

# Report for Congress

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## **The Vietnam-U.S. Textile Agreement Debate: Trade Patterns, Interests, and Labor Rights**

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# The Vietnam-U.S. Textile Agreement Debate: Trade Patterns, Interests, and Labor Rights

## Summary

In December 2001, the United States granted Vietnam most-favored-nation status, a key condition of the U.S.-Vietnam Bilateral Trade Agreement (BTA) that was approved by Congress and signed by President Bush earlier in the year. By receiving most-favored-nation status, which significantly reduced U.S. tariffs on most imports from Vietnam, Vietnam is expected to record a dramatic increase in its textile and apparel exports to the United States. This has prompted a debate over whether a textile agreement, which would place U.S. quotas on Vietnamese textile and apparel imports, should also be negotiated. Some members of the U.S. textile industry argue that a textile agreement is needed to protect the domestic industry from the potential surge of imports. Other U.S. interest groups oppose such restrictions, arguing that they are protectionist and would raise costs for U.S. consumers. Some opponents of a textile agreement assert that the level of Vietnam's textile and apparel exports to the U.S. are not sufficient to merit the application of quotas.

In addition, some Members of Congress insist that any bilateral textile agreement contain provisions linking Vietnam's quota levels to its progress in the area of labor rights, possibly similar to the provisions under the 1999 U.S. textile agreement with Cambodia. That agreement, which allows Cambodia to receive "bonus" quotas if it shows "substantial compliance" in enforcing its labor laws, has been controversial both in the United States and Cambodia. Labor rights supporters point to improvements in Cambodia's labor system as evidence of the success of the model. However, others have questioned the effectiveness of the incentive and the applicability of the model to Vietnam. Some observers contend that trade policy and labor issues should not be linked and, therefore, there should be no labor provision.

In February 2002, the U.S. Trade Representative Special Negotiator on Textiles visited Vietnam to initiate talks regarding the development of a textile agreement. However, formal negotiations have not yet begun, and the time frame for such negotiations has not been set. The Vietnamese government is reportedly reluctant to enter into a textile agreement, arguing that quotas should not be discussed until the pattern of textile trade is established. The United States potentially has significant leverage on the issue because it could unilaterally impose quotas on the non-WTO country at any time.

This report examines the status of U.S.-Vietnam trade in textiles and apparel, the arguments that have been raised for and against a textile agreement, and the debate surrounding a possible labor provision. This report will be updated periodically. For further information on U.S.-Vietnam relations and the BTA, see the following CRS products: CRS Issue Brief IB98033, *The Vietnam-U.S. Normalization Process*, by Mark Manyin; CRS Report RL30416, *the Vietnam-U.S. Bilateral Trade Agreement*, by Mark Manyin; and CRS Report RS20717, *Vietnam Trade Agreement: Approval and Implementing Procedure*, by Vladimir N. Pregelj. Further information on textile and apparel issues is available in CRS Report RS20436, *Textile and Apparel Trade Issues*, by Bernard A. Gelb.

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# The Vietnam-U.S. Textile Agreement Debate: Trade Patterns, Interests, and Labor Rights

## Background on the Normalization of U.S.-Vietnam Trade Relations

U.S.-Vietnam economic and diplomatic relations virtually ceased after the 1975 victory of communist North Vietnam over U.S.-backed South Vietnam. In addition to suspending most-favored-nation (MFN, also known as normal trade relations [NTR]) status to unified Vietnam, the United States imposed a trade embargo, ceased bilateral humanitarian aid, opposed financial assistance from international financial institutions, and banned U.S. travel to Vietnam.<sup>1</sup>

In February 1994, President Clinton took a major step towards normalizing relations when he lifted the 19-year old trade embargo. Diplomatic relations with Vietnam resumed the following year, and the first post-Vietnam War U.S. ambassador to Vietnam was approved in 1997. In 1998 President Clinton granted Vietnam a waiver of the Jackson-Vanik amendment's freedom-of-emigration requirements, a step which opened the way for the Overseas Private Investment Corporation (OPIC) and the U.S. Export-Import Bank (Ex-Im Bank) to support U.S. trade and investment in Vietnam.<sup>2</sup> Following this waiver and the subsequent presidential waivers granted in 1999, 2000, and 2001, joint congressional resolutions of disapproval were introduced but defeated in the House. In these cases, opposition to the waiver had been based on concerns over Vietnam's emigration policy,

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<sup>1</sup> Legislation was enacted in 1998 to replace the term "most-favored-nation" with the term "normal trade relations" (NTR) in existing and future legislation. The former term is used here for historical continuity and because of its continued use in international trade relations, including in the U.S.-Vietnam Bilateral Trade Agreement. For additional information, see CRS Issue Brief IB93107, *Most-Favored-Nation (Normal-Trade-Relations) Policy of the United States*, by Vladimir N. Pregelj.

<sup>2</sup> The so-called Jackson-Vanik amendment, which is contained in the Trade Act of 1974, Title IV, section 402, prohibits the President from normalizing trade relations with selected non-market economy (NME) countries if they do not meet certain requirements regarding freedom of emigration. A presidential waiver of the Jackson-Vanik requirements—or, alternatively, a presidential determination that the NME country complies with the freedom-of-emigration requirements—gives that country access to certain specific economic benefits, such as access to U.S. government financial facilities (export credits, export credit guarantees, and investment guarantees) and the ability to conclude a bilateral trade agreement with the U.S. For more information, see CRS Report 98-545, *The Jackson-Vanik Amendment: A Survey*, by Vladimir N. Pregelj.

restrictions on human and religious rights, and lack of appropriate accounting for POWs and MIAs.

On July 13, 2000, the U.S. and Vietnam signed a sweeping bilateral trade agreement (BTA), marking a historic moment in the normalization of economic relations.<sup>3</sup> The BTA, which entered into force on December 10, 2001, restored reciprocal MFN status and commits Vietnam to undertake a broad range of market-oriented reforms.<sup>4</sup> Vietnam's temporary MFN status reduces U.S. tariffs on Vietnamese goods from an average of 40 % to about 3%.<sup>5</sup>

## **Congressional Interest in a U.S.-Vietnam Textile Agreement**

Congressional discussion regarding a potential textile agreement with Vietnam began during the debate over the BTA, which contains no restrictions on textile and apparel imports from Vietnam. Some Members urged the Bush Administration to negotiate a separate bilateral textile agreement that would place quotas on imports of Vietnamese textile and apparel products, due to concerns that such imports would significantly affect the U.S. textile industry. Chapter VII, Article 3 of the BTA allows for the negotiation of an agreement on trade in "textiles and textile products."<sup>6</sup>

In February 2002, the U.S. Trade Representative (USTR) Special Negotiator on Textiles visited Vietnam to initiate talks regarding the development of a textile agreement. However, formal negotiations have not yet begun, and the time frame for such negotiations has not been set.

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<sup>3</sup> The text of the agreement, along with background documents, a separate Annex on Services, and two separate letters on investment, can be found on the website of the United States Trade Representative [<http://www.ustr.gov/regions/asia-pacific/regional.shtml>].

<sup>4</sup> Although Presidential waivers of the Jackson-Vanik requirements had been issued for Vietnam since 1999, Vietnam did not receive MFN status until the Bilateral Trade Agreement came into effect in December 2001. Under the Jackson-Vanik amendment, two conditions must be met in order for NME countries to have their most-favored-nation status restored. First, the President must either (a) issue a determination that the country complies with the freedom-of-emigration requirements of the Jackson-Vanik amendment or (b) waive those requirements, as discussed in footnote 2. Second, the country must conclude a bilateral trade agreement with the U.S. that includes a reciprocal MFN clause. See CRS Report RS20717, *Vietnam Trade Agreement: Approval and Implementing Procedure*, by Vladimir N. Pregelj.

<sup>5</sup> Vietnam's MFN status is temporary because it must be renewed on an annual basis. For additional information on Vietnam-U.S. relations and the BTA, see CRS Issue Brief IB98033, *The Vietnam-U.S. Normalization Process*, and CRS Report RL30416, *The Vietnam-U.S. Bilateral Trade Agreement*, both by Mark Manyin.

<sup>6</sup> Chapter VII, Article 3, Number 3, states, "Nothing in this Agreement limits the application of any existing or future agreements between the Parties on trade in textiles and textile products."

Although bilateral textile agreements do not require congressional approval, Congress can influence the terms of the agreements. Moreover, as USTR begins examining the possibilities for a textile agreement, Congress faces several issues regarding U.S.-Vietnam relations that may affect the context of the potential textile negotiations.

First, on June 3, 2002, the President renewed the Jackson-Vanik waiver for Vietnam, thus allowing Vietnam to maintain its temporary MFN status, which reportedly expires July 3, 2002.<sup>7</sup> The waiver is subject to Congressional review and can be rejected through a joint disapproval resolution.

Second, as part of its review of the Jackson-Vanik waiver, Congress is likely to scrutinize Vietnam's record on human rights and labor rights. In its 2001 Human Rights Report, the U.S. State Department found that Vietnam's "poor human rights record worsened in some respects" and that workers have limited labor rights.<sup>8</sup> Recently, concerns have been raised regarding the treatment of ethnic minorities, particularly those belonging to unofficial religious organizations. In March 2002, the United States agreed to allow 905 Vietnamese ethnic minority refugees who had fled to Cambodia to resettle in the United States.<sup>9</sup> At present, the Vietnam Human Rights Act (H.R. 2833), which passed the House on September 6, 2001 by a vote of 410 - 1, is on the Senate Legislative Calendar under General Orders. If passed, the bill would restrict U.S. non-humanitarian aid to Vietnam to its FY2001 levels, unless the President determined that Vietnam was making "substantial progress" in human rights. Vietnamese officials have criticized the United States for interfering in Vietnam's internal affairs by commenting on its human rights situation.<sup>10</sup>

Third, Congress is also likely to watch closely Vietnam's performance in implementing its initial commitments under the BTA. Vietnam has reportedly taken steps to carry out nearly all of the reforms that were to be completed upon the BTA's entry into force.<sup>11</sup> The question remains whether the government will be able to implement the longer-range reforms, given the opposition of powerful vested interests and the degree of cooperation required among governmental ministries and at the provincial level.

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<sup>7</sup> BNA, *International Trade Reporter*, January 24, 2002. Alternatively, Vietnam could maintain its MFN status through a presidential determination that Vietnam was in compliance with the Jackson-Vanik freedom-of-emigration requirements.

<sup>8</sup> U.S. Department of State, *Country Reports on Human Rights Practices, Vietnam 2001*, released by the Bureau of Democracy, Human Rights, and Labor on March 4, 2002. The report may be found on the website of the U.S. Department of State at [<http://www.state.gov/g/drl/rls/hrrpt/2001/eap/8384.htm>].

<sup>9</sup> *New York Times*, World Briefing: Asia, "Cambodia: Vietnamese Refugees Leave Camps," April 18, 2002.

<sup>10</sup> Vietnam News Briefs, "Party Runs Human Rights Spearheads at US," April 15, 2002.

<sup>11</sup> CRS Report RL30416, *The Vietnam-U.S. Bilateral Trade Agreement*, by Mark Manyin.

## International Textile and Apparel Trade Regime

From 1974 to 1995, the Multifiber Arrangement (MFA) provided the framework for international trade in textiles and apparel. The MFA was a set of rules governing bilateral agreements that applied quotas on imports into countries whose domestic industries were facing serious damage from a rapid surge of imports from developing countries. The MFA, in allowing importing countries to set different quota levels for individual exporting countries, conflicted with the then General Agreement on Tariffs and Trade's (GATT) principle of equal treatment for trading partners and with its general preference for customs tariffs over quantitative restrictions.<sup>12</sup>

The Agreement on Textiles and Clothing (ATC), negotiated in the Uruguay Round that established the World Trade Organization (WTO), replaced the MFA in 1995. The ATC is a transitional instrument designed to integrate textile and apparel trade into WTO rules governing other products by phasing out existing quotas over a ten-year transition period. The transition period, which allows manufacturers in industrial countries to prepare for increased competition from developing countries, ends on January 1, 2005, when all import quotas on textile and apparel products are to cease.

Vietnam is currently not a WTO member and, therefore, not a party to the ATC. This puts Vietnam at a significant disadvantage in the international textile and apparel trade in two ways. First, Vietnam does not benefit from the current phase out of existing import quotas. Second, if Vietnam is not a WTO member by 2005, its trade in textiles and apparel will be limited by whatever existing quotas it faces. WTO members, on the other hand, will then operate under quota-free trade in textiles and apparel.

## U.S.-Vietnam Trade in Textiles and Apparel

### The U.S. Textile and Apparel Industry and Market

In 2000, the U.S. textile and apparel industry employed 1.2 million people, 6.5% of total employment in manufacturing. This marked a 35% and 50% decline in employment in the textile and apparel industries, respectively, since 1980. This decrease in employment can largely be attributed to both productivity gains and increased importation of textile and apparel products. Over the same twenty-year period, U.S. production of textiles rose, while apparel production fell slightly.<sup>13</sup>

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<sup>12</sup> In general, the WTO prohibits countries from taking actions that selectively target one or more specific Member countries. For further information on textile and apparel issues, see CRS Report RS20436, *Textile and Apparel Trade Issues*, by Bernard A. Gelb. Also, for background information on the WTO, see *Trading into the Future* on the WTO website at [<http://www.wto.org>].

<sup>13</sup> CRS Report RS20436, *Textile and Apparel Trade Issues*, by Bernard A. Gelb.

The United States is currently the world's largest import market for textile and apparel products.<sup>14</sup> In 2001, the United States imported over \$70 billion in apparel and textiles, of which \$56 billion was apparel. During the same period, the United States exported over \$16.5 billion worth of apparel and textiles worldwide, with \$6.5 billion in apparel and \$10 billion in textiles.<sup>15</sup>

### **Vietnam Textile and Apparel Industry<sup>16</sup>**

Vietnam's textile and apparel industry is an important source of economic growth and employment for the country. It produces about 15% of Vietnam's exports and employs 1.6 million workers, approximately 25% of all industrial workers in the country. The sector comprises over 1,000 enterprises – 190 state-owned, 800 private, and approximately 180 foreign-invested companies that include international joint ventures with domestic firms. Individual tailors and small enterprises currently serve much of the domestic garment market, therefore, most medium and large apparel enterprises focus on export production. The industry is dominated by VINATEX, a conglomerate of 60 state-owned enterprises that accounts for over one-third of all textile and garment exports.

Vietnam's textile and apparel exports have risen substantially in recent years, surpassing \$2 billion in 2001. (See Table 1) Vietnam's largest markets for textile and apparel exports are Japan and the European Union (EU), with 2001 exports of \$617 million and \$512 million, respectively. Approximately half of Vietnam's 2001 exports went to the EU, Canada, Norway, and Turkey, countries with which Vietnam has completed bilateral textile and garment agreements. The other half of its exports went to its non-quota markets of Japan, Asia, and the United States.

**Table 1. Vietnamese Textile/Apparel Exports to Key Markets:  
1999-2001**  
(millions of dollars)

Country	1999	2000	2001
European Union	555	609	512
Japan	417	619	617
United States	35	50	50
<b>Total (all markets)</b>	1,747	1,892	2,080

**Source:** U.S. Embassy in Hanoi Reporting, March 15, 2002.

<sup>14</sup> BBC Monitoring International Reports, "Vietnam's Textile Firms Improve Conditions for Workers," March 1, 2002.

<sup>15</sup> Data from OTEXA, the Office of Textiles and Apparel, International Trade Administration, U.S. Department of Commerce, available at [<http://otexa.ita.doc.gov>].

<sup>16</sup> Much of the information from this section comes from reporting of the U.S. Embassy in Hanoi, March 15, 2002.



The Vietnamese government and textile industry have taken several measures to expand both production and U.S. sales. The government is granting an export subsidy of 7% to textile companies that export to the United States.<sup>17</sup> VINATEX opened a representative office in New York, sent several producers to the World Source Exhibition, and is building four specialized industrial parks.<sup>18</sup> In addition, the government plans to invest \$100 million in the domestic cotton industry, with the goal of expanding production to meet 60% of the local demand by 2010. Currently, Vietnam's domestic producers can only supply 10% of the cotton and 20% of the fabrics used in garment production.<sup>19</sup> The present level of Vietnamese cotton production may benefit the United States, since raw cotton is one of its leading export items to Vietnam.

## **Pre- and Post-BTA Trade in Textiles and Apparel**

Prior to the BTA, Vietnam's textile and apparel exports to the American market were negligible. In 2001, Vietnam ranked 64<sup>th</sup> among countries exporting textile and apparel products to the U.S., with an estimated \$50 million in products.<sup>20</sup> Overall, the United States imported more than \$70 billion in textiles and apparel last year, making Vietnam a small player in the U.S. market.

Now that Vietnam enjoys the most-favored-nation tariff rates under the BTA, Vietnamese exports of garment products to the United States are expected to increase rapidly. However, given the short amount of time that has passed since the BTA came into effect, it is not clear how significant or sustained the increase will be.

Some observers expect a dramatic surge in Vietnamese textile and apparel exports. The Vietnamese textile and garment industry reportedly expects to earn at least \$300 million from the U.S. market this year.<sup>21</sup> The post-MFN experience of Cambodia supports this view. In 1996, prior to receiving MFN status, the United States imported \$2.4 million in textiles and apparel from Cambodia. That amount rose to \$98 million in 1997, \$360 million in 1998, and was over \$950 million in 2001.<sup>22</sup>

Others assert that many Vietnamese textile companies are not ready to compete in the U.S. market, and, therefore, exports in the first year after the BTA will be lower than most expectations. They argue that potential export expansion will be

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<sup>17</sup> Vietnam News Briefs, January 7, 2002.

<sup>18</sup> *Vietnam Investment Review*, "Get Ready for Ragtime," January 14, 2002; Xinhua News Agency, "Vietnam Takes Measures to Expand Textile, Garment Market," April 8, 2002.

<sup>19</sup> U.S. and Foreign Commercial Service Market Research Reports, International Trade Administration, U.S. Department of Commerce, May 7, 2002; Reporting from the U.S. Embassy in Hanoi, March 15, 2002.

<sup>20</sup> Of the \$50 million in Vietnamese imports, almost \$48 million was in apparel products.

<sup>21</sup> Malaysia General News, "Vietnam's Garments, Textiles Export Up," February 21, 2002.

<sup>22</sup> Data from OTEXA, the Office of Textiles and Apparel, International Trade Administration, U.S. Department of Commerce.

limited by factory and industry constraints, such as outdated technology, low output capacity, lack of capital for investment, and limited domestic fabrics and other inputs.<sup>23</sup> In addition, sources suggest that it will take time for many Vietnamese companies to understand the preferences of the U.S. market and to meet U.S. quality and social accountability standards. Also, some Vietnamese companies may be cautious in shifting production to target the U.S. market for fear of hurting current sales to their larger markets, such as Japan and the EU.

Initial data for 2002 show a substantial increase in textile and apparel imports from Vietnam, compared to the same period from last year. In the first quarter of 2002, the United States imported approximately \$38 million in Vietnamese textile and apparel products, an almost 300% increase from last year's first quarter amount of \$14 million.<sup>24</sup> Several products in particular posted dramatic increases, such as men's and boys' man-made fiber coats and jackets, of which imports rose from \$1,400 in the first quarter of 2001 to \$1.3 million in the first quarter of 2002. U.S. imports of women's cotton blouses and shirts also increased significantly, from \$13,000 to over \$2 million.<sup>25</sup> While this marks impressive growth, Vietnam still lags far behind China, whose textile and apparel exports to the United States in the first quarter of 2002 surpassed \$1.5 billion.<sup>26</sup>

**Table 2. U.S. Textile and Apparel Imports from Vietnam:  
Selected Items**  
(millions of dollars)

Product Category	HTS Category	1999	2000	2001	Jan-Mar 2001	Jan-Mar 2002
Knitted apparel	61	11.24	16.75	21.32	6.48	13.98
Non-knitted apparel	62	25.15	29.92	26.04	7.03	18.47
Misc. textile items	63	0.28	0.85	0.74	0.12	0.62
Headgear	65	0.06	0.13	0.25	0.04	2.80
	<b>Total</b>	36.73	47.65	48.35	13.67	35.87

**Source:** U.S. International Trade Commission. HTS is the Harmonized Tariff Schedule.

Figures for the first several months of 2002, however, may not be indicative of the future pattern of trade. It is likely that some shipments planned for late 2001 were held off until the first quarter of 2002 in order to capitalize on the lower MFN tariff rates. Therefore, the 2001 export total may be artificially low, while the 2002

<sup>23</sup> Reporting from the U.S. Embassy in Hanoi, March 15, 2002.

<sup>24</sup> Data from OTEXA, the Office of Textiles and Apparel, International Trade Administration, U.S. Department of Commerce.

<sup>25</sup> Trade Dataweb, U.S. International Trade Commission, available at [<http://www.dataweb.usitc.gov>].

<sup>26</sup> Data from OTEXA, the Office of Textiles and Apparel, International Trade Administration, U.S. Department of Commerce.

first quarter results may overestimate the increase in trade. On the other hand, the time lag between orders and deliveries may mean that these early numbers do not capture sales that will be shipped later in the year. The fact that Vietnamese garment exports to the U.S. declined between July and November 2001 may validate the speculation that buyers delayed shipments in anticipation of the BTA. However, the U.S. recession and post-September 11 effects on the international economy may have also contributed to lower U.S. imports during those months.

## Arguments For and Against a Textile Agreement

### Support for a Textile Agreement

Members of the U.S. textile industry have called for a U.S.-Vietnam textile agreement to protect domestic producers against a potential surge of Vietnamese exports. With the view that Vietnam, with its low labor costs, most-favored-nation status, and unrestrained access to the U.S. market, is a threat to domestic production, they contend that the lack of a textile agreement could lead to increased job losses and factory closings in an industry already hard hit by the worldwide recession and trade benefits extended to other countries.<sup>27</sup>

The American Textile Manufacturers Institute (ATMI), for example, has stated that the textile industry is already facing “its worst economic crisis since the Great Depression,” with over 100 U.S. textile mills closing and over 60,000 workers losing their jobs in 2001 alone.<sup>28</sup> In 2001, governors from four textile producing states urged President Bush to “recognize that the U.S. textile industry, like the steel industry, is facing a crisis of survival that is not of its own making.”<sup>29</sup> After witnessing recent U.S. government actions to protect the domestic steel, lumber, and catfish industries, the textile industry has called for comparable consideration.

Domestic pressure for a textile agreement has been further heightened by U.S. quota concessions granted to Pakistan in February 2002 – estimated at nearly \$500 million over three years – to help repay Pakistan for its help in the war against terrorism. Sources in the textile industry assert that such concessions will have a substantial impact on the U.S. textile industry and could cost as many as 2,500 jobs.<sup>30</sup> In order to offset this negative impact on domestic industry, it has been suggested that quota space from another country be shifted to Pakistan. Some sources have hinted that Vietnam is the most likely candidate to lose potential quota, since

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<sup>27</sup> *Inside U.S. Trade*, “USTR Officials Visit Vietnam to Begin Talks on Textile Accord,” February 22, 2002.

<sup>28</sup> “ATMI Urges Congress, Administration to Adopt More Equitable Trade Policies,” February 7, 2002, available on ATMI website at [<http://www.atmi.org/Newsroom/releases/PR200204.asp>].

<sup>29</sup> International Mass Retail Association, Press Release, August 2, 2001, may be found at [<http://www.imra.org/public/pages.index.cfm?pageid=280>].

<sup>30</sup> *Inside U.S. Trade*, “White House Grants Pakistan Quota Concessions Worth Half a Billion,” February 15, 2002.

Vietnam is not a WTO member and it has just begun discussions with the United States regarding a possible textile agreement.<sup>31</sup> The fact that Pakistan, arguably one of the United States' most critical allies in the war on terrorism, received significantly less than its initial proposal does not bode well for Vietnam, since it may indicate the degree to which U.S. policymakers are willing to support the domestic textile industry in the face of international competition.

Also, the United States may seek to conclude a textile agreement with Vietnam in the interest of equity, since it has textile arrangements in place with all other ASEAN countries, except for Burma and Brunei.<sup>32</sup>

Labor rights proponents have also pressed for a textile agreement with Vietnam as a mechanism to promote improvements in Vietnam's labor conditions, possibly similar to the provisions under the 1999 U.S. textile agreement with Cambodia. At this point, it is unclear what type of labor provision, if any, would be acceptable to both countries.<sup>33</sup> (See discussion below.)

## Arguments Against a Textile Agreement

Those opposed to a textile agreement with Vietnam argue that by restricting trade, any textile agreement would end up hurting American consumers, U.S. industries, and the textile industry itself. By limiting the amount of apparel goods available to U.S. consumers, in theory, quotas would restrict choice and raise the cost to consumers of those goods, which in turn would reduce U.S. consumer spending on goods from other industries. Textile agreement opponents maintain that this would weaken U.S. consumers' purchasing power, and also limit Vietnamese export earnings, thereby reducing their ability to buy U.S. goods. They assert that textile quotas, in reducing the U.S. industry's competition from abroad, also may discourage the industry from modernizing and improving productivity. This may leave the industry more vulnerable to international competition after textile quotas expire under the ATC in 2005. Freer trade with Vietnam may also contribute to greater voice for the private sector in the economic and political affairs of that country.

Some opponents of a Vietnam textile agreement ask whether Vietnam can truly be considered a threat. They assert that even if the level of Vietnamese textile and apparel exports were to quadruple in 2002 to \$200 million, that would still be insignificant in the over \$70 billion of U.S. imports. Moreover, in order for Vietnam's production to be a true threat to U.S. domestic producers, it has to be

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<sup>31</sup> *Inside U.S. Trade*, February 15, 2002; Paul Wiseman and James Cox, "Competing Interests Tangle Textile Policy," USA Today, April 2, 2002.

<sup>32</sup> The ASEAN countries with which the United States has concluded textile arrangements are Cambodia, Indonesia, Laos, Malaysia, the Philippines, Singapore, and Thailand. These arrangements include bilateral textile agreements, visa arrangements concerning textiles and textile articles/products, and administrative arrangements regarding textiles. Although the United States currently has no formal textile agreement with Burma, it has placed import quotas on selected Burmese textile and apparel products.

<sup>33</sup> *Inside U.S. Trade*, February 22, 2002.

shown that Vietnam's increased market share would come out of the market share of U.S. producers, with the more likely scenario being that increased imports from Vietnam would displace the market share of China or other developing country producers.

The Vietnamese government is reportedly reluctant to enter into an agreement, arguing that quotas should not be discussed until the pattern of textile trade is established. Given that quota levels are typically based on historical performance, some observers believe there is a likelihood that quota levels may be set too low or may be applied to the wrong categories. In the case of Cambodia, there was a period of over 2 years between the U.S. granting of MFN status and the signing of a bilateral textile agreement. The latter occurred after textile and apparel imports from Cambodia surpassed \$350 million.

Opponents of a textile agreement also argue that the imposition of quotas could discourage potential investment in Vietnam's textile industry. If Vietnam is subject to U.S. quotas and is not a WTO member by 2005, the country would be at a significant disadvantage against WTO competitors who will enjoy quota-free trade in textiles and apparel. Opponents note that potential investors eyeing a post-BTA Vietnam may choose not to risk being stranded in an industry that cannot compete well in the world market after 2005. Increased foreign investment in the Vietnam textile and apparel sector, on the other hand, may increase economic opportunities for U.S. textile machinery, construction, telecommunications, and financial companies, who could gain from that sector's expansion. U.S. producers of raw cotton, one of the United States' leading export items to the Vietnam, may also benefit from expansion of the garment sector. During the first quarter of 2002, when Vietnamese textile and apparel imports increased rapidly, U.S. exports of cotton to Vietnam doubled to \$8.4 million.<sup>34</sup>

In August 2001, four U.S. trade associations – representing apparel retailers, importers, and manufacturers – sent a letter to President Bush urging him to reject additional protection for the textile and garment industry. Asserting that the industry is already highly protected, with over “1,000 quotas” and relatively high duty rates on imports, they dismissed any comparisons with the U.S. steel industry.<sup>35</sup> In March 2001, the same trade associations urged United States Trade Representative Zoellick to hold off on textile negotiations with Vietnam.<sup>36</sup>

## Labor Rights

Accompanying initial discussion of a possible U.S. textile agreement with Vietnam has been the question of whether such an agreement should have a labor

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<sup>34</sup> Trade Dataweb, U.S. International Trade Commission.

<sup>35</sup> International Mass Retail Association, “President Bush Urged to Reject Additional Textile Protection,” Press Release, August 2, 2001, may be found at [<http://www.imra.org/public/pages.index.cfm?pageid=280>].

<sup>36</sup> International Mass Retail Association, March 9, 2001.

provision, possibly modeled after the U.S.-Cambodia textile agreement. This section will provide a brief background on the debate over labor provisions and explore some preliminary issues relative to Vietnam.

## **Background on Labor Provisions in Trade Agreements**

Linking the promotion of labor standards to international trade policy is a highly controversial issue, both in the United States and internationally.<sup>37</sup> Within the broader debate about the effects of trade on labor standards and the impact of varying labor standards on trade competitiveness is the question of whether trade agreements should include legally-enforceable standards to protect worker rights. Labor rights proponents argue that the WTO's Trade-Related Aspects of Intellectual Property Rights (TRIPS), which protects owner rights for seven types of intellectual property, sets a precedent for including legally-binding standards that protect the rights of resource holders in trade agreements. Some also ask whether it is morally acceptable for the United States to import items made under labor conditions that would be illegal if the production occurred in the United States. Proponents believe that a critical advantage of including a labor rights provision in the body of a trade agreement is that it allows for the use of the agreement's dispute settlement process to ensure that labor standards are enforced.

On the other hand, many argue that trade and labor issues should not be linked. Some economists point out that labor provisions inhibit free trade, thereby raising the prices and reducing the selection of imported goods. Other critics of the trade-labor linkage assert that requiring poor countries to meet industrial nations' standards simply serves to protect developed country industries from developing country competition and, in doing so, limits the developing country's potential economic growth through trade. Opponents of labor provisions maintain that, in the end, by restricting trade and imposing higher standards, provisions that are ostensibly designed to help workers may actually cause factories to close and workers in developing countries, who have few safety net resources and work alternatives, to lose their jobs.<sup>38</sup> The WTO, faced with strong debate on this issue in the 1996 Singapore Ministerial, declared that the International Labor Organization (ILO) was

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<sup>37</sup> The labor standards outlined in the ILO's 1998 Declaration on Fundamental Principles and Rights at Work are widely accepted as the international core labor standards: freedom of association and the right to bargain collectively, elimination of forced labor, abolition of child labor, and the elimination of discrimination in employment. The U.S. Trade Act of 1974, as amended by P.L. 98-573, contains the first three standards in its definition of worker rights; however, rather than non-discrimination in employment, its final standard is acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

<sup>38</sup> For more information, see CRS Report RS20909, *Trade Agreements: A Pro/Con Analysis of Including Core Labor Standards*, by Gary Wells; and CRS Electronic Trade Briefing Book, "Worker Rights Protection in Trade Agreements and Fast Track Authority," by Mary Jane Bolle.

the appropriate organization for labor matters and refused to link these issues to its trade policies.<sup>39</sup>

Two U.S. trade agreements that are considered possible models for linking trade and labor issues are the Cambodia-U.S. textile agreement and the Jordan Free Trade Agreement. The “Cambodia model” introduced an innovative, incentive-based labor provision that ties Cambodia’s improvements in labor standards to increased access to the U.S. market. Under the agreement, Cambodia is entitled to receive annual, one-time “bonus” increases in its quotas if a U.S. interagency panel determines that working conditions in the textile and apparel sector “substantially comply” with internationally recognized worker rights and Cambodian labor law.<sup>40</sup> The bonuses, which take effect for one year only, are in addition to the 6% increase that typically is automatically granted to textile import quotas. In the 1999 agreement, the amount of the potential quota bonus was up to 14%, and Cambodia received bonuses of 9% in 2000, 2001, and 2002.<sup>41</sup> After the awarding of each bonus, the Cambodian government, American textile importers, and some labor rights organizations criticized the United States for not awarding the full 14% increase. In December 2001, the U.S.-Cambodia textile agreement was amended and extended for another three-year period, with the potential quota bonus raised to 18%.<sup>42</sup> In order to gather information on conditions in the garment sector, the United States, Cambodia, and the Garment Manufacturers Association in Cambodia funded the establishment of an independent monitoring system operated by the ILO. The ILO program began monitoring factories in June 2001 and has so far produced two synthesis reports on baseline conditions in 64 factories.<sup>43</sup>

The Jordan-U.S. Free Trade Agreement, adopted into law in September 2001, represents the first U.S. free trade agreement to include labor provisions directly in the body of the agreement, where they would be subject to dispute resolution procedures. The labor provisions require each country to enforce its own labor laws and authorize sanctions for non-enforcement. However, controversy over the use of sanctions to enforce labor standards led to a last minute exchange of letters between

<sup>39</sup> WTO, *Trading into the Future*. See also CRS Electronic Trade Briefing Book, “Labor Issues and the WTO,” by Mary Jane Bolle.

<sup>40</sup> The text of the Cambodia Bilateral Agreement is available on the website of the Office of Textiles and Apparel, International Trade Administration, U.S. Department of Commerce, at [<http://web.ita.doc.gov/Otexa/>]

<sup>41</sup> The 2000 bonus was parceled out over the year. In December 1999, the U.S. promised a 5% quota increase if Cambodia established an industry-monitoring program to be run by the ILO. After Cambodia complied with this request, it was awarded the 5% increase in May 2000. Five months later, the U.S. acknowledged further progress in Cambodia’s labor rights situation by awarding an additional 4% increase. *Inside U.S. Trade*, “CITA Awards Cambodia Nine Percent Quota Hike on Textiles, Apparel,” January 19, 2001.

<sup>42</sup> Press release, USTR, “U.S.-Cambodian Textile Agreement Links Increasing Trade with Improving Workers’ Rights,” January 8, 2002, available at [<http://www.ustr.gov/releases/2002/01/01-03.htm>].

<sup>43</sup> The Synthesis Reports from the ILO Garment Sector Working Conditions Improvement Project are available on the ILO website at [<http://www.ilo.org/public/english/dialogue/govlab/cambodia/cambodia2.htm>].

Jordan and the U.S. agreeing to “make every effort to resolve [the disputes] without recourse to the formal dispute resolution procedures.”<sup>44</sup> Some Members of Congress have called on the Administration to include the “Jordan standard” in the areas of trade and labor in future trade agreements.<sup>45</sup>

## Possible Approaches Concerning a Vietnam Labor Provision

**No Labor Provision.** Many argue that there is no need for a labor provision in any textile agreement, including a U.S.-Vietnam textile agreement. In addition to the arguments mentioned above regarding the potential negative effects on workers and consumers, opponents of a labor provision contend that the BTA in itself will improve labor rights by promoting economic development, foreign investment, and the rule of law in Vietnam.<sup>46</sup>

Other critics of a labor provision point out that Vietnam is already working with the United States to improve its labor situation. Under a Memorandum of Understanding (MOU) signed during former President Clinton’s visit to Vietnam in November 2000, the Vietnamese Ministry of Labor, Invalids, and Social Affairs (MOLISA) and the U.S. Department of Labor (USDOL) agreed to a program of technical cooperation in six areas: employment services, social insurance, employment for people with disabilities, industrial relations and labor law, child labor, and HIV/AIDS workplace-based education. To date, projects in four of those areas have been approved and are underway, with an industrial relations project awaiting approval of MOLISA and the HIV/AIDS project in development. Some contend that through its labor cooperation with the U.S. prior to the BTA, its numerous labor programs with the ILO and other foreign governments, and its recent revision of the Labor Code, Vietnam has already demonstrated its commitment to improving labor standards. These critics conclude that a labor provision is not only unnecessary, but that it could potentially distort the current efforts to improve worker rights in Vietnam.

As discussed above, however, labor rights supporters view a labor provision both as leverage to level the competitive playing field and as insurance against the use of unfair or substandard labor practices to bolster exports.

**MOU Plus.** Another approach would be to supplement the current U.S.-Vietnam labor cooperation program with an initiative tailored to the purpose of the labor provision. For example, if the goal of the labor provision were to improve conditions in the garment sector, efforts could be targeted at building the capacity of the Vietnamese labor inspectorate to identify and enforce violations in that sector.

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<sup>44</sup> CRS Report RL31178, *Trade Promotion Authority (Fast-Track): Labor Issues (Including H.R. 3005 and H.R. 3019)*, by Mary Jane Bolle.

<sup>45</sup> *Inside U.S. Trade*, “Daschle, Baucus Warn Zoellick Against NAFTA Approach to Labor, Environment Provisions,” March 22, 2002.

<sup>46</sup> For further information on Vietnam’s labor situation, see CRS Report RL30896, *Vietnam’s Labor Rights Regime: An Assessment*, by Mark Manyin, Thomas Lum, Lois McHugh, Phuong-Khanh Nguyen, and Wendy Zeldin.



This could also entail focusing attention on the garment industry through cooperation with the ILO. Such an approach would likely be supported by those who argue that the improvements in Cambodia's garment sector are the result of the international attention focused on the industry, rather than the specific incentives of the U.S.-Cambodia textile agreement.

**Jordan Standard.** Supporters of a labor provision would argue that, at a minimum, any textile agreement should have language similar to that in the U.S.-Jordan Free Trade Agreement that requires Vietnam to enforce its labor laws. A step beyond that would be to include dispute resolution procedures that would provide a mechanism for the U.S. to legally enforce the labor provision. This would give the United States economic recourse in the event that Vietnam lowered its labor standards. U.S. opponents of a dispute resolution mechanism that includes labor standards argue that it opens the door to the imposition of trade sanctions for alleged violations, or lack of enforcement, of a country's own labor laws. Based on Vietnam's reaction to U.S. comments on its human rights situation, Vietnam would likely view this approach as an unwarranted interference in its internal affairs.

**Cambodia Model.** Some have suggested that a Vietnam textile agreement include a trade incentive provision modeled after the Cambodia textile agreement. Advocates of this provision point to numerous improvements in Cambodia's labor system as evidence of the model's effectiveness. For example, since the agreement began in 1999, Cambodia has established a tripartite Labor Advisory Committee, ratified 7 of the 8 ILO core conventions, and established new regulations on union representation for collective bargaining. In addition, the minimum wage in the garment sector has been raised, and the number of registered unions has risen from 20 in 1997 to 245 by January 2002. Approximately 218 of those unions are in the garment sector.<sup>47</sup>

The Cambodia ILO monitoring system itself has also been praised for contributing to increased communication, trust, and understanding of Cambodian labor laws among unions, employers, and the government. Through a Project Advisory Committee, the monitoring program has provided a forum for the tripartite social partners to discuss labor issues related to the project. That committee also serves as an effective monitor of the monitoring program itself, since all three social partner groups review, and in some cases approve, activities under the project. Through factory visits and meetings with workers, the monitoring program has also increased awareness among factory management and employees about Cambodian labor laws.

Other supporters of the Cambodian model view it not only as a way to encourage governments to take action to improve labor conditions, but, more importantly, as a mechanism to empower workers. Because enterprises have to demonstrate good working conditions in order to receive quota bonuses under the agreement, it is in their interest to keep workers satisfied in order to minimize the incidence of complaints and disputes. This provides workers with an environment

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<sup>47</sup> Labor Trends Report 2002, U.S. Embassy in Cambodia, April 2002, available at [<http://usembassy.state.gov/cambodia>].

in which their issues are more likely to be addressed to their satisfaction and without reprisal from management.

Supporters of the Cambodia model emphasize that as labor conditions improved, through the incentive system, so did the economic benefits to Cambodia. Since the start of 1999, Cambodia has increased its garment and textile exports to the U.S. by roughly \$500-600 million, the number of garment factories has increased, and approximately 100,000 jobs have been created in the sector.<sup>48</sup> Some contend that the ILO's neutral review of labor conditions makes Cambodia's garment sector more attractive for buyers and retailers who are concerned about social responsibility. They also assert that by contributing to improved labor relations, the Cambodia model has enhanced political stability – another critical factor in economic growth. Thus, according to some, the Cambodia model proves that linking trade and labor can bring about the win-win results of economic growth and improved working conditions. U.S. Trade Representative Robert Zoellick called the Cambodia agreement “an excellent example of the way trade agreements lead to economic growth and promote a greater respect for workers' rights.”<sup>49</sup>

On the other hand, the Cambodia agreement has been criticized for several reasons. Some critics argue that focusing international attention and inspection resources on the garment sector distorts the equal protection of workers in other sectors. Although garment sector workers account for 50% of the industrial work force in Cambodia, they represent only 3% of the national work force.<sup>50</sup> Some question whether the United States should be promoting increased rights for workers in favored sectors only, and why the United States only examines conditions in one sector to determine whether Cambodia complies with international labor standards. These critics also point out that despite the increased international attention and Cambodia's efforts, there continue to be reports of child labor, forced overtime, and anti-union discrimination in the garment sector.

Other critics have called into question the effectiveness of the Cambodia incentive provision, citing the fact that most of Cambodia's apparel exports to the United States are not under quota. According to a private-sector source, Cambodia's unrestricted trade to the United States as of October 31, 2001 was almost two and a half times the volume of the trade under quota.<sup>51</sup> Some observers suggest that leaving most textile and apparel trade unrestrained is a greater benefit to Cambodia than the bonus quota offered through the labor provision. Of the factories that do produce quota goods, there is the question of whether those in compliance with labor laws actually receive the bonus quota or more of the bonus quota than non-complying

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<sup>48</sup> Labor Trends Report 2002, U.S. Embassy in Cambodia; Data from the OTEXA, the Office of Textiles and Apparel, International Trade Administration, U.S. Department of Commerce.

<sup>49</sup> Office of the United States Trade Representative, Press Release, January 7, 2002.

<sup>50</sup> Labor Trends Report 2002, U.S. Embassy in Cambodia.

<sup>51</sup> *Inside US Trade*, “U.S.-Cambodia Textile Deal Leaves Most Trade Unrestrained,” January 11, 2002.

factories.<sup>52</sup> If Cambodian garment factories do not need additional quota nor expect to receive it, the bonus quota may have little impact on factory management behavior. Some contend that it is the international attention focused on its main industry, rather than the quotas, that prompted the reported improvements in Cambodia's labor situation.

Another criticism of the incentive provision is that it acts in effect like a reverse sanction. Under a regular quota, the exporting country is entitled to ship a set amount of goods to the United States. If the United States believes labor laws in that country are not being enforced, then the United States must prove it in order to take that country's quota away. Under the incentive approach, the presumption is that the exporting country has poor labor standards. In order to receive its bonus quota, the country must prove that presumption wrong. If, in the end, it receives less than the full amount of bonus quota, as the case has been with Cambodia, it has little recourse.

Some opponents of the Cambodia agreement assert that it suffers from a lack of transparent criteria used to measure Cambodia's "substantial compliance."<sup>53</sup> While the ILO monitoring program bases its factory inspections on a comprehensive checklist of criteria, the program is still gathering baseline data on most factories and has yet to release a follow-up report that will show whether conditions have improved or worsened. Since 1999, however, the U.S. has awarded bonus quota to Cambodia 3 times for improvements in complying with core labor standards. Some critics question how those determinations were made, since the ILO program did not produce its first report until November 2001, and since information from the semi-annual labor consultations conducted under the textile agreement is not available to the public. On the flip-side, these critics ask whether a monitoring program is necessary at all, if the data used to make the "substantial compliance" determination is available from other sources.

Another view holds that the Cambodia model, whether effective in Cambodia or not, is not applicable to the Vietnam context. Some argue that it would be difficult for Vietnam to comply with the labor standards criteria and difficult for the United States to find Vietnam in "substantial compliance." The key question is how to deal with the issue of freedom of association, one of the internationally-recognized core labor standards. Although Vietnam, as an ILO member state, is obligated to promote freedom of association, workers in Vietnam are reportedly not accorded that right by the government. According to the State Department, in Vietnam, "Workers are not free to join or form unions of their choosing ... Trade unions are controlled by the Party and have only nominal independence ... Individual unions legally are not free to affiliate with, join, or participate in, international labor bodies."<sup>54</sup> The argument can be made that, by restricting freedom of association in this way, Vietnam does not

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<sup>52</sup> Brenda Jacobs, "The Growing Market for US Investment in Textiles," *Doing Business in Cambodia Today Conference Report*, April 18, 2001.

<sup>53</sup> Brenda Jacobs, April 18, 2001.

<sup>54</sup> U.S. Department of State, Country Reports on Human Rights Practices, Vietnam 2001.

comply with international core labor standards. Therefore, some observers believe that Vietnam would be ineligible for any bonus quota under an incentive provision.

Critics of a Vietnam incentive provision speculate that the only way Vietnam could receive bonus quota would be if the United States, focusing on the term “substantial,” chose to reward Vietnam’s compliance with other labor standards. Alternatively, the United States could examine other, perhaps more factory-level indicators of freedom of association, such as whether workers are free to join or not join unions, or whether factory unions have the ability to represent workers and negotiate on behalf of workers. Given that the United States has been a strong supporter of labor standards and, as an ILO member state, is obligated to respect all of the core standards, such an approach may be inconsistent with avowed U.S. policies on labor standards.

Additionally, some question whether a textile agreement would press Vietnam to lift its restrictions on freedom of association. Since this would require the Communist Party to relinquish significant control, the achievement of complete freedom of association over the next few years is highly unlikely. However, a strong labor incentive could perhaps influence Vietnam to allow greater freedom for the hundreds of unofficial “labor associations” that exist in Vietnam.

In terms of applying a Cambodia-like monitoring program to Vietnam, some argue that the logistics would be much more complicated and costly. In Cambodia, the garment sector is limited to an estimated 220 factories, located mostly in and around Phnom Penh, that employ 200,000 workers.<sup>55</sup> In Vietnam, there are over 1,000 textile and apparel enterprises located across the country, with 1.6 million employees. Even if a monitoring program were to focus solely on garment factories, since clothing rather than textiles dominates the sector’s exports to the United States., this would still require substantial financial and manpower resources. If the Cambodia program’s monitoring and reporting schedule were applied to Vietnam, with a rate of inspection of approximately 100 factories per year, it would take several years for a sizeable sample of Vietnamese factories to be evaluated.

The bureaucracy of conducting surprise inspections, critics contend, may also be cumbersome. Because factories are located across numerous provinces and special investment zones, approval for random inspections would be needed from the national government, provincial governments, export-processing and industrial zone authorities, national and local unions, national and local industry associations, and the factories themselves. In addition to maintaining a geographic balance among participating factories, a balance would have to be sought in ensuring that state-owned, domestic private, and foreign-invested enterprises are treated equally. Inspection of the state-owned enterprises, in particular, may be a politically sensitive issue, especially if the monitoring process finds violations. Moreover, unlike Cambodia, where the independent tripartite social partners – the employer association, unions, and government – ensure the neutrality of the monitoring program by voicing their different interests, Vietnam’s social partners are all linked

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<sup>55</sup> Labor Trends Report 2002, U.S. Embassy in Cambodia; Synthesis Reports from the ILO Garment Sector Working Conditions Improvement Project.

in varying degrees to the Communist Party. This implies, some argue, that the interests of the government, the entity most closely connected to the Party, will dominate any type of monitoring program.

In the end, because of the controversial nature of the Cambodia model and the particular sensitivities of applying it to Vietnam, the Vietnamese government may be unwilling to agree to such a provision. The Vietnamese reaction to U.S. comments on its human rights situation suggests that it would likely claim a Cambodia-type program to be interference in its internal affairs.

On the other hand, Vietnam may also recognize the potential economic benefits of such a program. If a Cambodia-style labor provision could contribute to both increased employment and exports, as it reportedly did in Cambodia, it might be an attractive option for Vietnam, which currently faces concerns over unemployment and underemployment. In addition, if a neutral monitoring system were to find favorable labor conditions in Vietnam, or could contribute to improved labor conditions, it might attract buyers and retailers who had not been operating in Vietnam due to unfavorable accounts regarding Vietnam's working conditions. Moreover, since many of the criticisms discussed above focus on implementation aspects of the Cambodia provision, they may provide useful "lessons learned" for the design of a more effective Vietnam labor provision. As mentioned, the United States has significant leverage on this issue, given that it could impose textile and apparel quotas unilaterally on Vietnam at any time.

## Other Trade Issues

Several recent issues may influence the U.S.-Vietnam relationship and the negotiation of a textile agreement.

**"Catfish".** The first potential post-BTA trade dispute between the U.S. and Vietnam is centered around the labeling of Vietnamese so-called "catfish." In late 2001, after American catfish farmers successfully argued that imports of the cheaper Vietnamese whiskered fish (also known as *basa* and *tra*, from the *pangasius* family of catfish) – which have increased sharply in recent years – were improperly labeled as "catfish," Congress included language in the Food and Drug Administration 2002 appropriations act that temporarily restricted use of the name "catfish" in the U.S. market to the *ictaluridae* catfish family. Section 10806 of the recently-enacted 2002 U.S. Farm Act (P.L. 107-171) also prohibits non-*ictaluridae* fish from being marketed as "catfish" in the United States. In spite of this trade dispute, Vietnamese basa fish exports to the United States increased to \$30 million in the first two months of 2002, already surpassing the \$22 million total for 2001. In the latest move, the Catfish Farmers of America are reportedly preparing to launch a possible antidumping campaign against Vietnam.<sup>56</sup>

**Intellectual Property Rights.** In April 2002, the United States placed Vietnam on its "301 watch list" of countries that fail to protect against violations of

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<sup>56</sup> Washington Post, "U.S. Catfish Industry Readies for Fight," April 26, 2002.

intellectual property rights.<sup>57</sup> During the first yearly review of the BTA in May, Assistant U.S. Trade Representative Jon Huntsman stated that intellectual property rights were at “the very foundation of our trading relationship,” with Vietnam and warned that failure to act against violations of those rights may result in retaliation.<sup>58</sup> Under the BTA, Vietnam agreed to be in full compliance with trademark protection within 12 months and copyright protection within 18 months of the agreement coming into effect.<sup>59</sup> Implementation of these commitments will likely be closely watched by the United States.

## Conclusion

Textile and apparel trade has been a highly contentious issue in trade legislation for decades. It is not clear at this point whether formal U.S.-Vietnam textile negotiations will move forward and, if so, at what speed. The recent U.S. actions taken in the interest of the domestic steel, lumber, and catfish industries suggest that a textile agreement with Vietnam may well be on the horizon. The United States may have leverage on the issue because it could impose quotas on Vietnam at any time. Under Section 204 of the Agriculture Act, the United States can impose quotas for textiles in the event that imports lead to “market disruption.” Therefore, while textile quotas can be set through the negotiation of a textile agreement with Vietnam, the United States could also impose them unilaterally because Vietnam is not a member of the WTO and, therefore, does not have access to the WTO dispute settlement mechanisms.<sup>60</sup>

Given the current low level of textile imports from Vietnam and the numerous alternative suppliers, arguments for and against a textile agreement seem to be more precautionary and based on principles of free trade and economic liberalization for Vietnam rather than being aimed at redressing past or current injury to the U.S. textile and apparel industry. However, while Vietnam’s textile industry is now relatively small, it appears to have the potential to become large. A textile agreement would provide predictability over the medium term of just how much the industry would be allowed to compete in the U.S. market and would bring textile trade with Vietnam under agreement similar to those already signed with other Southeast Asian countries.

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<sup>57</sup> The “Special 301” provisions of the Trade Act of 1974, as amended, require the U.S. Trade Representative to identify “foreign countries that deny adequate and effective protection of intellectual property rights or fair and equitable market access for U.S. persons that rely on intellectual property protection.” The 2002 Special 301 Report is available on the website of USTR at [<http://www.ustr.gov>].

<sup>58</sup> David Brunnstrom, “United States warns Hanoi on intellectual property,” Reuters, May 7, 2002.

<sup>59</sup> Tini Tran, May 7, 2002.

<sup>60</sup> *Inside U.S. Trade*, “Zoellick: Problems with Environment, Labor in U.S.-Jordan FTA,” March 9, 2001; 7 U.S.C. 1854; P.L. 84-540 as amended.

Yet an agreement would impose more restrictions on textile and apparel imports just as such restrictions are being phased out under the WTO. Although current imports from Vietnam are small, restrictions are likely to have a distorting effect on trade flows, prices of such products from Vietnam, and the incentives for investment in the industry. Allowing Vietnam's textile and apparel industry to develop further by not restricting access to the American market can also be seen as fostering Vietnam's nascent market economy and possibly a greater voice for the private sector in the nation's economic and political affairs.

If the combined pressure of textile interests and labor rights supporters succeeds in prompting the negotiation of a textile agreement, the key for the Administration and Congress will be satisfying both agendas. With respect to a labor provision, the more such a provision would require Vietnam to open its labor environment to scrutiny, or to open itself to the risk of some form of economic sanctions, the more likely Vietnam may be to reject the accompanying textile deal or to seek U.S. concessions in setting quotas. If the United States sets stringent quotas, it may be more difficult to obtain Vietnamese agreement to an extensive labor provision. On the other hand, the Vietnamese government may be more amenable to a labor provision than expected, if it anticipates that it could benefit through increased employment and investment in the textile and apparel industry. In addition, as Vietnam has witnessed in its "catfish" labeling dispute with the United States, increased international attention on Vietnamese products may translate into increased sales. Until formal textile negotiations actually begin, it is not clear what type of labor provision, if any, would be acceptable to both Vietnam and the United States.