

## **Frequently Asked Questions (FAQs): Vietnam WTO Accession**

### **U.S. Ratification and Permanent Normal Trade Relations (PNTR) for Vietnam**

#### **★ What is Vietnam's current trade status with the U.S.?**

Under U.S. trade law, Vietnam currently has conditional normal trade relations (NTR) status which must be renewed annually. The underlying key condition is Vietnam's compliance with the freedom-of-emigration requirement of the Jackson-Vanik amendment, a provision of Title IV of the Trade Act of 1974. Under this statute, based on freedom of emigration criteria, the President can, in effect, grant a one-year extension of NTR. The President's action remains in force unless both Houses of Congress pass a joint resolution of disapproval by August 31. Vietnam's present NTR status also is based on a reciprocal NTR provision of the comprehensive U.S.-Vietnam bilateral trade agreement (BTA), which entered into force on 10 December 2001. As a result of such criteria, Vietnam does not have permanent normal trade relations (PNTR) status (or unconditional most-favored-nation (MFN) status), which otherwise applies to virtually all U.S. trading partners.

#### **★ How does PNTR relate to Vietnam's accession to the World Trade Organization (WTO)?**

As a Member of the WTO, the United States is obligated to grant on a reciprocal basis immediate and unconditional most-favored-nation treatment to the products of all other WTO Members. Therefore, at Vietnam's accession to the WTO, the United States must grant Vietnam unconditional NTR (also known as Permanent Normal Trade Relations, or PNTR) or else resort before the accession to invoking the "non-application" clause of Article XIII of the WTO Agreement. If the non-application clause is invoked, however, Vietnam will have the right to withhold from the US the benefits of its WTO accession commitments to other WTO members (i.e., those that go beyond the BTA), denying to the US market access gains which would otherwise have been afforded to U.S. goods and services and that all other WTO Members will enjoy.

#### **★ What are the procedures for granting Vietnam PNTR status?**

Unless the U.S. decided to take recourse to WTO Article XIII, and whether or not Vietnam has already acceded to the WTO, PNTR would be extended to Vietnam through a procedure that has been used for granting PNTR status to Albania, Bulgaria, China, Czech Republic, Estonia, Georgia, Hungary, Kyrgyzstan, Latvia, Lithuania, Mongolia, Romania and Slovakia. The procedure consists of the enactment of a statute authorizing the President to terminate the application to Vietnam of Title IV of the Trade Act of 1974 and to extend to it permanent nondiscriminatory status. The PNTR granting legislation would move through Congress under normal procedures -- there are no special or "fast track" procedures for a bill to terminate the application of Title IV of the Trade Act of 1974 to Vietnam. Upon introduction in the House and the Senate, the bill is referred to the House Ways & Means Committee and Senate Finance Committee for consideration. The bill is open to amendments and congressional rules that typically govern any ordinary bill would apply. Upon its enactment, the President would implement the extension of PNTR by a Presidential proclamation.

#### **★ In addition to PNTR, what other legal obligations does the U.S. have with regard to Vietnam's WTO membership?**

Section 122 of the Uruguay Round Agreements Act requires the United States Trade Representative (USTR) to consult with the Senate Finance Committee and the House Ways and Means Committee before any vote is taken by the WTO Ministerial Conference relating to the accession of a state or separate customs territory to the WTO Agreement if the action (1) would substantially affect U.S. rights or obligations under the WTO Agreement or another multilateral trade agreement or (2) potentially entails a change in Federal or State law. Not later than 30 calendar days after the end of any calendar year in which the Ministerial Conference takes such an action, the USTR must report to the Committees as to whether the United States intends to invoke Article XIII of the WTO Agreement and must consult with the Committees promptly thereafter.

**★ What happens to the Bilateral Trade Agreement after Vietnam joins the WTO?**

The BTA would remain in effect between the Parties (unless either Party notifies the other Party, before the end of its current or any subsequent 3-year term, of its intent to terminate the agreement). However, the legal effect of specific BTA provisions post-WTO accession would depend on the particular BTA provision at issue.

- BTA provisions that incorporate WTO agreements in full (e.g., WTO Customs Valuation and Import Licensing Agreements) or in part (e.g., WTO SPS and TBT Agreements) would remain in effect; however, the Parties would most likely address problems and enforce their legal rights through the WTO, where binding dispute settlement is available.
- BTA provisions that go beyond current WTO obligations (e.g., the investment chapter as well as certain sections of the intellectual property and transparency chapters) would remain in effect.
- Many of the BTA's specific tariff and services commitments will be superseded by any new more favorable commitments negotiated as part of Vietnam's WTO accession. For instance, because of the MFN obligation, the United States will automatically receive any tariff and services commitments arising out Vietnam's WTO accession that are more extensive than those contained in the BTA. It is possible that Vietnam will seek to exempt certain BTA services commitments from the MFN obligation. If Vietnam is successful, then that particular BTA commitment will remain in effect only as between the United States and Vietnam. However, other WTO Members will likely resist any effort by Vietnam to do so.

## WTO Approval and Finalization of Vietnam's Accession Process

### ★ What procedures has Vietnam undertaken for WTO Accession?

WTO accession negotiations follow a well-established pattern:

- The formal accession process begins by filing a request for accession with the WTO Director-General. The WTO General Council then considers the application and may establish an accession working party. In January 1995, Vietnam applied for accession, the WTO General Council established the Working Party on the Accession of Vietnam, chaired by Ambassador Seung Ho of Korea. The Working Party is open to all WTO Members and to observers (such as other interested acceding countries).
- The next stage starts with a factual examination of the trade regime of the acceding government. The acceding government must prepare a Memorandum on its foreign trade regime for the Working Party, describing in detail the acceding country's regime for trade in goods, and policies and practices on intellectual property, services, and trade-related investment measures. Vietnam's Memorandum was circulated to the WTO in September 1996 and discussed at meetings of the Working Party. Vietnam then tabled an initial market access offer for goods and services early in 2002.
- Vietnam has thus far had eight Working Party meetings to review its market access offers, action plans for implementing the various WTO multilateral agreements including its legislative reform program, and answers to questions from trading partners regarding its trade regime. At the most recent of which occurred in June 2004, Members discussed the concrete terms of Vietnam's accession, including any transition periods or other special provisions. Members agreed to produce a *Draft Working Party Report* and hold the 9<sup>th</sup> Working Party session in early-December 2004. Members are expected to submit new questions by the end of July, and Vietnam will circulate replies by the end of September.
- As part of its accession, acceding country members also negotiate bilaterally with interested Working Party members on market access concerning goods and services. Vietnam has thus far conducted bilateral negotiations with the United States, European Union, Japan, Canada, Australia, Switzerland, Norway, Kyrgyzstan, Czechoslovakia, South Korea, Singapore, Thailand, Paraguay, New Zealand, Uruguay, China, and Cuba. It closed its first market access bilateral with Cuba in June 2004. Reports indicate that the U.S. and the EU are expected to conduct another round of bilateral negotiations with Vietnam in July.

### ★ What are the next steps to be taken for finalizing Vietnam's WTO accession?

- After all bilateral negotiations have been completed, the Working Party prepares a draft *Protocol of Accession*, a draft decision by the General Council approving the accession, and a report to the General Council providing a record of the Working Party's discussions. The acceding country submits draft schedules that record all the market access commitments to which it has agreed, and the schedules are attached to the draft *Protocol*. The draft *Protocol* records the exact terms of membership for the acceding country. All decisions by the Working Party are taken by consensus, including the decision on whether to approve the draft accession package (the *Protocol*, schedules, *Decision* and *Report* to the WTO General Council).
- After the package is forwarded to the General Council, the WTO General Council adopts the *Report* and approves the draft *Decision* and *Protocol of Accession*. The *Protocol* and *Decision* are formally submitted for a vote, but in practice the General Council decides on accessions by consensus. The *Protocol* is then opened for signature. Thirty days after the acceding government signs and accepts the *Protocol*, the *Protocol* enters into force, and the country becomes a WTO Member.