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## Vietnam's Contemporary Battle with the United States: Vying for Most Favored Nation Trading Status

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# NOTES

## Vietnam's Contemporary Battle with the United States: Vying for Most Favored Nation Trading Status

### ABSTRACT

*Since the United States and Vietnam signed the Paris Peace Agreement of 1973, Vietnam has sought to normalize economic relations with the United States in hopes of gaining American capital and technology. After the Vietnam War, however, the United States imposed a trade embargo against Vietnam and passed legislation denying that country non-discriminatory trading status. Moreover, Vietnam's past human rights abuses and its previous unwillingness to resolve American MIA/POW issues made its ambition of normalized U.S. relations an improbability. Recently, however, in response to Vietnam's renewed cooperation with U.S. foreign objectives, President Clinton has lifted the trade embargo against that country and has established U.S. diplomatic relations with Vietnam.*

*Before Vietnam may achieve its goal of truly normalized relations with the United States, it must obtain a U.S. grant of most favored nation trading status, thereby opening American borders to Vietnamese goods and encouraging U.S. investment in Vietnam. To procure such treatment, three conditions specified by the Trade Act of 1974 must be met. These include an executive order waiving the requirements of the Jackson-Vanik Amendment to the Act, a bilateral trade agreement between Vietnam and the United States, and Congressional approval of the commercial agreement. In this note, the author examines the options available to the President under the Trade Act of 1974 in light of Vietnam's current emigration policies. Next, the author considers the components of a successful bilateral trade agreement*

*between the two countries, highlighting areas that will likely lead to heavy debate and perhaps even gridlock in contract negotiations. Finally, the author concludes by considering the current political movements in the United States that may prevent Vietnam's grant of most favored nation trading status in the foreseeable future.*

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#### I. INTRODUCTION

At a U.S.-Vietnam Trade Council conference in 1995, Vietnam's Foreign Minister Nguyen Manh Cam declared, "We want the United States to be a major trading partner and the lead investor in Vietnam."<sup>1</sup> This ambition, however, can be realized only after the United States fully normalizes its economic

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1. Mark Felsenthal, *Vietnamese Pledge Economic Reform; U.S. Wants Comprehensive Trade Pact*, 12 Int'l Trade Rep. (BNA) 1690 (Oct. 11, 1995) available in LEXIS, BNA Library, INTRAD File.

relationship with Vietnam.<sup>2</sup> Such a task, which necessarily includes the negotiation of a bilateral trade agreement between the two countries, will open the Vietnamese market of 70 million people to U.S. businesses and provide Vietnam with U.S. capital, technology, and management expertise.<sup>3</sup> Toward this end, the United States has constructed a "roadmap" which outlines the required procedure for establishing normal economic ties with Vietnam.<sup>4</sup> This roadmap specifies a U.S. grant of most favored nation (MFN) trading status to Vietnam as the next step in the ongoing process of normalization.<sup>5</sup>

MFN trading status represents the non-discriminating treatment that the United States affords to most countries with which it trades.<sup>6</sup> Prior to 1947, the United States and its individual trading partners entered separate bilateral trade agreements which outlined steps to protect each nation's trade while favoring some trading partners over others.<sup>7</sup> With the passage of the General Agreement on Tariffs and Trade<sup>8</sup> (GATT) in 1947, however, the United States accepted the GATT provision obligating member countries to extend MFN status to all

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2. See POWELL, GOLDSTEIN, FRAZER & MURPHY, U.S.-VIETNAM ECONOMIC NORMALIZATION: CHARTING THE NEXT STEPS at i (1995) [hereinafter U.S.-VIETNAM NORMALIZATION].

3. *Vietnam: The Road Ahead: Hearings Before the Subcomm. on East Asian and Pacific Affairs of the Senate Foreign Relations Committee, available in LEXIS, News Library, ARCNEWS File (1991)* (statement of Richard H. Solomon, Assistant Secretary).

4. See *infra* note 30 and accompanying text.

5. VLADIMIR N. PREGELJ ET AL., VIETNAM: PROCEDURAL AND JURISDICTIONAL QUESTIONS REGARDING NORMALIZATION OF U.S. DIPLOMATIC AND ECONOMIC RELATIONS, CRS REPORT FOR CONGRESS No. 95-820S, at CRS-15 (Oct. 11, 1995) [hereinafter PREGELJ].

6. U.S.-VIETNAM NORMALIZATION, *supra* note 2, at 7. Currently, under the Harmonized Tariff Schedules, the United States maintains two columns of duties. The first column lists the tax rates applicable to U.S. trading partners to which MFN treatment has been accorded, while the second column catalogs the duty rates imposed on imports from countries to which the United States has not granted MFN status. The differences are substantial and often prohibitive. *Id.* For example, cane and bamboo furniture from non-MFN nations is taxed at a 60% rate whereas the same product imported from MFN nations is not subject to a tariff. Harmonized Tariff Schedule of the U.S., Pub. L. No. 100-418, 102 Stat. 1107 (1988).

7. Sesto E. Vecchi & Lisa Levaggi Borter, *U.S. MFN Status for Vietnam*, 17 E. ASIAN EXEC. REP. 6 (May 15, 1995).

8. General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A3, 55 U.N.T.S. 187 [hereinafter GATT]. The U.S. and over 120 other nations entered GATT to liberalize trade among member countries by reducing tariff and non-tariff barriers to manufactured goods and products. Ron Scherer, *What You Need to Know About the General Agreement on Tariffs and Trade (GATT)*, CHRISTIAN SCIENCE MONITOR, Sept. 15, 1986, at 21. See also *Key Questions and Answers About GATT Trade Agreement*, Gannett News Serv., available in LEXIS, News Library, ARCNEWS File, (1994).

participants of the agreement, even those with which the United States had not previously established bilateral trade agreements.<sup>9</sup> GATT fused the concept of non-discriminatory treatment of trading partners with the notion of MFN status<sup>10</sup> by providing in its section on "General Most-Favoured-Nation Treatment" that "any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties."<sup>11</sup>

MFN treatment will lead to non-discriminatory trade between Vietnam and the United States, while greatly decreasing the tariffs that the United States currently imposes on Vietnamese imports.<sup>12</sup> Because Vietnam is not a member of GATT, however, the Trade Act of 1974 (hereinafter 1974 Act)<sup>13</sup> specifies three conditions that must be met before the United States can extend MFN trading status to that country:<sup>14</sup> (1) the President must either certify that Vietnam permits the free emigration of its citizens or issue a waiver of that requirement in an attempt to promote U.S. emigration objectives;<sup>15</sup> (2) the United States and Vietnam must negotiate a commercial trade agreement establishing reciprocal non-discriminatory treatment for their exports; and (3) Congress must approve the agreement established with Vietnam.<sup>16</sup>

After reviewing the history behind the recent diplomatic normalization with Vietnam, this Note explores the procedure that Vietnam must follow to receive MFN trading status. This Note examines the choices available to a President under the Jackson-Vanik Amendment as it applies to Vietnam. It then surveys the feasibility and likelihood of a U.S.-Vietnam commercial trade agreement necessary to establish reciprocal non-discriminatory treatment between the two countries. Finally, this Note examines the controversy surrounding the congressional approval of a trade agreement with Vietnam, especially in light of the current human rights violations in Vietnam. This Note concludes that the current state of affairs in the United States and Vietnam will

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9. U.S.-VIETNAM NORMALIZATION, *supra* note 2, at 8.

10. Vecchi & Borter, *supra* note 7.

11. GATT, *supra* note 8, part I, art. I(1), 55 U.N.T.S. at 198.

12. Jim Ostroff, *Vietnam Decree Incites Industry Call for Quotas*, W. WKLY. DIG., July 12, 1995, at 2, available in LEXIS, News Library, CURNWS File.

13. 19 U.S.C. § 210 (1980). See *infra* part III.

14. U.S.-VIETNAM NORMALIZATION, *supra* note 2, at 8.

15. This is required by the Jackson-Vanik Amendment to the 1974 Act. See *id.*

16. *Id.*

likely impair Vietnam's opportunity to obtain MFN trading status in the near future.

## II. A HISTORY OF CONFLICT

In response to the violent past between the United States and Vietnam, the United States barred Vietnam from receiving MFN treatment in the early 1950s. The Trade Agreements Extension Act of 1951 required the President to refuse any tariff reductions on imports from "any nation or area dominated or controlled by [a] foreign government or foreign organization controlling the world Communist movement."<sup>17</sup> As a result, Truman issued a Presidential Proclamation that suspended MFN treatment to all parts of Vietnam under communist control; namely, northern Vietnam.<sup>18</sup> This exclusionary rule remained in the form of a regulation until 1962, with the passage of the Tariff Schedules of the United States. This regulation contained a list of countries, including Vietnam, that were denied MFN trading status.<sup>19</sup>

In 1964, at the outset of the Vietnam Conflict, the United States imposed a trade embargo upon North Vietnam.<sup>20</sup> By the end of the war, all U.S. economic and diplomatic relations with Vietnam had ended, and the United States applied the same trade restrictions to communist South Vietnam, as had previously been prescribed to North Vietnam.<sup>21</sup> Moreover, the 1974 Act maintained the presidential power to deny non-discriminatory treatment to any country to which the United States had not previously granted MFN trading status.<sup>22</sup> Thus, Vietnam began a commercial battle with the United States for economic normalization.

During the 1970s and 1980s, Vietnam made little progress in promoting trade with the United States. Vietnam attempted to establish diplomatic relations with the United States under the 1973 Paris Peace Agreement.<sup>23</sup> President Ford, however, refused

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17. Trade Agreements Extension Act of 1951, Pub. L. No. 50-141, 65 Stat. 73 (codified as amended at 19 U.S.C. § 1362), *repealed by* Act of Oct. 11, 1962, ch. 6, § 257(e)(1), 76 Stat. 882.

18. Proclamation No. 2935, 16 Fed. Reg. 7635 (1951).

19. PREGELJ, *supra* note 5, at CRS-17.

20. Thomas R. Stauch, *The United States and Vietnam: Overcoming the Past and Investing in the Future*, 28 INT'L LAW. 995, 996 (1994).

21. PREGELJ, *supra* note 5, at CRS-17. Under the 1962 Tariff Schedule, the suspension of South Vietnam's MFN status occurred automatically after its takeover by the Communist North. *Id.*

22. Trade Act of 1974, 19 U.S.C. § 2431 (1980).

23. The Paris Peace Agreement, signed by Vietnam and the U.S. on January 27, 1973, marked the end of the U.S. involvement in the Vietnam War. George Esper, *60,000 Unfulfilled Dreams; No Winners or Losers, Only Victims*, AP,

to negotiate until Vietnam provided a full accounting of U.S. POWs and MIAs of the Vietnam War.<sup>24</sup> In contrast, President Jimmy Carter initiated steps toward economic normalization with Vietnam.<sup>25</sup> The Carter Administration ceased such efforts, however, when Vietnam refused to provide information on prisoners of the Vietnam war unless the U.S. pledged several billions of dollars in aid for post-war reconstruction.<sup>26</sup> Other obstructions to diplomatic normalization during the Carter era included both Vietnam's invasion of Cambodia and its military alignment with the Soviet Union.<sup>27</sup>

Because President Reagan refused to consider normalizing relations with Vietnam until it withdrew from Cambodia, Vietnam made little progress in its economic negotiations with the United States during the 1980s.<sup>28</sup> It was not until 1991, a year after Vietnam negotiated a peace settlement with Cambodia, that the United States considered Vietnam's economic normalization.<sup>29</sup> In April of 1991, President Bush presented Vietnamese officials with a four-phase "roadmap," outlining the steps for normalizing relations with the United States.<sup>30</sup> The proposed agenda required Vietnam to account for the remaining U.S. soldiers lost during the Vietnam War and to participate in establishing peace in Cambodia.<sup>31</sup> In return, the United States agreed to expand relations between the two countries.<sup>32</sup>

Feb. 4, 1994, available in LEXIS, News Library, ARCNWS File. After signing the peace agreement, Vietnam sought talks with the United States to establish diplomatic relations between the two countries and demanded that the United States fulfill its duties under the Paris Peace Agreement by providing aid to Vietnam for post-war reconstruction. PREGELJ, *supra* note 5, at CRS-3.

24. This is an issue of importance that has frequently delayed the prospects of a bilateral trade agreement. PREGELJ, *supra* note 5, at CRS-3.

25. In an attempt to establish diplomatic ties, President Carter sent a commission to Vietnam in 1977 to discuss matters of mutual interest to the two countries and subsequently agreed to end the U.S. veto of Vietnam's application for membership in the United Nations. *Id.* See also *Talks Between Vietnamese Delegation & U.S. Presidential Commission Concluded*, Xinhua News Agency, Mar. 20, 1977, available in LEXIS, News Library, ARCNWS File.

26. PREGELJ, *supra* note 5, at CRS-3.

27. *Id.* at CRS-4.

28. *Id.*

29. *Id.* at CRS-4 to CRS-5.

30. *Id.* at CRS-5.

31. *Id.*

32. ROBERT G. SUTTER, VIETNAM-U.S. RELATIONS: THE DEBATE OVER NORMALIZATION, Congressional Research Service Issue Brief No. IB93081, CRS-14 (Nov. 8, 1995). In Phase I, Bush's roadmap directed Vietnam to sign a peace accord with Cambodia and aid in the resolution of U.S. POW and MIAs in exchange for bilateral talks on diplomatic and economic normalization with the United States. The second phase mandated Vietnam's continued assistance in both Cambodia's peace accord and the U.S. POW and MIA issues while the United States promised to renew communication systems in Vietnam, allow the United

With the signing of the Cambodian peace accord, and the visible progress made by Vietnam to resolve POW discrepancy cases<sup>33</sup> and other MIA issues, the United States maintained its pact, moving closer to political and economic normalization with Vietnam. Pursuant to Phase II of the roadmap, President Bush provided humanitarian aid to Vietnam, restored telecommunication links between the two countries, and permitted U.S. commercial sales of basic supplies to Vietnam in 1992.<sup>34</sup> President Clinton, having endorsed Bush's strategy for normalization of U.S. relations with Vietnam, lifted the trade embargo against Vietnam on February 3, 1994.<sup>35</sup> Subsequently, on July 11, 1995, Clinton announced the establishment of U.S. diplomatic relations with Vietnam, thus embarking on Phase IV of Bush's roadmap to normalization.<sup>36</sup> According to President Clinton, such a political step would not only aid in securing the fate and additional remains of U.S. POWs and MIAs, but would also promote U.S. relations with a peaceful Asia.<sup>37</sup> Secretary of State Warren Christopher, in response to Clinton's announcement, opened the U.S. embassy in Hanoi on August 8, 1995.<sup>38</sup> These newly-established diplomatic relations with Vietnam have positioned the United States for the completion of its political and economic normalization with Vietnam.<sup>39</sup>

### III. THE JACKSON-VANIK AMENDMENT: VIETNAM AND EMIGRATION

In 1972, President Richard Nixon announced that the United States would negotiate a bilateral trade agreement with the Soviet

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States to sign commercial contracts with Vietnam, and send delegations to Hanoi to negotiate normalizing U.S.-Vietnam relations. In exchange for the resolution of the last known POW discrepancy case in Vietnam, Phase III required the United States to fully lift its trade embargo against Vietnam. Finally, Phase IV directed the United States to establish ambassadorial-level diplomatic relations with Vietnam and consider granting it MFN trading status. *Id.* at CRS-14 to CRS-15.

33. Discrepancy cases are those instances where a U.S. soldier was last seen alive in Vietnam, but did not return to the United States under Operation Homecoming and has not yet been identified through any other means. Beth Castelli, *The Lifting of the Trade Embargo Between the United States and Vietnam: The Loss of a Potential Bargaining Tool or a Means of Fostering Cooperation?*, 13 DICK. J. INT'L L. 297, 311 n.120 (1995).

34. See U.S.-VIETNAM NORMALIZATION, *supra* note 2, at 1.

35. U.S. Removes Final Barrier to Vietnam: Republicans Blast Decision to Extend Diplomatic Relations, SUN-SENTINEL (Ft. Lauderdale, Fla.), July 12, 1995, at A1.

36. Clinton on Recognition: A Move "to Common Ground," N.Y. TIMES, July 12, 1995, at A8.

37. *Id.*

38. SUTTER, *supra* note 32, at CRS-10.

39. See *id.* at CRS-15.



Union.<sup>40</sup> Around that same time, however, the Soviet Union imposed an exit tax on its citizens attempting to emigrate.<sup>41</sup> This action, directed against the Soviet Union's Jewish community, sparked a U.S. campaign led by Senator Henry M. Jackson and Representative Charles Vanik to link a nation's trading status to its emigration policies.<sup>42</sup> As a result of the congressional outrage over the Soviet treatment of its Jewish community, the Jackson-Vanik Amendment to the 1974 Act<sup>43</sup> premised a country's grant of MFN trading status upon the right of that nation's citizens to emigrate freely.<sup>44</sup> This amendment provides an incentive to countries to suspend restrictive emigration policies in order to develop economic relations with the United States.<sup>45</sup> It is the first procedural requirement that Vietnam must satisfy before the United States will grant it MFN status.

According to the 1974 Act, any country's exports that did not receive MFN status from the United States at the time of the 1974 Act's implementation<sup>46</sup> will not be eligible for MFN treatment if that country:

(1) denies its citizens the right or opportunity to emigrate; (2) imposes more than a nominal tax on emigration or on the visas or other documents required for emigration, for any purpose or cause whatsoever; or (3) imposes more than a nominal tax, levy, fine, fee or other charge on any citizen as a consequence of the desire of such citizen to emigrate to the country of his choice.<sup>47</sup>

40. Robert H. Brumley, *Jackson-Vanik: Hard Fact, Bad Law?*, 8 B.U. INT'L L.J. 363, 365 (1990).

41. *Id.* The Soviet Union first launched its vicious campaign against its Jewish inhabitants after Israel won the Six Day War in 1967 which had led to the weakening of Soviet influence in the Arab community. Lara Iglitzin, *Jerusalem Conference Honors the Late Senator Jackson*, SEATTLE POST, Feb. 5, 1995, at P1; Geoffrey Wigoder, *Aftermath of Battle*, JERUSALEM POST, Jan. 19, 1990, available in LEXIS, News Library, JPOST File. The Soviet retaliation culminated in the imposition of high taxes upon Soviet Jews attempting to emigrate, the imprisonment of Jewish citizens for learning Hebrew, and the frequent interrogation of Jews by Soviet police. See Iglitzin, *supra*.

42. Brumley, *supra* note 40, at 365.

43. 19 U.S.C. § 2432 (1980).

44. Richard Lawrence, *Is Jackson-Vanik Still Needed?*, J. COM. & COM., June 24, 1993, at 8A; W. John Moore, *The Alumni Lobby*, NAT'L L.J., Sept. 9, 1989, at 2188, available in LEXIS, News Library, ARCNWS File.

45. S. REP. NO. 1298 (1974), reprinted in 1974 U.S.C.C.A.N. 7186, 7338.

46. 19 U.S.C. § 2431. Non-market economies to which the United States had not granted MFN trading status at the time Congress passed the 1974 Act included Albania, People's Republic of China, Cuba, North Korea, the former Soviet Union, and Vietnam. U.S.C.C.A.N., *supra* note 45, at 7333.

47. 19 U.S.C. § 2432(a). Although no certification is necessary under the Jackson-Vanik Amendment regarding the cooperation of Vietnam on U.S. POW and MIA issues, the President could determine, under Section 403 of the 1974 Act, that Vietnam has failed to cooperate with the United States to achieve a complete accounting of MIAs, to return remains, or to repatriate personnel who

In addition, under the Jackson-Vanik Amendment to the 1974 Act, any country that denies its citizens the freedom to emigrate will be excluded from U.S. programs extending credit to countries for the promotion of free trade.<sup>48</sup> Similarly, no commercial agreement may be concluded between the United States and a country with such restrictive emigration policies unless the terms of the amendment have been met.<sup>49</sup>

The Jackson-Vanik Amendment provides the President with two alternatives to end the mandated restrictions and grant MFN status to countries disqualified by the 1974 Act. First, the President may determine that the subject country is no longer in violation of the emigration restraints specified by the 1974 Act.<sup>50</sup> In compliance with the Jackson-Vanik Amendment, the President must submit a report to Congress outlining the emigration laws and policies of the country at issue, and demonstrate that any emigration restrictions previously imposed upon that country's

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are still alive. The consequences of such a finding could result in the denial of nondiscriminatory treatment. Trade Act of 1974, 19 U.S.C. § 2333 (1980). No such determination has been made under this provision with regard to Vietnam, and the recent forward movement in U.S.-Vietnam relations has been attributed to the progress made by that country toward resolving the POW and MIA issues. U.S.-VIETNAM NORMALIZATION, *supra* note 2, at 8. For this reason, it is extremely unlikely that President Clinton will utilize Section 403 of the Act and bar Vietnam from receiving MFN treatment based upon the remaining, unresolved MIA cases.

48. 19 U.S.C. § 2432(a). The U.S. credit facilities affected by the Jackson-Vanik Amendment include those of the Overseas Private Investment Corporation (OPIC) and the Export-Import Bank. OPIC is a self-sustaining government agency that promotes private, U.S. investment in some 120 less developed countries. Rob Garverick, *OPIC Supports U.S. Investors in LDCs & Emerging Democracies*, BUS. AM., Oct. 7, 1991, at 14. This organization's contributions to U.S. investors often prove crucial to emerging economies who seek U.S. capital to gain the strength necessary to compete in the global market. For a complete overview of OPIC and its benefits to developing nations, see S. Linn Williams, *Political & Other Risk Insurance: Eximbank, OPIC and Miga; Part I: OPIC Insurance*, MIDDLE E. EXECUTIVE REP., Feb. 1988, at 8. Likewise, noncompliance with the Jackson-Vanik Amendment may prevent a developing country from benefiting from the services offered by the Export-Import Bank which provides export insurance, loans, and credit guarantees to U.S. businesses that export to emerging economies. See James R. Kraus, *Ex-Im Bank Shifts Its Focus to Smaller Players*, AM. BANKER, Feb. 22, 1994, at 6 (indicating Bank's aim to boost exports by small and medium-sized U.S. companies to developing countries).

49. 19 U.S.C. § 2432(a). Although the United States has a strong interest in promoting human rights in Vietnam, one must note that the Jackson-Vanik Amendment links only a country's emigration policy to its ability to obtain MFN treatment. An acceptable human rights policy is not a statutory element of such a grant. *Lord Says No Linkage in Vietnam Between Trade and Human Rights*, 13 Int'l Trade Rep. (BNA) 65, 65 (Jan. 17, 1996).

50. 19 U.S.C. § 2432(b). Past Presidents have made such determinations with regard to Bulgaria, see Memorandum on Trade with Bulgaria, 29 WEEKLY COMP. PRES. DOC. 1025 (June 3, 1993), and the Czech and Slovak Republic, see Memorandum on the Emigration Policies of Czech and Slovak Federal Republics, 27 WEEKLY COMP. PRES. DOC. 1455 (Oct. 16, 1991).

citizens have been lifted.<sup>51</sup> Alternatively, the President may issue an executive order thereby waiving the application of the 1974 Act, with respect to any country in violation of the statute, so long as the President reports to Congress that the waiver will "substantially" promote the objectives of the Jackson-Vanik Amendment.<sup>52</sup> To waive compliance with the 1974 Act, the President must also receive assurances from the subject country that its emigration practices will promote the fundamental human rights of its citizens.<sup>53</sup> Such a presidential waiver extends for a twelve-month term, whereafter further extensions may be made for successive twelve-month periods.<sup>54</sup>

#### A. Presidential Emigration Certification

If the U.S. President submits a report to Congress indicating that a country provides its citizens with the right to emigrate, refuses to charge a substantial tax on documents required for emigration, or does not to levy a fee on any citizen desiring to emigrate, the exports of that country may be eligible to receive MFN treatment.<sup>55</sup> Following such executive action, the President may conclude a bilateral trade agreement with the subject country and offer it the benefits that accompany the nondiscriminatory treatment of its exports.<sup>56</sup> Consequently, President Clinton could grant MFN status to Vietnam if he determines that its emigration policies coincide with the goals of the Jackson-Vanik Amendment.

Given Vietnam's current emigration practices, however, such a determination is unlikely. In 1983, over 60,000 Vietnamese political prisoners remained in "re-education camps," without hope for a fair trial, and residents were prohibited from traveling or moving, let alone emigrating, without the permission of the government.<sup>57</sup> Although the rights of Vietnamese citizens have

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51. See 19 U.S.C. § 2432(b).

52. See 19 U.S.C. § 2432(c)(2)(b). Past Presidential waivers of the Jackson-Vanik emigration requirements include those of President Clinton for China, see *China: Most-Favored-Nation Status*, DEP'T OF STATE DISPATCH, (U.S. Dep't of State), June 14, 1993, available in LEXIS, Exec Library, DSTATE File, and of President Reagan for Romania, see *Trade with Romania, Hungary, & China*, 23 WEEKLY COMP. PRES. DOC. 624 (June 2, 1987).

53. 19 U.S.C. § 2432(c)(2).

54. 19 U.S.C. § 2432(d) (Supp. 1996).

55. 19 U.S.C. § 2432(b).

56. *Id.*

57. *Human Wrongs*, TIME, Feb. 21, 1983, at 18, 18. As late as April of 1983, years after the close of the Vietnam War with the United States, the Vietnamese government maintained eight re-education camps where South Vietnam supporters remained for political "rehabilitation." James Kelly, *When Will the Peace Begin?*, TIME, Apr. 25, 1983, at 82, 83.

improved since 1983, the current restrictions on emigration prevent President Clinton from demonstrating Vietnam's compliance with the Jackson-Vanik Amendment.

By 1995, Vietnam had granted most of its citizens the ability to travel within the country with few restrictions.<sup>58</sup> Although the Vietnamese must seek permission from the government to lawfully change residence, few restraints on internal travel are enforced, and citizens no longer need government-issued permits to cross provincial boundaries.<sup>59</sup> Foreigners also enjoy free access to most areas of Vietnam other than border areas, certain islands, and specific areas in the central highlands.<sup>60</sup> There have been, however, reports of certain ethnic minorities being forced to acquire permission to travel outside of their particular domains.<sup>61</sup>

Though the Vietnamese government has begun granting more exit visas, it still maintains a selective process that denies some citizens the right to travel abroad.<sup>62</sup> For example, Hanoi granted Dinh Thu Huong, an eminent dissident writer and citizen of Vietnam, the ability to leave the country for a European conference, but denied members of Vietnam's Muslim community the right to leave Vietnam to make a religious journey.<sup>63</sup> Similarly, Vietnam permits some categories of citizens to emigrate

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58. *Vietnam Human Rights Practices*, DEP'T STATE DISPATCH (U.S. Dep't of State), Mar. 1996, available in LEXIS, News Library, CURNWS File at \*9.

59. *Id.*

60. *Id.* Entry to Vietnam, however, is not without its limitations. For example, the Vietnamese government limited the number of travel visas granted to foreigners in June of 1996 in preparation for the 8th Communist Party Congress, the most important political even in Vietnam for the year. *Vietnam Restricting Visitor's Entry*, ORANGE COUNTY REG., June 6, 1996, at A1, available in LEXIS, News Library, CURNWS File.

61. *Vietnam Human Rights Practices*, *supra* note 58. For example, in an attempt to control the Vietnamese Catholic Church and prohibit the spread of Catholicism, the Vietnamese government declared in March of 1994 that Catholic bishops and priests could travel freely only within their diocese, while severely restricting movement outside of these areas. *Human Rights Watch: Asia*, Federal News Service, Testimony by Dinah Pokempner Before the House Committee on International Relations, July 27, 1995.

62. *Vietnam Human Rights Practices*, *supra* note 58, at \*10. The right of Vietnamese citizens to travel abroad will gain in importance as its economic position in the global market strengthens and its business community begins to negotiate with investors outside of Vietnam. See Richard Fisher, *Mission with Messages to Deliver*, WASH. TIMES, Aug. 3, 1995, at A20.

63. *Vietnam Human Rights Practices*, DEP'T STATE DISPATCH, (U.S. Dep't of State), Mar. 1995, available in LEXIS, News Library, CURNWS File. Though the Vietnamese government claims to promote freedom of religion, see *Communist Party Newspaper Says Freedom of Religion Observed*, BBC Summary of World Broadcasts, Sept. 19, 1995, available in LEXIS, News Library, CURNWS File, religious persecution is widespread and even U.S. tourists have been arrested and interrogated for evangelizing to Vietnamese citizens. See *Religious Freedom and Persecution of Christians*, (FDCH) Fed. Dep't & Agency Doc., Feb. 15, 1996, available in LEXIS, News Library, CURNWS File.

as part of the U.S. Orderly Departure Program, but denies certain ethnic groups access to this program.<sup>64</sup>

After signing a memorandum of understanding with the United Nations High Commissioner for Refugees in 1989, Vietnam has increasingly admitted citizens who fled its borders during the Vietnam War and thereafter.<sup>65</sup> Vietnam agreed to forego prosecution and other punitive actions against its citizens who illegally departed and subsequently returned under this voluntary repatriation program.<sup>66</sup> Since this U.N. agreement, over 72,000 Vietnamese citizens have returned to their homeland without government retribution or official discrimination.<sup>67</sup>

Vietnam's emigration policies have substantially improved since the Vietnam war. President Clinton, however, will not likely conclude or report to Congress that Vietnam has satisfied the emigration requirements listed in the Jackson-Vanik Amendment. Though Vietnam imposes no tax on its citizens desiring to leave the country, it limits those that may emigrate while discriminating against certain ethnic groups. In November of 1995, President Clinton sent an inter-agency fact-finding delegation to Vietnam to determine, among other things, its current emigration restrictions.<sup>68</sup> The committee's conclusions will determine Clinton's next step in his pursuit to grant MFN treatment to Vietnam. Because of Vietnam's current emigration policies, however, Clinton will likely waive the Jackson-Vanik Amendment restrictions for Vietnam in hopes of convincing Congress that such a waiver will enhance Vietnam's increasingly liberal emigration practices.

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64. *Vietnam Human Rights Practices*, supra note 58, at \*10. The Orderly Departure Program (ODP) was created in 1979 by a group of nations seeking to end the dangerous and often fatal attempt of Vietnamese "boat people" to defect from their country. See Robert Funseth, *A Safe Exodus from Vietnam*, CHI. TRIB., July 6, 1986, at 2. Today, the ODP provides a safe and legal means of departure to those Vietnamese residents who have been classified as Vietnamese immigrants and public interest parolees, refugees, or Amerasian immigrants. *Fact Sheet: U.S. Expands Orderly Departure for Vietnamese Refugees*, U.S. Dep't of State Dispatch, 1991 WL 2847679, Apr. 1, 1991.

65. *Vietnam Human Rights Practices*, supra note 58, at \*10.

66. *Id.* See, e.g., *Hong Kong Begins Deporting Vietnamese*, CHI. TRIB., Dec. 12, 1989, at 20. Vietnam's promises, however, often fall to deaf ears as many Vietnamese emigrants, who would rather live in transit camps than return home, refuse to voluntarily repatriate. In fact, the fear of forced repatriation has incited threats of suicide and actual violence in many such camps. See *Vietnamese Refugees in Malaysia Threaten Suicide if Forcibly Repatriated*, BBC Summary of World Broadcasts, available in LEXIS, News Library, ARCNWS File, June 29, 1992; Ismail Kassim, *Twenty Detained over Refugee Protest*, STRAITS TIMES (Singapore), June 7, 1995 available in 1995 WL 8537078.

67. *Vietnam Human Rights Practices*, supra note 58, at \*10.

68. *Lake Meets POW-MIA Representatives on Relations with Vietnam*, U.S. Newswire, Nov. 7, 1995, available in 1995 WL 11282682.

### B. Presidential Waiver

The Jackson-Vanik Amendment authorizes the President to waive, by executive order, the emigration requirements of the 1974 Act, if doing so will promote free emigration among its trading partners.<sup>69</sup> To make the initial waiver, the President must report to Congress that "he has determined that such waiver will substantially promote the objectives of [the Jackson-Vanik Amendment]; and he has received assurances that the emigration practices of that country will henceforth lead substantially to the achievement of the objectives of [the Jackson-Vanik Amendment]."<sup>70</sup> Thus, to waive the Jackson-Vanik Amendment emigration requirements for Vietnam and, consequently, grant MFN trading status to that country, President Clinton must demonstrate to Congress that establishing nondiscriminatory trading status with Vietnam will hasten improved emigration policies. Furthermore, Clinton must show that Vietnam would reform its current emigration policy to be consistent with the objectives of the Jackson-Vanik Amendment.

Examining past presidential waivers of the Jackson-Vanik Amendment requirements suggests that the President will be influenced more by the United States pursuit of free trade and economic prosperity than by Vietnam's emigration policies. In 1982, President Reagan waived Romania's compliance with the Jackson-Vanik Amendment based primarily upon the waiver's "important means for the strengthening of mutually beneficial relations" between the United States and Romania.<sup>71</sup> Nevertheless, President Reagan did voice his concern about the emigration policies of Romania, suggesting in the same congressional address that MFN status for Romania should be reconsidered in the future if it did not improve "its repressive emigration procedure and its significant decrease in Romanian Jewish emigration to Israel."<sup>72</sup> Similarly, in 1990, President Bush invoked his authority under the Jackson-Vanik Amendment to waive emigration requirements applicable to the former Soviet Union,<sup>73</sup> even though that nation had not adopted a liberal

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69. Trade Act of 1974, 19 U.S.C. § 2432 (1980).

70. *Id.* The President's initial waiver requires no congressional approval, nor is it subject to a congressional objection. PREGELJ, *supra* note 5, at CRS-18.

71. Trade with Romania, Hungary, and the People's Republic of China, President's Message to Congress, 18 WEEKLY COMP. PRES. DOC. 740 (June 2, 1982).

72. *Id.*

73. White House Fact Sheet on the Waiver of the Jackson-Vanik Amendment, 26 WEEKLY COMP. PRES. DOC. 2023 (Dec. 12, 1990).

emigration law.<sup>74</sup> President Bush, in an effort to help Mikhail Gorbachev, considered the waiver in light of the economic opportunities for U.S. farmers to sell grain to the former Soviet Union, which faced severe food shortages at that time.<sup>75</sup> According to U.S. officials, even though the Soviet Union did not permit its citizens to travel freely outside of its borders, emigration rules in practice had changed dramatically from 1974, when the Jackson-Vanik Amendment was first enforced, to 1990, when the President first considered a waiver for the former Soviet Union.<sup>76</sup>

Like the administrations before him, President Clinton may stress the economic benefits of free trade with Vietnam and deemphasize the established, but sometimes unenforced,<sup>77</sup> emigration rules of that country. According to a U.S. official, who accompanied Secretary of State Warren Christopher on a trip to Hanoi, "At the beginning of [the Clinton Administration], there were two key goals of U.S. foreign policy: promoting trade and promoting human rights . . . . Unfortunately, one goal often completely contradicted the other."<sup>78</sup> Many U.S. officials seek to avoid political disagreements at the cost of economic gain for U.S. businesses.<sup>79</sup>

Granting MFN status to Vietnam promises economic and political benefits for both the United States and Vietnam. The United States stands to gain a new market of over 70,000,000 consumers,<sup>80</sup> while creating an atmosphere that could better foster investigations into the remaining POW and MIAs of the Vietnam War.<sup>81</sup> Likewise, Vietnam stands to gain U.S. technology, management expertise, and capital,<sup>82</sup> while becoming a significant exporter of textile and apparel products to the United States.<sup>83</sup> President Clinton will likely grant Vietnam a waiver

74. Robert C. Toth, *Bush Considers Waiving Curbs for Soviet Grain Sale*, L.A. TIMES, Dec. 1, 1990, at A1.

75. *Id.* at A12.

76. *Id.*

77. See *supra* text accompanying notes 50-60.

78. Michael Dobbs, *American Trade Policies Showing Less Concern with Human Rights in Asia*, HOUS. CHRON., Aug. 9, 1995, at A12.

79. *Id.*

80. Llewellyn D. Howell, *AmerAsia's Future Is Now*, USA TODAY (Mag.), Mar. 1, 1994, at 69, available in 1994 WL 13637822.

81. *Human Rights in Vietnam: Testimony of Deputy Assistant Secretary of State Kent Wiedemann Before the Comm. on Int'l Relations*, Nov. 8, 1995, available in 1995 WL 11869416.

82. *U.S. Vietnam Relations - Issues and Implications*, GOA Reports (FDCH), Apr. 14, 1995, available in LEXIS, News Library, CURNWS File.

83. U.S.-VIETNAM NORMALIZATION, *supra* note 2, at 9.

under the Jackson-Vanik Amendment because of these economic benefits.<sup>84</sup>

To comply with the 1974 Act, President Clinton must report to Congress that waiving the Jackson-Vanik Amendment requirements will substantially promote more liberal emigration policies in Vietnam.<sup>85</sup> Although such a waiver will not constitute a conveyance of MFN status to Vietnam, it will further symbolize U.S. commitment to achieving that end. In an attempt to receive such an economically valuable status, Vietnam will likely comply with many U.S. demands on its emigration policies. For example, at the direction of the United States, Vietnam recently released two U.S. political prisoners, who had been detained since 1993.<sup>86</sup> Likewise, Vietnam has begun to allow the U.N. High Commissioner for Refugees to monitor its treatment of repatriates through direct visits to Vietnam.<sup>87</sup> Such cooperation demonstrates Vietnam's willingness to reform as it enters the global market. A waiver of the Jackson-Vanik Amendment requirements would provide the United States with even greater leverage to promote social changes in Vietnam.<sup>88</sup> Likewise, in anticipation of a nondiscriminatory trade agreement with the United States, Vietnam will likely fulfill its requirements under the Jackson-Vanik Amendment by assuring President Clinton that it will continue to work toward the free emigration of its citizens.

The successful waiver of the Jackson-Vanik Amendment requirements represents the first step toward Vietnam's grant of MFN status. Though a Congressionally-approved bilateral agreement must follow before Vietnam will be granted MFN treatment, a waiver of the Jackson-Vanik Amendment would make Vietnam immediately eligible to participate in U.S. programs extending credit and investment guarantees to foreign nations.<sup>89</sup> Likewise, U.S. trade assistance will open communications between the two countries and increase the likelihood of a bilateral trade agreement in the future.

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84. See *supra* text accompanying notes 50-57.

85. Trade Act of 1974, 19 U.S.C. § 2432(c)(2) (1980).

86. *Human Rights in Vietnam*, *supra* note 81, at \*7.

87. *Vietnam Human Rights Practices*, *supra* note 59, at \*10.

88. Vietnamese officials are anxious to benefit from a trade agreement with the United States and are welcoming U.S. products into their country. To foster this process, the Vietnamese government has indicated that it will discuss human rights issues with the United States, even though these concepts differ dramatically within the two cultures. *U.S. Vietnam Relations - Issues and Implications*, *supra* note 82.

89. See Trade Act of 1974, 19 U.S.C. § 2432(a) (1980); White House Fact Sheet on the Waiver of the Jackson-Vanik Amendment, 26 WEEKLY COMP. PRES. DOC. 2023 (Dec. 12, 1990).



## IV. COMMERCIAL TRADE AGREEMENT

Before the United States can grant MFN status to Vietnam, it must enter a comprehensive trade agreement with Vietnam providing for reciprocal grants of nondiscriminatory treatment.<sup>90</sup> According to the 1974 Act, the President may authorize a bilateral commercial agreement only after the determination that such an agreement is in the best interest of the United States.<sup>91</sup> The agreement must then be approved by a joint resolution of Congress<sup>92</sup> and limited to an initial period of no more than three years from the date of enforcement.<sup>93</sup> Thereafter, the agreement may be renewed by the President, for three-year periods, after a determination that a balance of concessions in trade has been maintained over the life of the agreement, and that reductions in U.S. tariffs and other barriers to trade have been reciprocated by the other country.<sup>94</sup> In this manner, the 1974 Act provides for periodic reviews of the agreement to ensure that any country negotiating with the U.S. offers reasonably comparable trade benefits without merely receiving a "free ride."<sup>95</sup>

The United States and Vietnam will likely enter a trade agreement similar in form to those that the United States has negotiated with current and former Communist governments.<sup>96</sup> U.S. officials have indicated that more specificity will be employed in an agreement with Vietnam than has been used in such agreements in the past.<sup>97</sup> In addition, the 1974 Act identifies certain terms of the agreement that the United States must include in its bilateral trade negotiations with countries seeking

90. Brenda A. Jacobs, *For Vietnam, Economic Normalcy Trails Diplomacy and Politics*, 37 *BOBBIN*, Oct. 1, 1995, available in 1995 WL 12115260.

91. 19 U.S.C. § 2435(a) (1980). Such a presidential determination will likely be rendered easily considering the economic benefits that a bilateral trade agreement may reap for U.S. businesses if Vietnam is granted MFN treatment.

92. 19 U.S.C. § 2435(c). Congressional cooperation will likely pose a challenge for Vietnam as it works toward MFN trading status with the United States. See *infra* V.A.

93. 19 U.S.C. § 2435 (b)(1).

94. *Id.* Factors that will be considered when reviewing Vietnam's cooperation with the United States in its trade relations include the implementation of non-tariff barriers, the success of a state-to-state trade agreement, the balance of market access opportunities, and reciprocal reductions in constraints on trade. See generally *Agreement on Trade Relations Between the United States of America and the Government of the Czechoslovak Federate Republic*, Sept. 12, 1990, available in 1990 WL 385123 (demonstrating the major concerns of the United States when attempting to maintain a reciprocal trade agreement with a foreign nation).

95. U.S.C.C.A.N., *supra* note 45, at 7340.

96. Jacobs, *supra* note 90.

97. U.S.-VIETNAM NORMALIZATION, *supra* note 2, at 9.

nondiscriminatory trading status.<sup>98</sup> The first of these terms specifies the duration of the agreement, enabling the United States to examine the balance of concessions between the contracting parties over the life of the agreement.<sup>99</sup> The remaining nine terms include provisions for: termination due to security reasons, safeguards against market disruption, protection of patents, trademarks, and industrial property of U.S. businesses, and arbitration of commercial differences and disputes.<sup>100</sup> These terms, and many others, represent issues that the United States must negotiate and settle with Vietnam before granting Vietnam MFN status.

### A. *Protecting National Security*

A bilateral commercial agreement with Vietnam must provide that it "is subject to suspension or termination at any time for national security reasons."<sup>101</sup> According to the 1974 Act, such a provision is paramount when negotiating with Communist governments.<sup>102</sup> Grounds for terminating trade concessions and credits to partner countries include circumstances where the trading partner encourages aggression against the United States or where it cuts off a supply of vital U.S. imports that are necessary for a stable U.S. economy.<sup>103</sup> Although the dynamics of the global community have changed greatly since the enactment of the 1974 Act, the inclusion of a national security provision in a trade agreement with Vietnam represents routine U.S. procedure and, as such, will not create much room for negotiation. Such a provision will likely resemble that of the 1990 trade agreement between the United States and the former Soviet Union, which represents a typical U.S. contract providing for nondiscriminatory treatment with a Communist country.<sup>104</sup> The stipulation will likely read that "[t]he provisions of this Agreement shall not limit the right of either Party to take any action for the

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98. 19 U.S.C. § 2435(b).

99. *Id.*

100. *Id.*

101. 19 U.S.C. § 2435(b)(2).

102. U.S.C.C.A.N., *supra* note 45, at 7340.

103. *Id.*

104. Throughout the Legislative History of the 1974 Act, the drafters refer to the 1972 U.S.-U.S.S.R. Trade Agreement as a model for future commercial agreements with Communist countries. Since that time, the agreement between the United States and the U.S.S.R. has been frequently updated until the fall of the Soviet Union. For this reason, the 1990 trade agreement will be employed between these two countries throughout the Note as a model of the standard commercial agreement employed by the United States in such negotiations.

protection of its security interests."<sup>105</sup> In this manner, the contracting parties may initiate strategic military maneuvers, including those affecting trade, without disrupting the preexisting bilateral trade agreement.

### B. Preventing Market Disruption

According to the 1974 Act, a bilateral trade agreement with Vietnam must include a provision protecting U.S. industries from market disruption.<sup>106</sup> This contractual term, which is customary in U.S. bilateral trade agreements, prevents imports of a specific product from increasing in quantity so quickly that they cause a material injury to competing domestic industries.<sup>107</sup> The 1974 Act requires safeguarding arrangements that provide for immediate negotiations when a market disruption is threatened, and which grant the authority to both countries to impose temporary trade restrictions.<sup>108</sup> A typical provision includes prompt consultation at the request of either party to examine the factors relating to the imports that create a market disruption and to determine the appropriate means of remedying the economic threat.<sup>109</sup>

Vietnam's agreement with the United States will likely specify reasonable protective measures, such as import limitations and tariffs, that either party may employ to end a market disruption.<sup>110</sup> At the same time, the agreement will likely give each trading partner the right, in the event the other party deviates from its obligations under the agreement, to itself deviate to that same degree.<sup>111</sup> Similar to a provision terminating the obligations of the trade contract for purposes of national security, this clause protects both parties to the agreement and will not likely be the subject of intense negotiations between the United States and Vietnam.

105. Agreement on Trade Relations, June 1, 1990, U.S.-U.S.S.R., art. XIII, 29 I.L.M. 946, 959.

106. 19 U.S.C. § 2435(b)(3).

107. The 1990 U.S.-U.S.S.R. Trade Agreement defines a market disruption as a circumstance where "imports of an article, like or directly competitive with an article produced by such domestic industry, are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat thereof, to such domestic industry." Agreement on Trade Relations, *supra* note 105, art. XI, at 957.

108. 19 U.S.C. § 2435(b)(3).

109. Agreement on Trade Relations, *supra* note 105, art. XI, at 957-58.

110. *See id.*

111. *Id.*

### C. Preserving U.S. Patents and Trademarks

Under the 1974 Act, if the party to a U.S. bilateral trade agreement is not a member of the Paris Convention for the Protection of Industrial Property (hereinafter Paris Convention),<sup>112</sup> the trade agreement must provide specific rights for U.S. businesses and investors with respect to patents and trademarks.<sup>113</sup> In this manner, U.S.-based industries can expect the same protection afforded their patents and trademarks by the Paris Convention parties.<sup>114</sup> Although Vietnam is a member of the Paris Convention, as well as the Arrangement of Madrid concerning the International Registration of Marks (hereinafter Madrid Agreement),<sup>115</sup> an off-shoot of the Paris Convention,<sup>116</sup> foreign trademarks are increasingly targeted for counterfeiting in Vietnam.<sup>117</sup> Moreover, the United States is not a member of the Madrid Agreement, and U.S. companies may not avail themselves of such international registration.<sup>118</sup> As a result, U.S. businesses must register their trademarks and patents individually in Vietnam.<sup>119</sup> For this reason, Vietnam must enforce its trademark and patent laws before a trade agreement with the United States can be negotiated.

Vietnam maintains a "first-to-file" rule for obtaining trademark rights.<sup>120</sup> For this reason, the most reliable method

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112. The Paris Convention established the basic principles of an international patent regime by emphasizing certain core rules, common among its member countries, governing unfair competition, application, registration, and duration of patents and trademarks. Michael A. Epstein, *Intellectual Property: Eye on Eastern Europe Treatise, Local Law Map Course For Enforcement*, N.Y.L.J., May 23, 1994, at S4, S14.

113. 19 U.S.C. § 2435(b)(4).

114. U.S.C.C.A.N., *supra* note 45, at 7341.

115. The Madrid Agreement encompasses the general principles advocated by the Paris Agreement while going a step further to provide a single registration for trademark protection in its 43 member countries. Ian Jay Kaufman, *Non-European View of Madrid Protocol, Trademark Law Treaty & Community Trade Mark*, N.Y.L.J., Aug. 18, 1995, at 5. Under the Madrid Agreement, any individual or legal entity who has a mark registered in his domicile or country of origin may receive protection for that mark by filing a single application, having a duration of 20 years, with the Central Registration Bureau located in Geneva, Switzerland. Ian Jay Kaufman, *The Madrid Protocol: Should the U.S. Join?*, N.Y.L.J., Oct. 9, 1992, at 5, 27.

116. Frederick Burke, *Trademark Protection in Vietnam*, E. ASIAN EXECUTIVE ○ REP., Oct. 15, 1991, at 8.

117. *Id.*

118. *What U.S. Companies Need to Know About Intellectual Property Protection in Vietnam*, BUS. AM., Oct. 5, 1992, at 22.

119. Burke, *supra* note 116, at 21.

120. *Id.* The first-to-file system represents an improvement from Vietnam's former "first-to-use" system of trademark protection, but problems continue to abound as pirates beat manufacturers to the trademark office. Murray Hiebert,

for obtaining trademark registration in Vietnam is to apply with the National Office of Inventions (NOI)<sup>121</sup> for a trademark license before any conflicting registration is filed.<sup>122</sup> Frequently, however, trademark pirates file local applications with the NOI for registration of trademarks that belong to foreign companies.<sup>123</sup> Additionally, even though filing a trademark with the NOI confers exclusive rights to the registrant, well-known marks are often pirated.<sup>124</sup> In such circumstances, the actual owner of the trademark has several recourses, the most effective of which is to take informal actions to resolve the problem.<sup>125</sup>

In the past, Vietnam's first-to-file trademark policy and ineffectual judicial system has fostered a lucrative business in counterfeiting foreign trademarks for the domestic market.<sup>126</sup> Vietnam has realized, however, that in order to attract foreign investors and participate in world trade, it must protect intellectual property rights.<sup>127</sup> As a result, the NOI has become more efficient and organized, issuing orders to terminate the infringement of registered trademarks within two to three months

*On Your Marks: Only the Quick Win Under Hanot's Trademark Rules*, FAR E. ECON. REV., Apr. 15, 1993, at 65.

121. The NOI, which reports to the State Committee for Science and Technology (which in turn reports to Vietnam's Council of Ministers), is charged with the administration of intellectual property law in Vietnam. James Taylor, Jr., *Vietnam: the Current Legal Environment for U.S. Investors*, 25 L. & POL'Y INT'L BUS. 469, 476 (1994).

122. Burke, *supra* note 116, at 21. A well-advised foreign manufacturer or producer will take steps to register its trademarks in Vietnam before launching its products in the Vietnamese market. In this manner, U.S. businesses may avoid the problems which arise when registering a trademark after a pirate has beaten a rightful trademark owner to the NOI, for adequate trademark protection begins with proper registration. Michael J. Scown, *Bucking the Wiles of Vietnam's Pirates*, ASIAN WALL ST. J., Jan. 7, 1993, at 6, available in 1993 WL-WSJA 2056436.

123. See *What U.S. Companies Need to Know About Intellectual Property Protection in Vietnam*, *supra* note 118, at 22.

124. *Id.*

125. Burke, *supra* note 116, at 25. Depending upon the type of trademark application which one completes, Vietnamese law may permit an applicant to oppose or contest a previously filed application judicially or informally. Taylor, *supra* note 121, at 476.

126. See *What U.S. Companies Need to Know About Intellectual Property Protection in Vietnam*, *supra* note 118, at 22. Rampant pirating in Vietnam also may be attributed to that country's long isolation from the global market. As a result, its residents' hunger for foreign goods fuels the success of those counterfeit products that imitate Western technology and emulate Western culture.

127. Tanya Pullin, *Vietnam Is Not a Copycat*. FAR E. ECON. REV., Jan. 18, 1996, at 28. See also Clark W. Lackert, *Worldwide Focus Is Greater Protection, Harmony: Countries Ease Legal Restrictions*, NAT'L L.J., May 11, 1992, at S10. ("[Vietnam's] leaders regard better trademark protection as necessary for economic development.")

of a petitioner's filing.<sup>128</sup> In addition, Vietnam's Market Management Bureau or local police will inspect an alleged infringer's factory and destroy any merchandise that violates a filed trademark.<sup>129</sup>

Moreover, the adoption of Vietnam's new Civil Code,<sup>130</sup> which provides guidelines for the enforcement of trademarks, patents, and copyrights registered in Vietnam, emphasizes Vietnam's commitment to improving its business environment for foreign investors.<sup>131</sup> The International Patent, Trademark, and Copyright Agency (INVENCO)<sup>132</sup> deals with matters concerning trademarks, and all trademarks will be protected going forward from the date upon which the government grants a registration certificate to the trademark owner.<sup>133</sup>

Because Vietnam has had little success enforcing its industrial property regulations in the past, the United States will likely negotiate a detailed trademark and patent provision in its bilateral trade agreement with Vietnam. This will occur even though Vietnam is a party to both the Paris Convention and the Madrid Agreement. Before entering a trade agreement, the United States must send delegations to Vietnam to analyze its current trademark and patent protection policies. Those U.S. delegations must ensure Vietnam's adherence to its commitments made as a member of the Paris Convention.<sup>134</sup> The United States will also likely include assurances in the agreement that Vietnam will promote the protection of intellectual property rights as outlined in its Civil Code. It may even premise the agreement upon certain tangible improvements in Vietnam's trademark procedures.<sup>135</sup> Regardless of the end result, the protection of trademarks and

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128. Pullin, *supra* note 127.

129. *Id.* The Market Management Bureau is an administrative agency in Vietnam that adjudicates cases regarding the infringement of intellectual property laws. See Harish Mehta, *Vietnam Lays Down the Law*, S. CHINA MORNING POST, Oct. 18, 1992, at 6, available in 1992 WL 10493585.

130. On October 28, 1995, Vietnam's National Assembly enacted that country's first-ever civil code. This Civil Code explicitly protects intellectual property that has been registered with proper Vietnamese agencies. Adrian Edwards, *Vietnam Passes Law for Property, Other Rights*, WASH. POST, Oct. 29, 1995, at A32. Vietnam hopes that the Civil Code, which was designed to establish a clear and modern body of law, will attract foreign investors and help the country develop its market economy. Kathy Wilhelm, *Legislature Overhauls Civil Code for Market Economies*, AP, Oct. 28, 1995, available in 1995 WL 4412060.

131. See Le Xuan Thao, *Trade Marks in Vietnam*, Trade Mark Yearbook, May 31, 1996, available in LEXIS, News Library, CURNWS File.

132. Vietnam's newly implemented Civil Code established INVENCO to administer matters concerning trademark, copyright, and patent regulations. *Id.*

133. *Id.*

134. Pullin, *supra* note 127.

135. See Agreement on Trade Relations, *supra* note 105, art. VIII, at 955-56.

patents will prove to be the subject of substantial talks between Vietnam and the United States, and could feasibly slow the negotiations of a bilateral trade agreement between the two countries.

#### D. Safeguarding Copyrights

The 1974 Act also specifies that the protection of copyrights must be addressed in a U.S. bilateral trade agreement if the contracting country is not a party to the Universal Copyright Convention (UCC).<sup>136</sup> Governed by the U.N. Educational, Scientific, and Cultural Organization, the UCC creates common copyright rules and standards for member countries, and sets the minimum protection of a copyright at the life of the author plus twenty-five years.<sup>137</sup> Such standards could create stumbling blocks for Vietnam in its negotiations for bilateral trade with the United States, since Vietnam is not a member of the UCC and has not established a law that effectively prevents copyright infringement.

Although the Vietnam National Assembly recently approved new copyright legislation in October of 1995,<sup>138</sup> it is estimated that thousands of unauthorized copies of audio and video programs are produced every day in Ho Chi Minh City to be sold in local Vietnamese stores.<sup>139</sup> As of July, 1996, Vietnam's copyright law has provided some basic protection for copyrights registered in Vietnam, but remains deficient in its enforcement provisions and its treatment of foreign rights owners.<sup>140</sup> Copyrights properly filed with the Vietnamese Ministry of Culture and Information typically protect a written work for fifty years after the death of the author; and in the case of a film, video, or recording, for fifty years after the date of manufacture or first

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136. 19 U.S.C. § 2435(b)(5)-(6) (1980). The UCC, adopted at Geneva on September 6, 1952, affords its signatories with international copyright protection without mandating the relinquishment of certain formality requirements. James J. Merriman, Note, *Battling Motion Picture Pirates in Turbid International Waters*, 23 CASE W. RES. J. INT'L L. 623, 627 (1991). Though the UCC obligates its members to provide effective copyright protection, it cannot itself confer any rights, thereby preventing any real benefit to foreign businesses that operate within its member nations that have passed individual copyright legislation. Bruce P. Keller, et al., *National Laws Play a Role in International Protection*, NAT'L L.J., Dec. 14, 1992, at 19, 23.

137. Epstein, *supra* note 112, at S14.

138. See *supra* note 130.

139. *Vietnam to Crack Down on Copyright Piracy*, Xinhua Eng. Newswire, Oct. 20, 1995, available in 1995 WL 11191175.

140. *1994 Vietnamese Ordinance on Copyright: A Summary of Key Points*, MUSIC & COPYRIGHT, July 5, 1995, at 11, available in 1995 WL 10232432.

broadcasting.<sup>141</sup> Vietnamese law only creates copyright privileges for foreign authors if their works are published in Vietnam within thirty days of their first publication in the author's country or by reciprocal agreements between Vietnam and other participating nations.<sup>142</sup> Presently, however, Vietnam is not a member of any major copyright convention.<sup>143</sup>

Recognizing a need for improvement in its copyright legislation to attract foreign investors, Vietnam has recently attempted to crack down on copyright infringement. For example, in 1995, the Ministry of Culture and Information<sup>144</sup> refused to issue any further permits to Vietnamese publishers to reprint foreign works unless the Vietnamese publishing house obtained written permission from the foreign publisher.<sup>145</sup> Additionally, the United States and Vietnam have begun negotiations for the enforcement of intellectual property rights in Vietnam that will act as a precursor to the copyright provision of an eventual trade agreement between the two countries.<sup>146</sup>

Vietnamese officials have urged its potential trading partners for flexibility as it attempts to implement effective copyright statutes in a poor country where one can earn a substantial income pirating foreign books and records.<sup>147</sup> As a result, the United States will likely include a comprehensive provision in a commercial trade agreement with Vietnam that advocates the standards of the UCC and specifically addresses Vietnamese enforcement of copyright legislation. Additionally, the United States may include a requirement that Vietnam enhance its present copyright law with adherence to the Berne Convention for the Protection of Literary and Artistic Works.<sup>148</sup> This Convention

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141. *Id.*

142. *Id.*

143. *Id.*

144. Vietnam's Ministry of Culture is a governmental agency charged with the enforcement of copyright law. David Lange, *Vietnam's 1994 Ordinance on Copyright Protection: A Survey and Preliminary Analysis*, 3 J. INTELL. PROP. L. 1, 22 (1995).

145. Reginald Chua, *In Vietnam, Publishing Yields Plenty of Dividends, But Few Royalties*, ASIAN WALL ST. J., Nov. 13, 1995, at 1, available in 1995 WL-WSJA 10228211.

146. *Vietnam-US Copyright Agreement Could Be Ready by June*. AGENCE FRANCE-PRESSE, Apr. 21, 1996, available in 1996 WL 3842206.

147. Greg Torode, *The Insular Days of Embargoes Are a Thing of the Past and Vietnam is Fast Becoming a Large Market for Counterfeit Goods*. S. CHINA MORNING POST, Dec. 21, 1994, at 6, available in LEXIS, News Library, CURNWS File.

148. See Agreement on Trade Relations, *supra* note 105, at art. VIII. The Berne Convention, established in 1886 by nine original member countries, is presently comprised of over 80 nations seeking universal protection for artistic works produced within their borders. Susan Stanton, *Development of the Berne International Copyright Convention and Implications of United States Adherence*, 13 Hous. J. INT'L L. 149 (1990).



protects literary and artistic works by establishing certain principles of national copyright treatment, independent of any copyright protection in the work's country of origin.<sup>149</sup>

Regardless of the terms used in the final draft of the bilateral trade agreement between Vietnam and the United States, Vietnam must actively enforce its copyright laws before such a contract can be drafted. Until Vietnam assures U.S. nationals of at least the same minimum protections afforded by the UCC, the United States, under the 1974 Act, cannot enter a commercial trade agreement with Vietnam.

#### E. *Protection of Industrial Rights and Processes*

A commercial trade agreement between the United States and Vietnam must include a provision that protects "industrial rights and processes" in addition to U.S. claims to patents, copyrights, and trademarks.<sup>150</sup> This term simply refers to industrial know-how, as opposed to a patent or trademark, and will likely be included in the negotiations with Vietnam regarding the protection of these industrial property rights. Compliance with the 1974 Act will result in the inclusion of a simple phrase ensuring that Vietnam will protect industrial property rights such as inventions, industrial designs, and trade secrets.<sup>151</sup> In this manner, the United States will incorporate the preservation of U.S. industrial property rights and processes in its negotiations with Vietnam.

#### F. *Resolving Commercial Differences and Disputes*

According to the 1974 Act, the United States must also include, in a commercial trade agreement with Vietnam, "arrangements for the settlement of commercial differences and disputes."<sup>152</sup> Because most commercial contracts resulting from the trade agreement will be made by U.S. nationals rather than the government, the 1974 Act does not intend for the agreement to require a specific and time-consuming method of commercial dispute resolution.<sup>153</sup> On the contrary, the trade agreement must include an endorsement by the contracting parties of the

149. Epstein, *supra* note 112, at S14.

150. Trade Act of 1974, 19 U.S.C. § 2435(b)(6) (1980).

151. See, e.g., Agreement on Trade Relations, *supra* note 105, art. VIII, at 955 (including the phrase that the United States and the Soviet Union included in their trade agreement to ensure protection of these industrial property rights).

152. 19 U.S.C. § 2435(b)(7). See also Dominic Bencivenga, *Vietnam on Hold: Investors Wait for Trade and Legal Developments*, N.Y.L.J., July 20, 1995, at 5 (resolving disputes next for Vietnam and investors).

153. U.S.C.C.A.N., *supra* note 45, at 7341.

"principle of independent dispute-settlement mechanisms" and a covenant that both parties will facilitate such arbitration.<sup>154</sup>

Vietnam is currently developing an effective arbitration system to resolve commercial disputes between Vietnamese parties and foreign entities. Vietnam's Law on Foreign Investment, promulgated in 1987,<sup>155</sup> mandates that parties to a foreign investment contract attempt to resolve commercial disputes through independent negotiation.<sup>156</sup> If this fails to provide a solution, the parties must refer the dispute either to the Vietnam International Arbitration Center (hereinafter Center) or another judicial body stipulated by the contract.<sup>157</sup> Upon filing a request for arbitration with the Center, a hearing will be conducted by one or more arbitrators who have previously been approved by the Center.<sup>158</sup> After the arbitrator announces the decision, records are kept summarizing the particulars of the dispute, the hearing, the decision, and the arbitrator's reasoning.<sup>159</sup> If, however, parties stipulate to a specific, foreign judiciary to resolve their commercial disputes, Vietnam will abide

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154. *Id.* Though such covenants seem to have little enforceable power, the United States may premise the renewal of its ultimate trade agreement with Vietnam upon that country's willingness to establish an effective system of arbitration. Additionally, these clauses will assure foreign businesses that Vietnam recognizes the importance of arbitrating commercial disputes between international investors and its citizens.

155. James S. Finch & Harold P. Fiske, *Vietnam's Evolving Arbitration System*, E. ASIAN EXEC. REP., Apr. 15, 1995, at 9. The Vietnamese National Assembly enacted the Law on Foreign Investment in December of 1987 to form the legal foundation for foreign investment in Vietnam. Since that time, however, additional laws and ordinances have been promulgated in such areas as labor, banking, and arbitration to provide a more detailed explanation of the government's intent to foreign investors. Mathilde L. Genovese, *Succeeding in Vietnam's Emerging Market Economy*, E. ASIAN EXEC. REP., May 15, 1995, at 7, 22.

156. Taylor, *supra* note 121, at 478.

157. *Id.* The Center was established in April of 1993 as a combination of the State Economic Arbitration Council, the Foreign Trade Arbitration Committee, and the Maritime Arbitration Committee, each having previously employed differing rules of arbitration. Though nongovernmental, the Center receives its funding from Vietnam's Chamber of Commerce and Industry. Finch & Fiske, *supra* note 155. See also Douglas Wong, *Vietnam "Working on Enforcing Arbitration Awards,"* STRAITS TIMES, July 26, 1993, available in LEXIS, News Library, ARCNWS File; *Arbitrator Steps in for Judgeless Courts*, VIETNAM INV. REV., July 25, 1994, at 12.

158. Finch & Fiske, *supra* note 155. The Center conducted its first hearing in 1994. Since that time, new rules have been implemented to facilitate the adjudication of disputes, including rules governing the location of the hearing and the subject matter of the dispute. Thai Nhu, *First Arbitration Disputes Settled*, VIETNAM INV. REV., Feb. 21, 1994, at 12.

159. Finch & Fiske, *supra* note 155.

by that forum's decisions as long as the resolution complies with the fundamental principles of Vietnamese law.<sup>160</sup>

The major flaw of Vietnam's arbitration system lies in its lack of enforcement powers. Currently, no formal legal mechanism exists in Vietnam guaranteeing that parties will receive the damages awarded by an arbitration proceeding.<sup>161</sup> For this reason, the Center focuses upon attempts to settle disputes at the arbitration stage and encourages voluntary compliance with arbitration decisions, rather than upon the legal enforcement of particular dispute resolutions.<sup>162</sup> Although the Center's inability to enforce decisions undermines its ability to resolve disputes, Vietnamese officials have indicated that legislation providing enforcement measures to the Center will likely be enacted in 1996.<sup>163</sup> Such an act will fortify Vietnam's arbitration system while stressing Vietnam's commitment to the establishment of an effective method for commercial dispute resolution.

Because the 1974 Act only requires that the United States and Vietnam include a provision supporting the principles of commercial dispute resolution in their bilateral trade agreement,<sup>164</sup> negotiations in this area will be minimal, especially in light of Vietnam's recent progress in commercial arbitration. The U.S. trade agreement with Vietnam will likely include language encouraging Vietnamese entities and U.S. businesses to include arbitration in the terms of their contract as a means of settling commercial disputes.<sup>165</sup> Likewise, the trade agreement will likely recognize the validity of arbitration decisions made outside of either country under internationally recognized arbitration standards. Such language, required by the 1974 Act, represents the position of both the United States and Vietnam, and will cause little friction between the two countries as they attempt to negotiate a bilateral trade agreement.

160. *Vietnam Okays Foreign Arbitration*, Japan Economic Newswire, Sept. 30, 1995, available in LEXIS, Nexis Library, CURNWS File.

161. Finch & Fiske, *supra* note 155. Recently, however, Vietnam signed the New York Convention, which provides that commercial arbitration resolutions made abroad will be enforceable in Vietnam. *Steady Legal Changes Clearing Investors' Path*, VIETNAM INV. REV., Mar. 4, 1996, at 25.

162. Finch & Fiske, *supra* note 155. This emphasis of disputed resolution is best illustrated by examining the number of disputes settled prior to an actual arbitration proceeding. Since the first 21 hearings at the Ho Chi Minh City office, 17 cases settled prior to the scheduled arbitration action. *Id.*

163. *Id.*

164. 19 U.S.C. § 2435(b)(7) (1980).

165. See Agreement on Trade Relations, *supra* note 105, art. XII, at 958.

### G. Promoting Effective Bilateral Trade

The remaining requirements of the 1974 Act include three housekeeping provisions for the promotion of bilateral trade. The agreement must establish the necessary government offices and trading positions to facilitate trade, provide for regular consultations between the participating countries to maintain a cooperative relationship, and include any additional issues that promote the purposes of the 1974 Act.<sup>166</sup> These three provisions are common elements of the commercial agreements between the United States and its Communist trading partners also. The provisions ensure that the agreement creates benefits for the private sector, while enabling the United States to monitor the trading relationship and make any necessary adjustments to promote the interests of its citizens.<sup>167</sup>

Many additional issues exist that cannot be found in the 1974 Act but must be resolved before formal trade negotiations can begin with Vietnam. According to a U.S. trade official, considerable research of Vietnam's trade regime must be completed before a trade agreement can be established.<sup>168</sup> Reports on Vietnamese import tariffs, state licenses for imports and exports, and permits for individual trade transactions are among a few of the topics that U.S. officials will investigate before negotiating with Vietnam.<sup>169</sup> Furthermore, because talks with the Vietnamese government regarding a formal trade agreement requires Congressional approval, President Clinton is not likely to push for such negotiations during the 1996 election year.<sup>170</sup> This mix of factors makes it difficult to predict when negotiations for a trade agreement with Vietnam will begin. Until that time, however, Vietnam should focus on the nine factors listed in the

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166. Trade Act of 1974, 19 U.S.C. § 2435(b)(8)-(10).

167. U.S.C.C.A.N., *supra* note 45, at 7341.

168. Gary G. Yerkey, U.S., *Vietnam Set to Begin Talks on Trade Pact in October*, *Aide Says*, 12 INT'L TRADE REP. (BNA), 1615 (1995), available in LEXIS, BNA Library, INTRAD File.

169. *Id.* Vietnam has made recent attempts to improve its position in the global market by announcing revisions of its import-export regulations and lowering tariffs to facilitate trade. See *Vietnam to Revise Import-Export Rules*, Xinhua Eng. Newswire, Apr. 15, 1996, available in 1996 WL 10075034 and *Vietnam to Cut Tariffs*, Platt's Oilgram News, Jan. 2, 1996, available in 1996 WL 8701220. At the same time, however, Vietnam has shown a reluctance to lower all trade barriers, bringing imports of white and crude sugar to a halt in March of 1996 to stabilize the price of sugar cane harvested in that country. *Vietnam Temporarily Stops Sugar Imports, Raises Tariffs*, ASIAN WALL ST. J., Mar. 26, 1996, at 21, available in 1996 WL-WSJA 3330507.

170. Ronald E. Yates, *U.S. Investors Enter Vietnam at Own Risk Status, Competition Puts Americans at a Disadvantage*, FRESNO BEE, May 15, 1995, at E5, available in LEXIS, News Library, CURNWS File.

1974 Act that must be included in a trade agreement with the United States. In so doing, Vietnam could help facilitate trade negotiations when they do, in fact, occur.

## V. CONGRESSIONAL APPROVAL

According to the 1974 Act, the U.S. President may extend MFN status to Vietnam only after the United States has negotiated a bilateral commercial agreement with Vietnam.<sup>171</sup> Such a presidential proclamation, however, as well as the trade agreement, may be executed only after the U.S. Senate and House of Representatives each adopt a concurring resolution approving the extension of MFN status to Vietnam.<sup>172</sup> Although Congress has supported both the termination of the trade embargo against Vietnam and the recent diplomatic normalization with that country,<sup>173</sup> Vietnam's unresolved POW and MIA issues, as well as its human rights abuses, may negatively influence the determination of Vietnam's trading status with the United States.

### A. Accounting for U.S. POWs and MIAs in Vietnam

According to U.S. government officials, "Obtaining the fullest possible accounting for [U.S.] POW and MIAs remains the [Clinton] Administration's highest priority in relations with Vietnam."<sup>174</sup> The specific role of the United States in Vietnam and the approach it has taken in pursuit of this goal, however, has sparked a debate in Congress that transcends party lines and represents the most significant threat to Vietnam's attainment of MFN trading status.<sup>175</sup> Legislators backed by U.S. businesses are pushing for economic normalization with Vietnam.<sup>176</sup> Legislators representing families of missing U.S. soldiers and veteran groups believe that maintaining the status quo of U.S.-Vietnamese relations will result in a more expedient method of accounting for

171. 19 U.S.C. § 2434(a) (1980).

172. 19 U.S.C. § 2437(c)(1) (1980).

173. For a time line outlining the events leading up to the current relationship between the United States and Vietnam, see Mark T. Kehoe, *U.S.-Vietnam Relations*, Wire Stories, June 20, 1995, available in 1995 WL 9164258.

174. *Human Rights in Vietnam*, supra note 81. See also Adrian Edwards, *Vietnam Lauds Nomination of Former POW as New Envoy*, HOUS. CHRON., May 26, 1996, at 25.

175. See, e.g., *Dole Vows to Block Relations with Vietnam*, AUSTIN AM.-STATESMEN, July 22, 1995, at A5.

176. Donna Cassata, *Final Battle of Vietnam War May be Fought in Congress*, 53 CONG. Q. WKLY. REP. 1583, 1583 (1995).

the remaining POWs and MIAs of the Vietnam War.<sup>177</sup> The outcome of this controversy could be the determinative factor in a congressional effort to grant MFN treatment to Vietnam.

The Clinton Administration asserts that the recent progress made in U.S.-Vietnamese relations has resulted in Vietnam's increased effort to account for the remaining POWs and MIAs of the Vietnam War.<sup>178</sup> After President Clinton announced a plan to press for greater cooperation from Vietnam in 1993, the remains of thirty-nine U.S. soldiers were brought back to the United States from Vietnam, making 1993 one of the most productive years for recovering the remains of U.S. MIAs since the end of the Vietnam War.<sup>179</sup> Since 1993, 174 sets of remains, including thirty-one in 1995, have been repatriated through the joint activities of the United States and Vietnam.<sup>180</sup> As a result, forty-five U.S. soldiers lost in the Vietnam War have been identified and returned to their families since 1993.<sup>181</sup>

Similarly, Vietnam has cooperated with the United States to reduce the number of discrepancy cases from 196 U.S. soldiers to fifty-five.<sup>182</sup> Such U.S.-Vietnamese collaboration has also resulted in a trilateral cooperation with Laos, whereby Vietnamese residents that witnessed possible deaths of U.S. soldiers in Laos during the Vietnam War accompany U.S. officials to accident sites, enabling the United States to locate and investigate the crash sites and graves of U.S. soldiers.<sup>183</sup> Furthermore, in 1995, Vietnam surrendered 295 documents containing information about unresolved cases of U.S. MIAs an act that President Clinton

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177. *Id. See, e.g.,* Delores Apodaca Alfond, National Chairperson of National Alliance of Families, *Testimony Before the House Military Personnel Comm.*, Cong. Test. (FDCH) June 19, 1996, available in 1996 WL 10828730.

178. *Human Rights in Vietnam*, *supra* note 81. *See also* *MIA Relatives Press for More U.S.-Vietnamese Efforts*, AGENCE FRANCE-PRESSE, June 19, 1996, available in 1996 WL 3874778.

179. *U.S. - Vietnam POW/MIA Progress: Lifting the Embargo: Statement Before the Subcomm. of E. Asian and Pac. Aff. of the Sen. Foreign Rel. Comm.*, available in LEXIS, News Library, ACHNWS File (Feb. 28, 1994) (statement of Winston Lord, Assistant Secretary for East Asian and Pacific Affairs).

180. *Human Rights in Vietnam*, *supra* note 81. For an example of Vietnam's participation in locating the remaining POW and MIAs of the Vietnam War, see *POW/MIA Issues: Testimony of Kent M. Wiedemann, Dep. Assist. Sec. of State for E. Asian and Pac. Aff., Before the House Comm. on Nat'l Security, Subcomm. on Military Personnel*, June 19, 1996, available in 1996 WL 10828646.

181. *Human Rights in Vietnam*, *supra* note 81.

182. *Id.* "Discrepancy cases" represent those instances where the fate of U.S. soldiers believed to have been captured alive remain unknown. *See, e.g., Clinton: Vietnam Cooperating Well on MIA Search*, Xinhua English Newswire, May 31, 1996, available in 1996 WL 10545724.

183. *Id.*

attributes to renewed relations with Vietnam.<sup>184</sup> According to the congressional proponents for establishing nondiscriminatory trading status with Vietnam, such tangible progress warrants the grant of MFN treatment to Vietnam in an effort to continue accounting for U.S. POWs and MIAs and to reward Vietnam for its cooperation.<sup>185</sup>

Congressional opponents to normalizing economic relations with Vietnam disagree that the progress made in accounting for the U.S. POWs and MIAs of the Vietnam War has been substantial. Opponents accuse the Clinton Administration of distorting facts in order to meet its economic agenda. According to Senator Bob Smith, a veteran and leading opponent to trade with Vietnam, Vietnam is not being fully cooperative with regard to several hundred POW and MIA cases.<sup>186</sup> Senator Smith maintains that Pentagon analysts have proven the existence of records of at least 250 MIA cases from Laos that have not been surrendered by Vietnam.<sup>187</sup> In an attempt to explain Vietnam's failure to submit such documents to the United States, one analyst believes that these documents contain evidence that the Vietnamese either killed U.S. soldiers or allowed them to die of starvation or battle injuries. These elements of war could severely impair Vietnam's goal of MFN treatment.<sup>188</sup> Senator Smith, who is joined by other opponents to trade with Vietnam, insists that nothing less than full disclosure by the Vietnamese of the "hard-core" cases in both Laos and Vietnam will prevent him from "doing everything [he] can to ensure that the Vietnamese are fully forthcoming on the POW and MIA issues—including cutting the

184. *Id.* Though the Clinton Administration maintains that the surrender of war documents represents a renewed cooperation on behalf of Vietnam, critics question the value of the documents which may lack new information regarding U.S. MIAs and POWs in Vietnam. *POW-MIA Issue Downplayed as Viet Ties Near*, HOUS. CHRON., July 8, 1995, at 22.

185. *See, e.g.,* Jill Zuckman, Kerry, McCain Share a Goal Over Vietnam, BOSTON GLOBE, July 9, 1995, at 1.

186. *U.S. Government Knowledge of POW/MIAs in Vietnam. Congressional Testimony Before the House Nat'l Sec. Subcomm. on Military Personnel*, Dec. 14, 1995, available in 1995 WL 13415547 (testimony of Sen. Bob Smith). *See, e.g.,* Alan G. Lance, *Americans Deserve a Full, Complete Accounting of POWs, MIAs*, IDAHO STATESMAN, Sept. 19, 1995, available in 1995 WL 10504364; Carl M. Cannon, *Critics Deny Vietnamese Are Aiding MIA Search as Clinton Nears Diplomatic Ties, Some Dispute Claims*, COMMERCIAL APPEAL, July 8, 1995, at A1, available in 1995 WL 9355316.

187. *Id.* Some opponents to normalizing relations with Vietnam claim that an even greater number of documents exist and that Vietnam could unilaterally solve hundreds of MIA and POW cases if pressured. *See, e.g., Congressman Turns Up Heat on Vietnam*, AGENCE FRANCE-PRESSE, Dec. 14, 1995, available in 1995 WL 11485418.

188. William F. Buckley, Jr., *Hanoi Ties Not a Moral Issue*, SAN ANTONIO EXPRESS, July 18, 1995, available in 1995 WL 5569056.

funds for full diplomatic and economic relations if that's what it takes to send a message to President Clinton and the Vietnamese Government."<sup>189</sup>

Although full disclosure of Hanoi's records has not yet been achieved, many senators and representatives believe that continued improvements in U.S.-Vietnamese relations will lead to that result. Supporters of a trade agreement with Vietnam advocate a "step-by-step, carrot and stick approach" to normalizing relations.<sup>190</sup> Granting MFN treatment to Vietnam could reward Vietnamese participation in settling the POW and MIA issues, while implying that additional concessions will be made if Vietnam continues to cooperate with the United States. Furthermore, broadening the U.S. presence in Vietnam could result in an even greater recovery of lost U.S. soldiers in Vietnam.<sup>191</sup>

At the forefront of this position are Republican Senator John McCain, a Vietnam veteran who spent six years as a POW, and Democratic Senator John Kerry, also a Vietnam veteran.<sup>192</sup> In 1994, these senators sponsored a non-binding amendment, approved by a 62-38 vote in the Senate, supporting an end to the economic embargo against Vietnam.<sup>193</sup> One week later, Clinton acted with this congressional support and ended the nineteen-year ban on trade with Vietnam.<sup>194</sup> According to Senator Kerry, "To continue to punish Vietnam will continue to make it difficult to get the answers for families" whose relatives fought in Vietnam and have not been located.<sup>195</sup>

Critics of Clinton's plan for normalization argue that the President's policy of employing incentives to obtain POW and MIA information from Vietnam has failed and only serious negotiations coupled with a firm approach can lead to the desired result.<sup>196</sup> According to one U.S. Representative, proof that Clinton's approach has not been successful is evidenced by Vietnam's

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189. *U.S. Government Knowledge of POW/MIAs in Vietnam*, *supra* note 186.

190. James A. Baker, III, *Outlook: "Road Map" leads to Hanoi*, *HOUS. CHRON.*, July 16, 1995, at 1.

191. *Id.* See also Jonathon Alter & Ron Moreau, *Binding Up Old Wounds*, *NEWSWEEK*, June 26, 1995, at 34, 35; Stewart M. Powell, *Clinton Makes Vietnam Ties Official*, *S.F. EXAMINER*, July 11, 1995, at A1.

192. Zuckman, *supra* note 185, at 1. See also Jim Abrams, *McCain Backs Renewed Ties to Vietnam, Ex-POW Sees Full Relations as a Way to Deal with China's Role in Region*, *L.A. DAILY NEWS*, July 10, 1995, at N9.

193. *Senators Unite on Vietnam Trade; Cooperation on MIAs Helps Heal Wounds*, *CINCINNATI POST*, Jan. 28, 1994, at 2A.

194. Carroll J. Doherty, *Clinton Lifts Vietnam Trade Ban After Senate Provides Cover*, *CONG. Q. WKLY. REP.*, Feb. 5, 1994, at 256.

195. John Aloysius Farrell, *U.S. Mends Fence with Viets; Clinton to Extend Diplomatic Relations Today*, *DENVER POST*, July 11, 1995, at A1.

196. *U.S. Government Knowledge of POW/MIAs in Vietnam*, *supra* note 186.



failure to surrender information about the remains of POWs and MIAs that should be easy to locate and provide.<sup>197</sup> Using the past behavior of Communist Vietnam as an indicator of the future, congressional opponents to normalization declare that Vietnam only responds to U.S. demands when the United States makes it clear that it will go no further to meet Vietnam's agenda until cooperation has been obtained.<sup>198</sup>

According to opponents trade with Vietnam, the United States should force Vietnam to "come clean" on the POW and MIA issues before providing additional concessions, because Vietnam needs U.S. business investments, economic experience, and management know-how.<sup>199</sup> Congress advocated this position, in December of 1995, with the passage of an appropriations act that contained a provision entitled, "Limitation on the Use of Funds for Diplomatic Facilities in Vietnam."<sup>200</sup> The amendment provided for a presidential certification of Vietnam's cooperation with the United States in regard to its resolution of discrepancy cases, recovery of United States remains, surrender of documents, and implementation of trilateral investigations with Laos.<sup>201</sup> Although President Clinton vetoed this legislation,<sup>202</sup> it demonstrated that extending MFN treatment to Vietnam could create controversy in Congress. Moreover, the amendment proved the emphasis that

197. 141 CONG. REC. E1083-02 (daily ed. May 19, 1995) (statement of Rep. Benjamin A. Gilman).

198. *Vietnam POW/MIA Full Disclosure Act*, 141 CONG. REC. S6912-04 (daily ed. May 18, 1995) (statement of Sen. Bob Smith).

199. *Id.* See also *Smith Slams State Department's Push for Vietnam Recognition*, Gov't Press Releases (FDCH), June 13, 1995, available in 1995 WL 14249721.

200. 141 CONG. REC. S18127-05, S18159 (daily ed. Dec. 7, 1995). This proposed provision, included in the Judiciary Appropriations Bill for Fiscal Year 1996, stated that:

None of the funds appropriated or otherwise made available by [the] Act may be obligated or expended to pay for any cost incurred for: (1) opening or operating any U.S. diplomatic or consular post in the Socialist Republic of Vietnam that was not operating on July 11, 1995; (2) expanding any U.S. diplomatic or consular post in the Socialist Republic of Vietnam that was operating on July 11, 1995; or (3) increasing the total number of personnel assigned to U.S. diplomatic or consular posts in the Socialist Republic of Vietnam above the levels existing on July 11, 1995, unless the President certifies within 60 days, based upon all information available to the U.S. Government, that the Government of the Socialist Republic of Vietnam is fully cooperating with the United States . . . .

*Id.*

201. *Id.*

202. 141 CONG. REC. H15166-02, H15166-H15167 (daily ed. Dec. 19, 1995).

Congress places upon tangible results with regard to the unresolved POW and MIA issues in Vietnam.<sup>203</sup>

Congressional proponents of free trade with Vietnam will likely receive resistance from veteran groups, POW and MIA family organizations, and legislators who believe a firm stance against Vietnam will best promote its participation in resolving war issues. Regardless of the battle ahead, however, an immediate presidential push for economic normalization with Vietnam seems unlikely, as does additional congressional support, as Clinton and many legislators face the November election.<sup>204</sup> In the meantime, Vietnam must continue in its cooperation with the United States to uncover missing U.S. soldiers and respond to congressional critics by making tangible progress in the 2,000 U.S. veterans still missing as a result of the Vietnam War.

### B. Human Rights

The 1974 Act does not refer to a country's human rights record as a condition precedent for granting MFN status. Since the Chinese incident at Tiananmen Square in 1989,<sup>205</sup> however, Congress has essentially required that a country seeking normalized trade relations with the United States must meet United States and international standards for protecting and assuring the fundamental human rights of its citizens.<sup>206</sup> As a

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203. Recently, to validate President Clinton's commitment to POWs and MIAs in his negotiations for trade with Vietnam, the U.S. Legislature included a provision in the 1996 budget that blocked U.S. funds for U.S. diplomatic posts and officials in Vietnam until the President certified Hanoi's cooperation in fully resolving the POW and MIA cases that have yet to be settled. Bill Gertz, *Budget Law Requires Vietnam to Act on POW's*, WASH. TIMES, Apr. 27, 1996, at A4. President Clinton made such a certification in May of 1996. Opponents of U.S.-Vietnam normalization question the truth of Clinton's assertion. *White House Satisfied with Hanoi on MIA's*, RECORD (N.J.), May 31, 1996, at A24.

204. Jim Mann, *Dealing with the Foreigners*, FT. WORTH STAR-TELEGRAM, Jan. 26, 1996, at 33.

205. In 1989, upon the death of Hu Yaobang, a former Secretary-General of China's Communist Party, students gathered in Beijing's Tiananmen Square to protest high inflation, mismanaged government reform programs, and government corruption. See Ben Tierney, *Student Unrest Causes Alarm in Beijing*, VANCOUVER SUN, Apr. 22, 1989, at B1. Protesters sought democracy, rehabilitation, a free press, and vindication of Hu. *Id.* The protest resulted in over 3000 deaths and 10,000 injuries when soldiers opened fire on students and civilians to quash the potential establishment of what the government feared would be "bourgeois republic." James Wallace et al., *China: What Price Peace? The Military Has Saved the Hard-liners for Now, But Its Own Unity Is Shattered*, U.S. NEWS & WORLD REP., June 19, 1989, at 20, 20.

206. U.S.-VIETNAM NORMALIZATION, *supra* note 2, at 10.

result, Vietnam must make substantial progress in its human rights practices before Congress can approve a trade agreement.

The Vietnamese government currently operates a national system of surveillance through domicile registration and Communist party-appointed block wardens who monitor individual activities through informants.<sup>207</sup> Likewise, the Vietnam Communist Party (VCP) selectively censors mail, seizes packages, and monitors telephone conversations, while maintaining additional control over its citizens by restricting the number of children a family may have.<sup>208</sup> In addition, the Vietnamese government prohibits speech that questions the role of the governing party regime, promotes a multi-party democracy, or discusses certain matters such as human rights.<sup>209</sup> Vietnamese officials also restrict the right of assembly by requiring those wishing to congregate to obtain a permit, which can be arbitrarily denied by local authorities.<sup>210</sup> A failure to comply with this restriction can lead to arrest, trial in a court controlled by the VCP, and a lengthy prison term for a crime against the state.<sup>211</sup> All of these Vietnamese practices represent hurdles for trade negotiations with U.S., for they will be considered by U.S. legislators who ultimately determine Vietnam's trading status with the United States. Furthermore, the VCP's official practices will be emphasized by opponents to trade with Vietnam if a presidential proclamation providing Vietnam with MFN treatment is submitted to Congress.

Vietnam has, however, recently progressed in its approach to human rights by maintaining its commitment to the rule of law

207. *Vietnam Human Rights Practices, 1994*, *supra* note 63, at \*10-11. Though restrictions on daily life in Vietnam have reportedly eased, including the surveillance of Vietnamese citizens, individuals whom the government believes to be "reactionary" are closely monitored by informants and plain-clothed police. Mike Jendrzeczyk, Wash. Dir. of Human Rights Watch/Asia, *Testimony Before the House Int'l Relations Comm., Subcomm. on Int'l Operations & Human Rights and Asia & the South Pacific*, Nov. 8, 1995, available in 1995 WL 10888941, at \*4-5.

208. *Vietnam Human Rights Practices, 1994*, *supra* note 63, at \*11-12. Additionally, with the increased use of computerized communications, Vietnam has begun to formulate a means of controlling the information flow from cyberspace into that country. Keith B. Richburg, *Future Shock: Surfing the Net in 'Nam; Like Other Authoritarian Regimes, Hanoi Fears "Virtual Democracy" of Cyberspace*, WASH. POST, Nov. 19, 1995, at A24.

209. *Vietnam Human Rights Practices, 1994*, *supra* note 63, at \*12-13. See *Human Rights and Democracy in Asia, Testimony of John Shattuck, Asst. Sec. For Democracy, Human Rights, and Labor*, 1995 WL 8643511, at \*21-22.

210. *Vietnam Human Rights Practices, 1994*, *supra* note 63, at \*17.

211. *Id.* at \*8. See also Adam Schwarz, *Arrested Development: Crackdown at Home Follows Opening Abroad*, FAR E. ECON. REV., Sept. 7, 1995, at 33.

and allowing some latitude for criticism of its policies.<sup>212</sup> For example, in 1994, the VCP permitted discussion and public criticism of its administrative procedures, bureaucratic lethargy, government corruption, and economic policy.<sup>213</sup> Similarly, the recently revised labor code in Vietnam recognizes the right of laborers to strike.<sup>214</sup> These changes represent Vietnam's willingness to make political improvements and solicit increased trade activity.

Congressional proponents of trade with Vietnam believe that extending MFN status to Vietnam will foster additional progress in human rights through a balance of U.S. pressure and economic advances.<sup>215</sup> Opponents of trade with Vietnam, however, argue that the grant of MFN status to Vietnam will eliminate a major negotiating tool and will cause Vietnam to initiate few tangible improvements to its human rights abuses in order to receive concessions from the United States.<sup>216</sup> Nevertheless, Vietnam must recognize that its human rights practices will be scrutinized by Congress when it decides whether to extend nondiscriminatory treatment to the products of Vietnam. Though the Vietnamese Constitution provides for many freedoms pertaining to speech, assembly, and religion,<sup>217</sup> until the VCP recognizes and supports the validity of such provisions, Vietnam's superficial laws will have little effect on congressional opinion. For these reasons, Vietnam must continue to improve its current human rights regime, while waiting for diplomatic normalization with the United States, and congressional consideration of granting MFN treatment to Vietnam.

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212. *U.S. Vietnam Relations - Issues and Implications*, *supra* note 82. See also *Vietnam Is Reforming, Official Says; Christopher Raises Rights Issue on Trip*, ATLANTA J., Aug. 7, 1995, at A4.

213. *Vietnam Human Rights Practices, 1994*, *supra* note 63, at \*12.

214. *Id.* at \*34. Though the Vietnamese Labor Code, adopted by the National Assembly in May of 1994 and implemented in January of 1995, creates specific employment rights such as the freedom to join trade unions and to strike, enforcement has proven difficult, making the reform inadequate. Andrew Nette, *Vietnam-Labor, Union Movement Negotiates Mixed Bag of Reforms*, Inter Press Serv., Apr. 27, 1996, available in 1996 WL 9810280.

215. SUTTER, *supra* note 32, at CRS-7.

216. See *id.*; see also Dina Elboghady, *O.C. Lawmakers Oppose Full Relations; Politics: They Say Normalization Should Hinge on MIA and Human Rights Issues*, ORANGE COUNTY REG., July 11, 1995, at A10, available in 1995 WL 5859621.

217. *Vietnam Human Rights Practices, 1994*, *supra* note 63, at \*12.

## VI. STRIVING FOR RESULTS

In 1986, Vietnam's annual inflation rate reached 700%, starvation threatened the nation's farmers, and the economy depended solely upon monetary aid from the Soviet Union.<sup>218</sup> Recognizing the need for substantial economic change, the Vietnamese government implemented "Doi Moi," a program of economic, social, and political reform aimed at transforming the financial system into a market economy.<sup>219</sup> As a result of the nation's efforts, Vietnam sustained an impressive level of economic improvement over a ten-year period. This growth culminated in a nine and one-half percent growth rate in its gross domestic product in 1995 and a low inflation rate remaining under thirteen percent in the same year.<sup>220</sup> Food production has increased by nearly one-half since 1987.<sup>221</sup> Vietnam has become a major exporter in less than a decade with a total trade turnover of \$12.74 billion in 1995, a forty-eight percent increase from the previous year.<sup>222</sup> The question remains as to why Vietnam, a country dubbed Asia's next economic tiger,<sup>223</sup> would willingly succumb to U.S. demands in an attempt to receive MFN trading status.

When Vietnam executed Doi Moi in 1986, the government hoped to induce domestic and commercial development, enhance economic cooperation with foreign entities, and increase exports based upon an effective use of its natural resources and manpower.<sup>224</sup> Since that time, the Vietnamese government has closely monitored the country's economic development and, in response to Vietnam's successful renovation process, has adopted the Strategy for Socio-Economic Stabilization and Development until the Year 2000 (hereinafter Strategy 2000).<sup>225</sup> This strategy

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218. Steven Butler, *Vietnam's Next Crusade Twenty Years After the War's End, a Former Foe Struggles to Transform Its Communist Ways*, U.S. NEWS & WORLD REP., May 1, 1995, at 55, 58.

219. Luke Aloysius McGrath, *Vietnam's Struggle to Balance Sovereignty, Centralization, and Foreign Investment under Doi Moi*, 18 FORDHAM INT'L L.J. 2095, 2095-96 (1995).

220. *Vietnam Trade Deficit Balloons to 2.3 Billion Dollars in '95*, ASIAN ECON. NEWS, Jan. 8, 1996.

221. Butler, *supra* note 218.

222. *Vietnam Trade Deficit Balloons to 2.3 Billion Dollars in '95*, *supra* note 220. Total trade turnover represents the sum of Vietnam's total imports and exports for a given year.

223. Richard Korman, *World Projects Hanoi to World: Let's Make a Deal*, ENGINEERING NEWS-REC., Nov. 1, 1993, available in 1993 WL 2387922.

224. Camellia Ngo, *Foreign Investment Promotion: Thailand as a Model for Economic Development in Vietnam*, 16 HASTINGS INT'L & COMP. L. REV. 67, 72 (1992).

225. Ngo Quang Xuan, *Vietnam: Potential Market and New Opportunities*, 19 FORDHAM INT'L L. J. 32, 33 (1995).

seeks to overcome Vietnam's standing as a poverty-stricken and underdeveloped country, create better conditions for rapid economic development, and double 1990's Gross Domestic Product (GDP) by the year 2000.<sup>226</sup> To achieve these goals, Vietnam must sustain an annual GDP growth rate of ten to twelve percent throughout the current decade and increase its industrial output by fifteen to sixteen percent per year.<sup>227</sup> Nondiscriminatory trade with the United States is therefore crucial for Vietnam.

Until the lift of the U.S. trade embargo against Vietnam in 1994, the United States prohibited foreign investment in Vietnam and restricted economic and financial assistance to Vietnam from multilateral agencies.<sup>228</sup> Such economic sanctions prevented many other countries from supplying Vietnam with needed investment as well, for many industrial nations did not want to frustrate their trade relations with the United States. Additionally, other industrialized nations opposed Vietnam's presence in Cambodia.<sup>229</sup> Since the United States began negotiations with Vietnam to normalize relations and Vietnam pulled its troops out of Cambodia, direct foreign investment and economic assistance have begun to pour into Vietnam.<sup>230</sup> Vietnam's grant of MFN trading status, however, will result in an even greater influx of capital, while creating another market for Vietnamese exporters to exploit. Furthermore, the normalized relations with the United States will substantiate Vietnam's economic progress in the world community. Such an event will likely encourage additional investments in Vietnam from other industrial nations wishing to take advantage of Vietnam's inexpensive, yet intelligent, labor supply, whose work product could be exported around the globe without the imposition of any major trade sanctions.

After analyzing the many problems that threaten its industrial modernization, Vietnam has recognized that it must obtain \$50-55 billion in foreign capital in the next five years to meet the objectives of Strategy 2000.<sup>231</sup> Many Vietnamese business people hope that U.S. investments will comprise a majority of that figure, since Vietnam admires U.S. technology,

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226. *Id.*

227. *Id.* at 36.

228. J. Clifford, et al., *American Involvement in Vietnam, Part II: Prospects for U.S. Business in a New Era*, BUS. HORIZONS, Mar. 1, 1995, at 21, 21-22, available in 1995 WL 8685878.

229. *See id.*

230. *Id.* For an examination of the U.S. momentum-building investments in Vietnam, see Marc Lavine, *Lacklustre U.S. Investment in Vietnam May Go Gold in '95*, AGENCE FRANCE-PRESSE, Feb. 2, 1995, available in 1995 WL 7755001.

231. Ngo Quang Xuan, *supra* note 225, at 32, 37.

businesses, and laws.<sup>232</sup> Because economic relations have not yet normalized between Vietnam and the United States, however, U.S. investment in Vietnam remains far below its potential, with a total value of only \$525 million, ranking the U.S. eighth among countries with investments in Vietnam.<sup>233</sup> Moreover, neither Vietnam nor the United States benefit from stalled trade negotiations as Vietnam hopes to export agricultural products, textiles, and consumer goods to the United States. Vietnam is also desperately in need of U.S. machinery, agricultural products, and airplanes for industrial development.<sup>234</sup> Only through total economic normalization with the United States, including the grant of MFN status, will Vietnam reach its economic objectives for the year 2000.

## VII. CONCLUSION

Although Vietnam has developed substantially since the implementation of Doi Moi, it is still a poor country with over eighty percent of its population living in rural areas and a per capita GDP of about \$250.<sup>235</sup> U.S. investment, however, will enable Vietnam to reach its economic goal of attaining an efficient market economy and becoming an active participant in the global market. Furthermore, applying nondiscriminatory treatment to Vietnamese goods entering the United States will foster additional trade between the two nations, as well as additional investments in Vietnam, where foreign capital is the key to its economic future.

Unfortunately for both countries, obstacles outside the requirements of the 1974 Act remain that will slow U.S. trade developments with Vietnam. On the U.S. front, the upcoming presidential election poses a serious threat to the future of U.S.-Vietnam relations. The Clinton Administration has indicated that it will focus upon the MFN trading status of China in 1996 and leave the question of a trade agreement with Vietnam for 1997, after the election in November of 1996.<sup>236</sup> Furthermore, the

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232. Butler, *supra* note 218, at 55. Moreover, the Vietnamese desire for Western products has positioned many U.S. businesses such as PepsiCo to exploit current market conditions in Vietnam. See J. Clifford, *supra* note 228.

233. Ngo Quang Xuan, *supra* note 225, at 32, 38-39. See also Bruce Stanley, *Vietnam Doesn't Foresee Big Boom in U.S. Investment*, AP, July 13, 1995, available in 1995 WL 4397023.

234. Ngo Quang Xuan, *supra* note 225, at 38.

235. Clifford, *supra* note 228. See also *Asia-Poverty: Bright Lights, Dark Alleys*, Inter Press Serv., Oct. 18, 1995, available in 1995 WL 10135003.

236. Owen Ullman, *Washington Outlook: Capital Wrap-up: The China Syndrome*, BUS. WEEK, Feb. 19, 1996, at 45.

Republican presidential nominee, Robert Dole, has vocally opposed President Clinton's normalization with Vietnam and has vowed to fight the grant of MFN status to Vietnam.<sup>237</sup> For these reasons, Vietnam is assured a wait of at least another year before receiving MFN status. Conceivably, it also may face a four-year hiatus in negotiations with the United States if Dole wins the November election.

Likewise, in Vietnam, government leaders have voiced disappointment in the United States for its failure to continue diplomatic normalization efforts through the consummation of a trade agreement and the extension of MFN status.<sup>238</sup> In fact, some Vietnamese officials have stated that their voluntary cooperation with the U.S. POW and MIA issues has not been adequately recognized and reciprocated amidst U.S. criticism of Vietnam's human rights abuses.<sup>239</sup> Party leaders have indicated that the value of the U.S.-Vietnam trade relationship will be a subject of debate in upcoming congressional meetings in Vietnam. Some party members suggest abandoning trade negotiations with the United States in favor of China.<sup>240</sup>

Because U.S.-Vietnam relations are at a temporary standstill, Vietnam will have to go elsewhere for the investment capital necessary to accomplish its objectives of Strategy 2000. This may not only impede Vietnamese economic progress, but may also frustrate the plans of U.S. businesses hoping to profit from Vietnam's investment opportunities and immense labor supply. In the interim, Vietnam is well-advised to pay close attention to the 1974 Act and continue its progress on emigration and human rights issues, while the U.S. braces itself for a potential political change.

Davis Frye\*

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237. Keith B. Richburg, *U.S.-Vietnam Ties Turn Out Knotty; After Six Months, Both Sides are Scaling Back Initial Expectations*, WASH. POST, Jan. 30, 1996, at A10. See also Nigel Holloway, *On Offensive: Dole Would Toughen the U.S. Stand in Asia*, FAR E. ECON. REV., May 23, 1996, at 34.

238. Richburg, *supra* note 237, at A10. According to some commentators, such conduct should not come as a surprise to the Vietnamese government which has attempted to normalize relations with the United States in the past. *U.S. & Vietnam; It's Time to Normalize Relations*, STAR TRIB., May 29, 1995, at A12.

239. Richburg, *supra* note 237, at A10.

240. *Id.*

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