

## **Frequently Asked Questions**

### **Understanding Vietnam and GSP**

In May, Vietnam formally presented to the United States a request to be designated as a beneficiary developing country under the U.S. Generalized System of Preferences program. That request is currently being reviewed in the Office of the U.S. Trade Representative, which chairs the GSP Subcommittee. A Federal Register notice requesting written comments on the request is expected to be published soon.

#### **1) What is the Generalized System of Preferences (GSP) Program?**

***Answer:***

The GSP program is designed to promote economic growth in the developing world by providing preferential duty-free entry for qualifying products. By eliminating U.S. tariffs on imports from certain developing countries, the program encourages the development of job-creating industries in countries plagued by poverty. Currently, 132 countries have been designated by the United States as beneficiary countries and territories. The GSP program was first implemented by the U.S. in 1976, and has been renewed periodically since then, most recently in 2006, when legislation reauthorized the program through December 31, 2008.

Other developed countries also have GSP programs, including Europe, Canada, Japan, Australia, New Zealand, Norway, Turkey, Switzerland, and even Russia. Products of Vietnam receive GSP benefits from each of these countries.

#### **2) Which Vietnamese Goods Would Benefit Most Under GSP?**

***Answer:***

Not all imports are eligible for the benefits of the GSP program. Under the U.S. GSP program, only those products identified in the U.S. tariff schedule through the use of the designation “A” in the “Special” column are eligible. (A slightly expanded list of products is eligible for the least developed developing countries, as indicated by the designation “A\*,” but Vietnam would not fit within that category.) For developing countries like Vietnam, there are approximately 3,400 tariff lines in the U.S. tariff schedule that are eligible for GSP benefits. That is about one-third of the U.S. tariff schedule.

By law, products considered “sensitive” cannot be designated, as discussed below. Eligible products also have to meet a strict origin rule, also discussed below.

A review of the list of 3,400 eligible products and Vietnam’s trade to date in those products indicates that it is primarily imports in non-import sensitive industries that would benefit from GSP, offering the potential for Vietnam to diversify its exports into new areas where it has so far not been competitive. Currently, Vietnam has trade in only about 1,000 of those lines, suggesting that the GSP program could encourage diversification of Vietnam’s trade. The following Vietnamese products stand to gain the most from GSP treatment:

- Certain ceramics, porcelain or china
- Import non-sensitive electronics (e.g. space heaters, loudspeakers, audiofrequency products)

- Saddlery and harnesses
- Insulated ignition wiring sets
- Precious metal
- Wooden tableware and statuettes
- Pens and markers
- Golf clubs and equipment
- Gaskets, washers
- Imitation jewelry
- Basketwork, wickerwork, baskets, sacks, and bags
- Flour, meal, starch
- Inflatable balls

### **3) Which Imports are Automatically Excluded From the Program?**

#### *Answer*

There are numerous U.S. “import sensitive” industries, including textiles, that are explicitly excluded from GSP treatment. These import sensitive products also have traditionally been protected through higher duty rates as well as quotas. As a result, by law, Vietnam would not receive GSP treatment for any of the following goods:

- Textiles and apparel
- Most watches
- Import-sensitive electronics
- Import-sensitive steel articles
- Footwear
- Handbags
- Luggage
- Flat goods – wallets, change purses, eyeglass cases
- Work gloves
- Leather wearing apparel
- Import sensitive semi-manufactured and manufactured glass products
- Agricultural products subject to a tariff-rate quota that exceeds the in-quota quantity

Also, the quantity of sugar allowed to enter the U.S. is unaffected by the GSP program. Beneficiary countries would receive duty-free treatment for the amounts entered within the allowed quota, but imports of sugar above the in-quota amount would be subject to the over-quota duty rate.

### **4) What Rules of Origin Would Apply to Vietnam Under the GSP Program?**

#### *Answer*

To be eligible for duty-free benefits under the GSP program, a product from a beneficiary developing country (BDC) must meet a stringent rule of origin intended to ensure that it is truly a product of that BDC, providing employment opportunities for workers in that BDC. The rule requires 1) production processes to be performed in Vietnam that substantially transform any inputs into a new and different article; 2) that inputs made or transformed in Vietnam and labor performed in Vietnam account for at least 35 percent of the value of the goods; and 3) direct shipment from Vietnam to the United States.

Because Vietnam is a member of ASEAN, and the U.S. considers the GSP-eligible ASEAN countries as one country, the required 35 percent value added also can come in part from other ASEAN BDCs, namely Cambodia, Philippines, Indonesia and Thailand, and shipment to the U.S. can be from one of those countries.

## **5) How does the GSP Program Help U.S. Consumers and U.S. Businesses?**

### *Answer*

The GSP program is an important way for American consumers and companies keep costs down. In 2007, GSP saved U.S. importers nearly \$1 billion in duties. Lower-cost consumer goods help American families make ends meet. Finished consumer goods typically sold by retailers accounted for 25 percent of GSP imports in 2005. Large corporations, as well as small businesses, utilize the program, particularly to obtain raw materials, components, and machinery to support U.S. manufacturing operations.

The long list of eligibility criteria under the GSP program, and the annual review process, also give the United States leverage to encourage beneficiary countries to improve labor practices, protect intellectual property rights, treat U.S. investors fairly, steer clear of child labor, and open their markets to U.S. goods and services.

## **6) How Does GSP for Vietnam Intersect with GSP Renewal in Congress?**

### *Answer*

Vietnam's designation is separate and distinct from Congress' consideration of renewal of the GSP program. While Congress authorizes the overall U.S. GSP program, the Administration decides which countries and which products may participate, in accordance with the Congressionally-set parameters. The President designates new BDCs by Presidential Proclamation and annually issued Proclamations address changes in product coverage.

In May, Vietnam sent a formal request to the Administration seeking beneficiary status under the GSP program. Beneficiary status is granted through Presidential declaration, based upon the advice from the interagency GSP Subcommittee of the Trade Policy Staff Committee, chaired by USTR. Congress does not vote on these designations (or modifications).

The Congress is responsible for authorization of the GSP statute, and has done so successively since 1974, when the program was first established. Currently, the GSP statute is set to expire at the end of 2008. Indications are that the current Congress is considering renewing the program, perhaps for a period as short as one or two years, pending a more thorough review with a goal of enacting an extensive reform of the program during the next Congress. If Congress were to reform the program, and if Vietnam were to be designated by the President as BDC, Vietnam would be subject to the same rules as all other BDCs.

In a number of instances, the GSP program has lapsed temporarily, because the reauthorization was not completed before the expiration date, but each time the reauthorization was retroactive to the date of the last authorization.

## **7) When Might the Administration Decide on Vietnam's Request for Designation as a BDC Under the GSP Program?**

### ***Answer***

There is no statutory or regulatory timetable for the GSP Subcommittee to make a recommendation to the President or for the President to issue a Proclamation designating Vietnam as a BDC. However, the goal is to have the President designate Vietnam this year.

If President Bush designates Vietnam as BDC this year, while the current GSP authorization is still in effect, Vietnam's designation remains valid even if the GSP program subsequently expires. Typically, when Congress has to reinstate GSP after an expiration, the reinstatement is retroactive to the date of the expiration, so there is no gap in benefits. Products of Vietnam would then also have the benefit of retroactive reinstatement, back to the effective date of the President's Proclamation.

If Congress renews the GSP program before it expires on December 31, 2008, President Bush could designate Vietnam as a BDC up until the date he leaves office, January 20, 2009.

If the current Congressional authorization for the GSP program expires before Vietnam is designated as a BDC, and there is a lapse in the GSP program, action on Vietnam's request may have to wait until Congress reauthorizes the program – and that might not be until late January or February of 2009, or even later. In that event, the Proclamation would have to be issued by the next President, which may take a little longer given the time necessary for a new Administration to organize itself.

## **8) What Happens if Vietnam's Trade in GSP Eligible Products Expands Greatly After Designation?**

### ***Answer***

The GSP program is intended to help developing countries become competitive in a range of products, but once a supplier is competitive in a particular product, the duty-free benefit may be eliminated. This is done through "competitive need limits," or ceilings on the preferential treatment accorded each product and country. A product from a particular country may lose its GSP eligibility if it exceeds these limits during a 12-month period. Currently, the limits that will trigger consideration of whether GSP benefits are no longer necessary are set at: 1) 50 percent or more of the value of total U.S. imports of that product; or 2) \$130 million total value in 2008 (this level is adjusted annually). The U.S. may suspend GSP treatment on products that exceed these limits.

A country also may be graduated from the program. There is an automatic termination of benefits when the country's per capita income surpasses the "high income" country threshold. (According to the World Bank, countries are classified as low income if they have a per capita Gross National Income (GNI) of \$905 or less and high income if they have a GNI of \$11,116 or more.) For example, the President determined that Barbados, Bahrain, and Antigua and Barbuda had reached "high income" status and graduated them from the GSP program in January 2006. Even if a country does not reach the per capita income threshold for graduation, it may still lose GSP benefits if the President deems it to be a sufficiently competitive exporter across a range of

exports. As the result of such a review of their advances in economic development and trade, in 1989, the President “graduated” from GSP the four “Asian Tigers” --- Hong Kong, Korea, Taiwan and Singapore – and similarly removed Malaysia from the program in 1996.

### **9) How Would GSP Impact Shrimp and Catfish Trade?**

#### *Answer*

U.S. imports of catfish and shrimp are already duty-free from all countries under the U.S. tariff schedule, so the GSP program would have no effect. However, these imports from Vietnam are subject to antidumping duties which have been imposed since 2004. Those antidumping duties would remain in force; the GSP program would not change this.

### **10) Is Vietnam Truly a Developing Country in Need of Economic Support?**

#### *Answer*

Although Vietnam is undergoing a radical economic transformation, moving from an inward looking planned economy to one that is globalized and market-based, it is no economic tiger like Singapore, Hong Kong, South Korea or Taiwan. With a population of 85 million people, Vietnam has a relatively low standard of living, an underdeveloped industrial base, low per capita income and a high level of poverty and malnutrition. The increased competitiveness that GSP benefits will provide to Vietnamese eligible products is an appropriate mechanism to help Vietnam transition to its next level of development.

Vietnam’s gross national income per capita was \$620 in 2005 and is still only \$690 as of 2006, one of the lowest in East Asia. Approximately 29 percent of Vietnam’s population lives below the national poverty line, and 28 percent of the children under the age of five suffer from malnutrition. Rural areas have considerably higher levels of poverty than urban areas, with at least one region experiencing a level of poverty in excess of 50 percent. Recent inflation in Vietnam means that poverty levels have increased, with more people unable to earn enough to pay for essential goods and services.

Monthly per capita personal income varies widely in the country, with an overall average in 2006 of only US\$39.79. Monthly consumption spending likewise varies considerably, with a country-wide average of US\$28.

Vietnam’s gross domestic product for 2006 was US\$59.3 billion. For the first six months of 2007, Vietnam estimates its GDP at VND493,455 billion, or US\$30.88 billion. Looking at the GDP data by sector, in 2006 agriculture accounted for 20.4% of GDP, industry and manufacturing accounted for 41.6% of GDP, and services accounted for 38.2% of GDP.

### **11) How Can a Communist Country Qualify Under GSP?**

#### *Answer*

The GSP program prohibits a Communist country from beneficiary status unless it meets four criteria: 1) it receives normal trade relations status (NTR); 2) it is a member of the WTO; 3) it is a member of the IMF; and 4) it is not dominated by international communism. Vietnam meets all of these criteria. Congress approved NTR for Vietnam in 2006, Vietnam became a member of the WTO in 2007, and joined the IMF in 1956.

Vietnam has equally and friendly relations with all countries. The Vietnam government is engaged in numerous efforts to accelerate the administrative reform process and to achieve a market economy regime in order to become an industrialized and modernized country by 2020.

In addition, Vietnam has established diplomatic and trade relations with more than 200 nations and territories with various political systems. The main principle of these relations is friendship, cooperation, non-interference in each other's internal affairs, and mutual respect for political choices. The Vietnam government does not promote or encourage the adoption of a Vietnamese-form of government, or any other form of government, in any other country.

Significantly, Vietnam's laws demonstrate a commitment to the creation of a market economy, premised on the right to own private property. Importantly, Vietnam's Constitution, its Civil Code, and other relevant laws, including the Law on Land, Law on Housing, Commercial Law, and Law on Intellectual Property, recognize and protect property ownership and property rights. Indeed, real property rights in Vietnam parallel Western concepts, with individuals and entities bearing the rights to use, to transfer, to inherit, and to buy and sell property interests.

## **12) Is Vietnam Providing Sufficient Protections for Intellectual Property?**

### *Answer*

While enforcement of intellectual property rights remains an issue, Vietnam has made significant strides both internationally and domestically over the past two decades to improve intellectual property rights protections. Efforts began through negotiation of commitments under the BTA and the WTO TRIPS agreement and implementation of those obligations leading to a series of modern laws. Vietnam has also undertaken an active training and education program targeted at both government officials and citizens at large, in order to promote the importance of IPR. These educational efforts have been paired with stronger, and more frequent, enforcement actions meant to ensure that the modern laws on IPR are given their full effect. Finally, Vietnam has developed a plan for moving forward on IPR and ensuring that it continues to improve on its enforcement efforts.

Vietnam is a member of the World Intellectual Property Organization (WIPO), the Berne Convention, the Geneva Convention for the Protection of Producers of Phonogram, the Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite, the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, the Patent Cooperation Treaty, to the Madrid Agreement and its Protocol (international registration of marks), and a signatory to the Paris Convention on protection of industrial property.

Vietnam has created a strong domestic legal framework for the protection of IPR. In 2005, it enacted a comprehensive intellectual property law and implementing regulations to create a modern and consolidated legal framework for IPR protection and enforcement, including safeguards for copyrights, industrial property rights (which includes trademarks, inventions and industrial designs), and rights to plant variety. Civil enforcement of intellectual property rights is provided through the Civil Proceeding Code and criminal enforcement is provided through the Criminal Code of 1999. Criminal protection of intellectual property rights is provided under the

1999 Criminal Code. IPR is enforced by both the courts and competent authorities responsible for sanctioning administrative violations. These authorities include the Inspectorates of the Ministry of Science and Technology, the Ministry of Culture, Sport and Tourism, and the Ministry of Agriculture and Rural Development, as well as the Market Control Force, Provincial and District People's Committees, the Police, and the Customs Authority. Vietnam is in the process of instituting more deterrent fines and penalties for copyright infringement and drafting legislation to control optical media.

Vietnam remains on the U.S. Special 301 "Watch List," but according to the USTR's 2008 Special 301 report, "Vietnam made progress in 2007 by continuing to build its legal framework for IP protection, strengthening enforcement capacity, and improving interagency coordination." Vietnam has made clear that it is eager to work with partners to address concerns and it is collaborating with countries like the U.S. and international organizations such as WIPO, APEC, ASEAN and WHO on technical assistance and training programs to improve IP protection.

Under the GSP annual review criteria, BDCs must make continuous progress toward achieving effective protection and enforcement of IP in order to maintain those benefits. Whether Vietnam continues to make good progress in the area of protection of IPR will be a consideration during the annual reviews of GSP benefits conducted by the GSP Subcommittee to determine whether those benefits should be continued, providing a further opportunity for continued dialogue and action.

### **13) Is Vietnam Providing Sufficient Protections for Worker Rights?**

#### ***Answer***

Vietnam meets all of the worker rights criteria under the GSP statute, including 1) the right of association, 2) the right to organize and bargain collectively, 3) freedom from compulsory labor, 4) a minimum age for the employment of children, and 5) acceptable conditions of work with respect to minimum wages, hours of work and occupational safety and health. Vietnam maintains an active dialogue with the U.S. to promote the effective protection of worker rights and improve the observance of internationally recognized labor rights signing and updating an MOU on labor cooperation most recently in August 2006. Vietnam works in partnership with the ILO and receives technical assistance through other bilateral relationships such as UNICEF, World Bank and foreign governments such as Finland.

The Vietnam Labor Code, drafted in 1994 with assistance from the ILO, includes, among many other provisions, an explicit guarantee of workers' right to strike, and provisions establishing minimum wages, maximum working hours, maternity leave and overtime pay. Providing compelling evidence of Vietnam's continuing progress in the area of worker rights, the Code has been continuously amended and updated since its original enactment, with the latest amendments made in November 2006, and becoming effective in July 2007.

Vietnam also has begun the process of ratifying and implementing the core conventions of the International Labor Organization, having already ratified and implemented five of the eight core conventions (Nos. 29 (compulsory labor), 100 (income equality), 111 (discrimination), 138 (minimum age), and 182 (child labor)), and is working closely with the ILO to implement

the last three. Plus, ratification of Convention Nos. 87 and 98, Freedom of Association and the Right to Organize and Collective Bargaining, is being actively and seriously studied by the Vietnam Government, and is strongly supported by the Vietnam General Confederation of Labor (VGCL). Vietnam also recently signed the United Nations' International Convention on the Dignity of Persons with Disabilities and is actively implementing its obligations.

**Freedom of Association:** The Vietnam Constitution of 1992, along with other domestic laws, guarantees that workers have the right of association. Article 69 provides that "Citizens are entitled to freedom of speech and freedom of the press; they have the right to receive information and the right of assembly, association and demonstration in accordance with the law." As a result of November 2006 amendments to the Labor Code approved by the National Assembly, workers are permitted to choose their own representatives to negotiate disputes at enterprises where no union exists. Such representatives do not have to be members of VGCL.

**Right to Organize and Collective Bargaining:** Chapter V of the Labor Code establishes the terms and procedures for the negotiation and implementation of "collective accords." Strikes are not uncommon in Vietnam, though many have not followed the authorized conciliation and arbitration process, and therefore were not technically legal. Nevertheless, the law prohibits retribution against strikers and there has been, and will be, no retribution against illegal strikes. Significantly, even where strikes have been illegal, the government has disciplined employers where it has determined that illegal practices led to the strikes, a fact that provides strong evidence of the value assigned to worker rights.

Whether Vietnam continues to make good progress in the area of worker rights will be a consideration during the annual reviews of GSP benefits conducted by the GSP Subcommittee to determine whether those benefits should be continued, providing a further opportunity for continued dialogue and action.

#### **14) What is the Human Rights Situation in Vietnam? Shouldn't That be a Factor in Whether Vietnam is Designated as a BDC?**

##### ***Answer***

Progress on protecting human rights is not a specific criterion under the GSP program, but it can color Administration and Congressional perceptions of Vietnam.

Since 1986, Vietnam has been implementing the *doi moi* or "renovation" economic reforms, which not only unleashed private enterprise in Vietnam but also extended religious freedoms and allowed the development of an active press corp. Extension of GSP, as a form of further integration with the international community, can be expected to contribute to this trend.

Vietnam has a broad framework of domestic laws and international commitments that promote human rights. The Vietnamese constitution and code guarantee the right to free speech, freedom of the press, and freedom of movement within the country, foreign travel, emigration, and repatriation. It outlaws arbitrary arrest, detention and physical abuse of prisoners and guarantees that citizens are innocent until proven guilty.

Vietnam has instituted tight procedures for criminal trials, including the right to legal counsel for all accused of crimes. The law provides for the independence of judges and lay assessors. It prohibits arbitrary interference with privacy, family, home or correspondence. Regarding women's rights, laws prohibit gender discrimination and trafficking. Of note, Vietnam's National Assembly has among the highest proportion of women representatives of any Asian country. Vietnam also is a state party to the International Covenant on Civil and Political Rights (ICCPR).

Through increased engagement, the U.S. and Vietnam established an annual human rights dialogue that helped bring about improvements in the country and compelled the Bush Administration in 2006 to lift its designation of Vietnam as a Country of Particular Concern relating to religious freedom violations. In fact, the 2008 State Department report on human rights acknowledged that "overall respect for religious freedom improved during the year," noting that the government "continued to relax restrictions on religious activities, and such activities continued to grow significantly." According to a glowing April 2008 The Economist Special Report on Vietnam, Vietnamese officials "praise" the positive contribution of religion to society and have improved treatment of ethnic minorities. The report also states that the press freedoms are on the rise, allowed "reasoned criticism of government policy" and can expose government corruption.

#### **15) What Are Vietnam's Currency Policies?**

##### ***Answer***

Vietnam maintains a "managed float" of its currency, the *dong*, via a daily trading band that limits its fluctuation. Vietnam is looking to widen the band for the dong from the current 0.75 percent which may allow the currency's value to rise and will help Vietnam fight a recent surge in inflation. For the time being, The Government has no plan to devalue the VND. Vietnam is not included in the Treasury Department's Report to Congress on International Economic and Exchange Rate Policy which implicates currencies involved in currency manipulation practices.