, under which Vietnam committed to widespread market reforms and agreed to provide most-favored-nation and national treatment to U.S. products. As a result of Vietnam's accession to the WTO in 2006, Vietnam has dramatically revamped its intellectual property, investment, agriculture and services laws to meet its commitments under the WTO. Most recently, Vietnam agreed to enter into negotiations with the United States on a Bilateral Investment Treaty, although it already has a record of respecting arbitral awards as a member of the New York Convention.

Vietnam clearly has demonstrated a deep commitment to and a record of accomplishment in meeting the GSP eligibility criteria. Through the annual review process, the GSP program will provide an avenue for continued bilateral dialogue and leverage on the full range of trade-related issues.

In short, GSP is a win-win for the United States and Vietnam. For all these reasons, USA-ITA strongly supports designation of Vietnam as a BDC under the GSP program.

Sincerely,

August 4, 2008
Page Two

A handwritten signature in black ink, appearing to read "Laura E. Jones". The signature is fluid and cursive, with the first name "Laura" being more prominent than the last name "Jones".

Laura E. Jones
Executive Director

**Vietnam Eligibility Review
U.S. Chamber of Commerce/
International Division/
Asia Department**

From: Obermann, Natalie [nobermann@USChamber.com]
Sent: Monday, August 04, 2008 2:18 PM
To: FN-USTR-FR0711
Cc: Hiebert, Murray
Subject: Designation of Socialist Republic of Vietnam as a GSP Beneficiary Country

Dear Chairman of the GSP Subcommittee:

Attached is a letter of support from the U.S. Chamber of Commerce for Vietnam's request for designation under the Generalized System of Preferences.

Please contact us if you have any questions.

Regards,

Natalie Obermann
Coordinator for programs and research, Southeast Asia
International Division
U.S. Chamber of Commerce
Phone: 202-463-5652.
email: nobermann@uschamber.com.



August 4, 2008

INTERNATIONAL DIVISION
Asia Department

Chairman, GSP Subcommittee
Trade Policy Staff Committee
Office of the U.S. Trade Representative
1724 F Street, NW, Room F-220
Washington, DC 20508

Dear Chairman of the GSP Subcommittee:

Since the resumption of diplomatic relations in 1995, Vietnam and the United States have become close partners in Vietnam's development and integration into the world economy. Vietnam has made significant strides in creating a market economy, joining the World Trade Organization and mounting economic reforms as a responsible participant in the global trading system.

The U.S. Chamber of Commerce understands that the government of Vietnam now seeks designation as a Beneficiary Developing Country (BDC) under the Generalized System of Preferences (GSP) program. The Chamber strongly endorses including qualifying products from Vietnam under this program, so that these otherwise less globally competitive products, such as food products, chemicals, glues, film, plastic products, tires, porcelain, ceramic and glass products, jewelry, and iron and steel parts and products, would be eligible for duty-free entry into the U.S., on the same footing as other developing countries. Importantly, GSP is a poverty reduction program, encouraging the development of trade and self-sufficiency instead of aid.

The inclusion of products from Vietnam in the GSP program offers mutual bilateral benefits, ensuring that development in Vietnam meets its full economic potential while creating new opportunities (and consumers) for U.S. manufacturing and service companies and for U.S. investment. Through its annual review process, GSP further provides another avenue for bilateral dialogue on trade and trade-related issues of particular importance to U.S. firms, including issues such as

Chairman of the GSP Subcommittee
August 4, 2008
Page Two

adequate and effective protection of intellectual property rights and promotion of internationally recognized worker rights.

For all these reasons, the Chamber urges the administration to respond positively to Vietnam's request.

Sincerely,

A handwritten signature in black ink, appearing to read "Myron Brilliant", with a long horizontal flourish extending to the right.

Myron Brilliant
Vice President, Asia
U.S. Chamber of Commerce

**Vietnam Eligibility Review
US-ASEAN Business Council
Letter of Aug. 4, 2008,
to Chairman, GSP Subcommittee**

From: Mai-Lan Ha [mha@usasean.org]
Sent: Monday, August 04, 2008 1:40 PM
To: FN-USTR-FR0711
Subject: Designation of the Socialist Republic of Vietnam as a GSP Beneficiary Country

Please find attached, the Council's Comments letter on GSP.

Thank you,

Mai-Lan Ha
Manager - Vietnam Affairs
US-ASEAN Business Council
1101 17th Street, NW
Suite 411
Washington, DC 20036
202-416-6710



August 4, 2008

Chairman, GSP Subcommittee
Trade Policy Staff Committee
Office of the U.S. Trade Representative
1724 F Street, NW., Room F-220,
Washington, DC 20508

**RE: Designation of Socialist Republic of Vietnam as a GSP Beneficiary Country:
FR Doc. E8-14017**

Dear Chairman of the GSP Subcommittee:

In response to the June 20 Federal Register notice soliciting public comment, the US-ASEAN Business Council is pleased to express its strong support for designation of Vietnam as a beneficiary developing country (BDC) under the U.S. Generalized System of Preferences (GSP) program.

The US-ASEAN Business Council (USABC) is a national organization in the United States representing American private sector interests in ASEAN, the Association of Southeast Asian Nations. The Council is a non-profit organization and is headquartered in Washington, DC. Its members include 120 leading American corporations that represent a broad, dynamic, and highly influential segment of American business. In Southeast Asia, the Council holds a strong in-country presence through representative offices in the major economies, including Vietnam. Its members represent a wide array of interests in Vietnam, including those in the energy, pharmaceutical, agricultural, manufacturing, automotive, and services sector.

GSP will benefit both for the United States and Vietnam. Duty-free entry into the United States for qualifying eligible products helps make U.S. manufacturers more competitive and consumer goods more affordable for Americans. At the same time, it makes Vietnamese products more competitive and helps Vietnam reach its full economic potential by diversifying its market and becoming more globally competitive in non-traditional products. That economic success also should reinforce support within Vietnam for continued economic and legal reform, which is essential for U.S. companies doing business in or with Vietnam. In addition, as more workers in Vietnam earn more, sales of American goods and services will expand in Vietnam.

More specifically, with Vietnam-made products eligible for GSP treatment, the Council's members will benefit. The Council's members represent those corporations that represent some of the longest and largest investors in Vietnam. This includes significant investments worth billions in a wide range of business activities including manufacturing, energy exploration, and services. The Council's companies look towards GSP as a mechanism that will broaden the economic relationship between the two countries. GSP provides a platform for review of issues important for United States businesses, including adherence to intellectual property rights and

other legal and economic reforms. Companies rely on these reforms to help ensure an open and transparent environment for business operations.

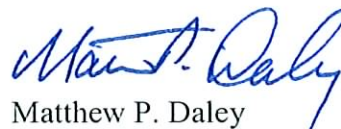
Aside from the economic benefits the Council's member companies stand to gain from enhanced trade ties, it is clear that Vietnam meets each of the mandatory and discretionary eligibility criteria for designation as a GSP beneficiary. The United States is one of few developed countries that has yet to extend GSP to Vietnam. The European Union, Australia, New Zealand, Canada, and Japan, among others, all have conferred GSP benefits on Vietnam, recognizing that Vietnam's economic development falls well below that of most other nations in East Asia and would benefit significantly from the GSP program. Recent rampant inflation in Vietnam has exacerbated poverty in Vietnam, with more people unable to earn enough to pay for essential goods and services, and making it that much more important that additional measures, such as GSP benefits, be made available to increase Vietnam's competitiveness in the global market.

Vietnam has made great strides over the past decade to modernize and transform itself into a market economy, repeatedly demonstrating its commitment to become a responsible stakeholder in the global trading system. The GSP program would continue and build on that progress. In 2001, the U.S. and Vietnam signed a Bilateral Trade Agreement, under which Vietnam committed to widespread market reforms and agreed to provide most-favored-nation and national treatment to U.S. products. Most recently, in January 2007, Vietnam acceded to the World Trade Organization and gained Permanent Normalized Trade Relations (PNTR) with the United States. As a result, Vietnam has dramatically revamped its intellectual property, investment, agriculture and services laws to meet its obligations under the WTO. Just this past June, Vietnam agreed to enter into negotiations with the United States on a Bilateral Investment Treaty, although it already has a record of respecting arbitral awards as a member of the New York Convention.

Vietnam clearly has demonstrated a deep commitment to and a record of accomplishment in meeting the GSP eligibility criteria. Through its annual review process, the GSP program will provide an avenue for continued bilateral dialogue and leverage on all of these important trade-related issues, including those most important to our companies including labor and intellectual property protection, ensuring that Vietnam continues to undertake the measures necessary to benefit both its own citizenry as well as the wider business community.

For all these reasons, the US-ASEAN Business Council strongly supports designation of Vietnam as a BDC under the GSP program.

Sincerely,



Matthew P. Daley
President

On behalf of:

The General Electric Company – Chairman of the US-Vietnam Committee of the US-ASEAN
Business Council

The Boeing Company

Chevron

Discovery Communications

Federal Express

Johnson & Johnson

J. Ray McDermott

Vietnam Partners LLC

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**Vietnam Eligibility Review
Yazaki North America, Inc. (YNA)**

From: Sheryl Leanza [Sheryl.Leanza@us.yazaki.com]
Sent: Monday, August 04, 2008 1:50 PM
To: FN-USTR-FR0711
Cc: Sheryl Leanza
Subject: Designation of the Socialist Republic of Vietnam as a GSP Beneficiary Country

Importance: High

Please find attached the following documents:

1. Yazaki North America, Inc. cover letter (PDF format)
2. Yazaki North America, Inc. Business Confidential version of comments to FR Doc. E8-14017
3. Yazaki North America, Inc. Public version of comments to FR Doc. E8-14017

Have a great day!

Sheryl R. Leanza
Customs Manager
Yazaki North America, Inc.
6801 Haggerty Road, 2205E
Canton, Michigan 48183
Tel: 734.983.4518
Fax: 734.983.4519
e-mail: sheryl.leanza@us.yazaki.com

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 **YAZAKI NORTH AMERICA, INC.**

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August 4, 2008

Chairman, GSP Subcommittee
Trade Policy Staff Committee
Office of the U.S. Trade Representative
1724 F Street, NW., Room F-220,
Washington, DC 20508

**RE: Designation of Socialist Republic of Vietnam as a GSP Beneficiary Country:
FR Doc. E8-14017**

Dear Chairman of the GSP Subcommittee:

This e-mail is on behalf of Yazaki North America, Inc., signed by an Executive Vice President within YNA. The two attachments are YNA's comments labeled for Business Confidential and Public as per the above reference Federal Register notice.

Should you have any questions, please contact:

Sheryl R. Leanza
Customs Manager
Yazaki North America, Inc.
6801 Haggerty Road, 2205E
Canton, Michigan 48183

Telephone: 734-983-4518
Fax: 734-983-4519
E-mail: Sheryl.leanza@us.yazaki.com

Sincerely

Yazaki North America, Inc.


Sheryl R. Leanza

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August 4, 2008

Chairman, GSP Subcommittee
Trade Policy Staff Committee
Office of the U.S. Trade Representative
1724 F Street, NW., Room F-220,
Washington, DC 20508

**RE: Designation of Socialist Republic of Vietnam as a GSP Beneficiary Country:
FR Doc. E8-14017**

Dear Chairman of the GSP Subcommittee:

In response to the June 20, 2008 Federal Register notice soliciting public comment, Yazaki North America, Inc. (YNA) is pleased to express its strong support for designation of Vietnam as a beneficiary developing country (BDC) under the U.S. Generalized System of Preferences (GSP) program.

YNA is a supplier of electronic and technology products, instrumentation and power and data distribution systems for the automotive industry. *** YNA employs approximately *** highly educated and highly skilled work force in the United States, ****.

YNA annually exports approximately *** to *** for the purpose of manufacturing wire harnesses that are then returned to the U.S. for distribution ***.

YNA imports completed wiring harnesses ***. The production of wiring harnesses is a very manual labor-intensive process. Our foreign manufacturing locations employ *** and provide them with a higher standard of living. In the United States and in other countries, Yazaki contributes to the overall welfare of its workers, their families, communities and the environment. ***.

A wire harness is a bundle of many wires that serves as the “nervous system and the veins” of a motor vehicle. Electricity is sent through the wiring harness to the operating system of the motor vehicle ***. All motor vehicles made in the world use wiring harnesses, consequently they are high volume products. Application of GSP to wire harness production has been ideal from a business and policy standpoint. Since production of this labor-intensive product has migrated outside of the United States over the last 15 – 20 years, no American jobs are lost due to GSP – related sourcing. Further, since the same economics apply to America’s primary automotive sector competitors in Japan and the EU, they too have migrated labor-intensive component production off-shore.

Like the United States, both Japan and the EU employ trade and aid programs to support the twin goals of foreign development and global competitiveness in the automotive sector. Canada has taken its view of importation provision for OEM imported product one step further by allowing duty free treatment (regardless of manufacturing country of origin) for all automotive products falling under a specified tariff number at time of importation instead of using a specific complex Special Trade Program.

U.S. OEM vehicle manufacturers *** demand price cuts on the products they purchase from YNA on a continuous basis. Downward pressure on prices is not a cyclical phenomena but instead has become the norm in business relations between an automotive supplier and its customers. This continued pressure has caused YNA and other automotive suppliers to scrutinize every aspect within its supply chain process to cut costs and meet the demands of the OEM vehicle manufacturers. YNA carefully studies each sourcing strategy to determine the optimal location capable of meeting the OEM customer demands. These factors include:

• ***

GSP is a win-win for the United States and Vietnam. Duty-free entry into the United States for qualifying eligible products helps make U.S. manufacturers more competitive and consumer goods more affordable for Americans. At the same time, it makes Vietnamese products more competitive and helps Vietnam reach its full economic potential by diversifying its market and becoming more globally competitive in non-traditional products. This economic success also should reinforce support within Vietnam for continued economic and legal reform, which is essential for U.S. companies doing business in or with Vietnam. In addition, as more workers in Vietnam earn more, sales of American goods and services will expand in Vietnam.

More specifically, with Vietnam-made products eligible for GSP treatment, YNA will benefit. YNA's primary customer base consists of motor vehicle producers in the United States, Canada and Mexico. The North American motor vehicle industry is experiencing unprecedented pressures to reduce the cost of production to compete with motor vehicle production plants in Europe and Asia. GSP is one such program that reduces the cost of parts for motor vehicle production in the United States. The current "cost-price- squeeze" is another critical characteristic of the automotive supplier industry relevant to the GSP review. GSP has been one tool used by YNA and other American automotive suppliers to cope with the "cost-price-squeeze." *** By granting GSP benefits to Vietnam, YNA would be able to off-set a small fraction of the continuing increase in additional duty burden from countries being removed from the GSP program. YNA's experience in the current market proves that YNA is not be able to pass on our added duty costs by way of piece price increases to our North American Automotive manufacturers customers. In the event the U.S. OEM vehicle manufacturers would possibly entertain price increases from YNA, ultimately, the U.S. consumer will bear the burden as such manufacturers will pass through higher costs to them. Granting GSP benefits to Vietnam would

help YNA remain competitive in global competition as well as help maintain U.S. jobs opposed to cutting U.S. jobs in compensation for continued increasing import expenses.

In addition to the general good of strengthening the relationship between the United States and Vietnam, the inclusion of Vietnam in the GSP program would include the following benefits:

For Vietnam

- 1.) Duty free access for eligible products
- 2.) Strengthening of business and investment environment
- 3.) Diversification of Vietnam's economic production and trade. Currently, Vietnam has trade in only about 1000 of the 3400 GSP eligible product lines.

For the United States

- 1.) Additional choice for American consumers through Vietnam's entry in GSP-eligible markets such as: most dutiable manufacturers and semi-manufacturers, and selected agricultural, fishery, and primary industrial products.
- 2.) Strengthening of U.S. economic ties with Vietnam, furthering a channel of dialogue on bilateral trade and economic relations -- promoting reforms in the business and investment environment in Vietnam.
- 3.) GSP eligibility would provide another option for duty free access on potential inputs needed by US manufacturers of finished goods.

Aside from the economic benefits YNA stands to gain from enhanced trade ties, it is clear that Vietnam meets each of the mandatory and discretionary eligibility criteria for designation as a GSP beneficiary. The United States is one of few developed countries that has yet to extend GSP to Vietnam. The European Union, Australia, New Zealand, Canada, and Japan, among others, all have conferred GSP benefits on Vietnam, recognizing that Vietnam's economic development falls well below that of most other nations in East Asia and would benefit significantly from the GSP program. Recent rampant inflation in Vietnam has exacerbated poverty in Vietnam, with more people unable to earn enough to pay for essential goods and services, and making it that much more important that additional measures, such as GSP benefits, be made available to increase Vietnam's competitiveness in the global market.

Vietnam has made great strides over the past decade to modernize and transform itself into a market economy, repeatedly demonstrating its sincere commitment to become a responsible stakeholder in the global trading system. The GSP program would continue and build on that progress. In 2001, the U.S. and Vietnam signed a Bilateral Trade Agreement, under which Vietnam committed to widespread market reforms and agreed to provide most-favored-nation and national treatment to U.S. products. Most recently, in 2006, Vietnam acceded to the World Trade Organization. As a result, Vietnam has dramatically revamped its intellectual property, investment, agriculture and services laws to meet its obligations under the WTO. In June, Vietnam agreed to enter into negotiations with the United States on a Bilateral Investment Treaty, although it already has a record of respecting arbitral awards as a member of the New York Convention.

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employment of children, acceptable conditions of work, and a prohibition on the worst forms of child labor. It has signed and implemented five of the eight core International Labor Organization conventions relating to compulsory labor, income equality, discrimination in the workforce, minimum age of labor and worst forms of child labor. It is working in tandem with the ILO and international donors to ensure that these commitments are fully implemented.

Vietnam clearly has demonstrated a deep commitment to and a record of accomplishment in meeting the GSP eligibility criteria. Through its annual review process, the GSP program will provide an avenue for continued bilateral dialogue and leverage on all of these important trade-related issues.

For all these reasons, Yazaki North America, Inc. strongly supports designation of Vietnam as a BDC under the GSP program.

Sincerely,

Yazaki North America, Inc.



Nigel Thompson
Executive Vice President
Planning, Costing, Finance, Business Systems

Exhibit “B”
