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ASIAN PRACTICE GROUP - TRADE UPDATE

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THE VIETNAM-U.S. BILATERAL TRADE AGREEMENT: OPPORTUNITIES FOR U.S. IMPORTERS AND DISTRIBUTORS

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Overview

The Vietnam-U.S. Bilateral Trade Agreement, signed in July 2000, finally became effective on December 10, 2001. In accordance with the BTA, Vietnam has been extended temporary normal trade relations status (i.e., "most-favored nation" status), which significantly decreases U.S. tariffs on most imports from Vietnam.

Import from the Socialist Republic of Vietnam, according to the World Bank estimate, will rise by 60% in 2002, to \$1.3 billion, as tariff rates on imports from Vietnam fall from their non-MFN average of 40% to less than 3%. Notably, the MFN treatment is expected to prompt garment imports from Vietnam to surge tenfold in 2002 – from less than \$40 million to close to \$400 million. According to information provided to us by a Vietnamese trade official, import from Vietnam may be as high as \$1.8 billion in 2002, and garment and textile imports is expected to exceed \$400 million.

Summary of the BTA

The BTA consists of four parts: market access, trade in services, intellectual property rights, and investment.

Market Access. Reciprocally, goods from Vietnam are now given most-favored-nation treatment by the United States; however, the BTA included a safeguard provision that would allow either country to raise tariffs temporarily if it encounters a surge of imports. Both countries undertook to give imports the same treatment as domestically produced products (i.e., "national treatment"). Quantitative restrictions on all imports will be gradually eliminated in the next seven years. Vietnam also agreed to add transparency to its government procurement process, allow U.S. companies and U.S.-invested companies to import and export most products without having to rely on licensed Vietnamese importers, ensure that state enterprises comply with WTO rules and adhere to WTO rules in applying customs, import licensing, technical standards, and sanitary measures.

Trade in Services. Vietnam has committed to uphold WTO rules such as most-favored nation, national treatment and disciplines on domestic regulation. U.S. companies are permitted to invest in markets in a broad range of service sectors, including banking, insurance, telecommunications, advertising, accounting and law, with a phase-in period of three to five years. For example, for basic telecommunications services, joint ventures are permitted after four years, with a 49% cap on U.S. equity participation; for Internet, e-mail and other higher-end telecommunications services, in two years U.S. investors will be allowed to own up to 50% of a joint venture.

Intellectual Property Rights. Vietnam undertook to give U.S. companies adequate and effective protection and enforcement of intellectual property rights and pledged to phase in the WTO Agreement on Trade-Related Intellectual Property Rights over a period of eighteen months. Vietnam also agreed to “TRIP plus” protection in several areas such as encrypted satellite signals, patent for plants and animals, and confidential test data submitted to government agencies.

Investment. Vietnam granted U.S. companies investing in Vietnam protection against expropriation, the right to choose top management, and free transfer of currency on a national treatment basis. Requirement of certain board representation by Vietnamese is being eliminated gradually. Screening of U.S. investments by the Vietnamese government will be completely phased out, depending on industry sector, over a period of two, six or nine years. Discriminatory pricing to U.S. investors (e.g., utilities, transportation fees, etc.) is also being phased out over a period of up to 4 years, depending on the type of fees.

On December 10, 2001, the date the BTA went into force, U.S. tariff rates for Vietnamese products shifted from “Column 2” to “Column 1” rates, falling on average from non-NTR rates of 40% to NTR rates of about 3%. The key statutory purpose of the BTA is the restoration of nondiscriminatory tariff treatment (normal-trade-relations” or “most-favored-nation” treatment) to U.S. imports from Vietnam.

U.S.-Vietnam Trade: Increasing Commercial Ties

The United States did not lift its two-decade long embargo on Vietnam until February 1994. Since 1994, the United States has taken several strides to normalize commercial relationship with Vietnam. The Bilateral Trade Agreement was signed in July 2000, and transmitted to U.S. Congress for approval in June 2001. The BTA went into effect three months ago, in December 2001.

According to the U.S. Census Bureau, imports from Vietnam increased from less than \$200 million in 1995 to more than \$1 billion in 2000, or more than 500% increase in a short period of six years.

Table 1. U.S. Import from Vietnam and U.S. Export to Vietnam, 1993 - 2001

	1993	1994	1995	1996	1997	1998	1999	2000	2001
U.S. Imports	\$0.0	\$50.6	\$198.9	\$331.8	\$388.5	\$554.1	\$608.3	\$821.4	\$1,052.6
U.S. Exports	\$7.0	\$172.7	\$252.5	\$616.4	\$286.6	\$274.1	\$291.5	\$367.6	\$460.9

Figures in million U.S. dollars. Source: U.S. Census Bureau

The top ten categories of imports from Vietnam, according to U.S. Census Bureau’s statistics for year 2000, are (*ranked by dollar volume*):

1. Fish (\$301 million)
2. Coffee, tea, cocoa, spices (\$133 million)
3. Footwear (\$125 million)
4. Petroleum and petroleum products (\$88 million)
5. Vegetables and fruits (\$53 million)
6. Clothing apparel (\$47 million)

7. Manufactured art (\$15 million)
8. Furniture (\$9 million)
9. Nonmetallic minerals (\$7 million)
10. Crude rubber (\$5 million)

Top U.S. exports to Vietnam in 2000 are: electrical machinery, power generating machinery, fertilizers, footwear, specialized machinery, textile fibers (other than wool), plastics, telecommunications equipment, office machinery and general industrial machinery.

As of year 2000, Vietnam ranked 71st among U.S. trade partners, while the United States ranked 7th among Vietnam's top 10 export destinations and 9th among Vietnam's top 10 importers. In 2002, Vietnam's worldwide export is expected to grow by 7%, to \$16.23 billion.

As a result of the BTA, imports of labor-intensive products from Vietnam with large differential between the MFN and non-MFN tariff rates are expected to increase. In light of Vietnam's experience in the European Union and Japan, imports of the following Vietnamese products are likely to grow substantially: garments, leather products, footwear, household plastic products and processed foods.

Clothing Imports from Vietnam

Prior to 2002, apparel products from Vietnam were assessed import duties of as high as 35% to 40% prior to the effectiveness of the BTA. As a result of the prohibitive tariff, import of apparel products from Vietnam amounted to less than \$40 million in 1999, while Vietnamese garment exports to the European Union and Japan totaled more than \$640 million and \$500 million, respectively. In light of the BTA, the United States granted Vietnam conditional MFN status, which lowered U.S. import duties by as much as 75%. (Vietnam's MFN status is subject to annual congressional review.) Based on Cambodia's experience after the United States granted Cambodia MFN status in 1996, the World Bank predicts a tenfold increase of apparel imports from Vietnam in 2002.

Vietnam has the potential to be a major U.S. source of apparel and textile products given the comparatively low cost of production in Vietnam. According to industry sources, Vietnam is likely to be competitive in exporting cotton apparel, such as men's and women's knit shirts and trousers.

The Bilateral Trade Agreement contains no quota on textile imports from Vietnam. However, because Vietnam is not yet a World Trade Organization member, the United States has the right to unilaterally impose quotas on textile imports in the event of a dramatic growth. In late February 2002, U.S. Trade Representative officials visited Vietnam to begin negotiation of a bilateral textile accord, which would place caps on volume of apparel that Vietnam can export to the United States.

Looking Ahead

The BTA is an important milestone in the decade-long normalization of U.S.-Vietnam relations. The next step in commercial normalization between the United States and Vietnam is the restoration of permanent "most-favored nation" status by passing a law "graduating" Vietnam from its status as a non-MFN country. Presumably, this step will be taken if and when Vietnam joins the World Trade Organization.

Vietnam applied to join the WTO in 1995. In 2001, Vietnam's Trade Minister publicly announced his government's goal to join the WTO by 2004. Towards this goal, Vietnam is expected to engage in another round of negotiation with the United States about further opening of its markets and other improvements in its trade regime Vietnam must undertake before the United States would support Vietnam's accession to the WTO.

The continued normalization of the U.S.-Vietnam commercial relationship may present opportunities for clients and friends of the firm that are in the import and distribution business, as Vietnamese exporters will be looking for U.S. partners to establish their distribution channels in the United States.

About Our Asian Practice Group

Our Asian Practice Group is an interdisciplinary practice group working primarily in the representation of Asian American businesses in the Tri-State area and multinational Asian companies that are doing business in the United States.

Attorneys in our Asian Practice Group have broad-based commercial, corporate and finance, intellectual property and litigation capabilities. Many of our attorneys have varying degree of fluency in Chinese, Korean, Taiwanese and other languages, and have lived in or traveled extensively to various Asian countries. The language capabilities and cultural understanding of our attorneys distinguish Phillips Nizer from other firms of our size and caliber in the United States.

Our Firm has been working with clients who are doing business with Vietnam since 1996.

If you are interested in receiving a complete copy of the Vietnam-U.S. Bilateral Trade Agreement, or would like to discuss generally how your business can benefit from (or be affected by) the implementation of the BTA, please feel free to contact any member of our Asian Practice Group.

Other Useful Websites

(in alphabetical order)

American Chamber of Commerce in Vietnam	www.amchamhanoi.com
Asian American Business Development Center	www.aabdc.com
Embassy of Vietnam in the United States	www.vietnamembassy-usa.org
Office of U.S. Trade Representative	www.ustr.gov
U.S. Census Bureau	www.census.gov
U.S. Consumer Product Safety Commission	www.cpsc.gov
U.S. Customs Department	www.customs.gov
U.S. Department of Agriculture	www.usda.gov
U.S. Department of Commerce,	
International Trade Administration	www.ita.doc.gov
Office of Textiles and Apparel	otexa.ita.doc.gov
U.S. Food & Drug Administration	www.fda.gov
U.S. Foreign Agricultural Service	www.fas.usda.gov
U.S. Embassy in Vietnam	embassy.state.gov/vietnam
U.S. Vietnam Trade Council	www.usvtc.org

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