

Carmen Suro-Bredie, Chair
Trade Policy Staff Committee
Office of the U.S. Trade Representative
600 17th Street, NW
Washington, D.C. 20508
<http://www.regulations.gov>
Docket # USTR-2009-0041

INTRODUCTION

Boat People S.O.S. (BPSOS) welcomes the opportunity to comment on the negotiating objectives for the proposed Trans-Pacific Partnership Free Trade Agreement (TPP) with Vietnam. BPSOS is a 501(c)3 nonprofit organization dedicated to assisting Vietnamese refugees and immigrants in their search for a life in liberty and dignity by empowering, equipping and organizing Vietnamese American communities in their progress toward self-sufficiency. We closely monitor the country conditions in Vietnam and publish the annual Vietnam Country Report.

In negotiations with Vietnam for the Trans-Pacific Partnership Free Trade Agreement, we believe that there are four concerns that must be addressed by Vietnam during the process which are discussed in detail below.

NEGOTIATIONS OBJECTIVES

I. Vietnam must recognize and cease state-sponsored labor trafficking

Vietnamese law does not recognize labor trafficking, which is by far more prevalent and problematic than sex trafficking. Labor trafficking is intimately related to and a result of Vietnam's policy to "eradicate hunger and reduce poverty" (xoá đói giảm nghèo). Sending workers overseas is the main thrust of this policy. Since 2000 Vietnam has exported 600,000 workers and there are currently half a million Vietnamese workers overseas. They send home US \$2 billion a year. Vietnam aggressively expands this labor export in existing and to new markets.

Labor trafficking increased significantly in both numbers and scope as Vietnam aggressively expanded its labor export markets. In the first two months of 2008, some 15,000 workers were sent to Taiwan, Malaysia, South Korea, Qatar and other countries. In January 2008, Vietnam and Qatar reached an agreement to increase the number of Vietnamese workers in this Middle East country tenfold from the current level of 10,000.

Vietnam's existing legal framework is very weak in terms of combating trafficking in persons. Existing laws cover only trafficking in women and children (the Vietnamese Penal Code's articles 119 and 120, respectively) but not trafficking in persons in general. In cases involving the trafficking of men, the only provision in Vietnam's Criminal Code that could be used to prosecute traffickers is Article 275, not for trafficking but for "organizing, coercing others to illegally escape or stay overseas." This provision does not apply to labor export syndicates, which export workers through legal routes. On January 29, 2007 Vietnam's prime minister issued Executive Decision

No. 17/2007/QĐ-TTg, establishing new policies regarding the reception of and community re-integration assistance for trafficked women and children returning from foreign countries. This document also excludes men.

Because of this deficiency in Vietnam's law, there is currently no legal mechanism to protect victims of labor trafficking or to prosecute their traffickers. Vietnam should change its law to include prevention and prosecution of labor trafficking. Ideally Vietnam should adopt the Palermo Protocol.

II. Vietnam must ensure fair labor practices for its workers and allow the formation of independent labor unions with collective bargaining power.

In the last two years, Vietnam has witnessed hundreds of strikes involving hundreds of thousand workers. The government-controlled labor union cannot defend the rights of workers. However, attempts by workers to form independent labor unions have been outlawed by the government. Independent labor union leaders have been harassed and many of them arrested, including Tran Thi Le Hong, Doan Huy Chuong, Doan Van Dien, Phung Quang Quyen and Tran Quoc Hien. Without the right to form independent labor unions, workers in Vietnam have no collective bargaining power.

III. Vietnam must pay judgment for the trafficking victims of two Vietnamese state-owned companies.

In January of 2001, in an overwhelming decision, the High Court of American Samoa found two Vietnamese state-owned companies, Tourism Company 12 (TC 12) and International Manpower Supply (IMS), liable for their mistreatment of Vietnamese workers in the Daewoosa American Samoa case—which remains the largest case of labor trafficking ever prosecuted by the US federal government. For more than eight years Vietnam's Ministry of Labor, War Invalids and Social Affairs, which directly operated those two firms, has steadfastly refused to pay US\$3.2 million dollars in damages to some 250 Vietnamese workers trafficked to American Samoa. By ignoring the ruling of a US court, Vietnam shows its disregard for the US judicial system, not a positive precedent for future trade disputes.

As part of the TPP negotiations with Vietnam, the US Government should use the Daewoosa American Samoa case to appraise Vietnam's good faith in respecting US laws and in complying with US court rulings.

IV. Intellectual products must be allowed to be sent freely to Vietnam.

Under the Bilateral Trade Agreement with the US, Vietnam enjoys the privilege of freely exporting all forms of print and audio-visual media, including books, newspapers, magazines, printed matter, motion-picture films, records, tapes, etc. to the US. This same agreement however permits the Vietnamese government to substantially limit the import of similar products from the US into Vietnam. Even according to its WTO commitment, Vietnam allows only educational, technical, scientific, historical, cultural, legal and economic books in Vietnamese. Daily newspapers are allowed, but

weekly or fortnightly publications including journals and periodicals must cover only three areas: science, technology, and economics. Music and video-recorded compact discs and tapes are totally prohibited.

This treatment not only runs counter to the principles of fair and free trade and free flow of information, but also violates the reciprocity rule of diplomatic relations between the two countries. As a partial result of this violation, the US trade deficit with Vietnam rose from US\$454 million in 2000 to US\$7.5 billion in 2006, a 16-fold increase in just six years.

Over the years, Vietnam has freely broadcast radio and television programs abroad and collected advertising revenues without any foreign interference. However, the Vietnamese government has said it will maintain the evaluation regime for investment licensing indefinitely, in order to control radio and television broadcasting, production, publishing, and the distribution of cultural products in Vietnam. As a result, no foreign or private companies are allowed to do business in these areas. Selected programs broadcast into Vietnam, including Radio Free Asia (RFA), have been constantly jammed. Access to websites featuring different views from those of the Hanoi government has been denied.

Vietnamese artists are allowed to book tours in the US while their overseas Vietnamese counterparts cannot perform in Vietnam unless they have obtained written permission from Hanoi. Vietnamese newsmen are permitted to file reports from abroad while overseas Vietnamese reporters, including US Congress-mandated RFA staff, cannot visit Vietnam and freely conduct journalistic activities in that country. Some foreign journalists are banned from reentry into Vietnam for their reports critical of the Communist Party of Vietnam and the government.

With the forthcoming TPP negotiations with Vietnam, the US has an important opportunity to rectify these injustices. As a condition the US government should demand that Vietnam abolish this unfair practice to trade.

V. Vietnam Must Protect Intellectual Property Rights.

Although Vietnam is part of the WTO, it is still listed as one of the most software piracy-prone nations in the world. About 90% of software throughout the country is used illegally, according to a 2007 survey by the International Data Corporation (IDC). Competing with Vietnam on the top of the list are Zimbabwe (90%), Indonesia (87%), and Pakistan (86%). Violations of intellectual rights are prevalent without strict government intervention.

Pirated copies of videotapes and DVDs newly released in the US and specially produced by Vietnamese-American companies are normally found for sale in Vietnam within three days, and are four times cheaper than the original products. Many copied products find their way back to the US. It is not uncommon to discover that publishers in Vietnam have cashed in on the reputation of some well-known overseas Vietnamese authors by publishing books under their names, even though they are not the authors.

Improvements regarding transparency, corruption, and protection of intellectual property rights must be set as conditions for the TPP negotiations.

V. Vietnam Must Fight Corruption.

Corruption has become an issue of major political and economic significance in recent years. One case of big corruption was exposed by news reporters in 2006. It involved the well-publicized Project Management Unit (PMU) 18 scandal. PMU 18 involved the Ministry of Transportation, 17 agencies, and 40 individuals including one minister and one deputy minister and substantial funds from Japan and the World Bank. Another well-known corruption case involved Vietnam Airlines. In this case, the investigation revealed that 11 officials from office chief to director levels were hired inappropriately. The company budget was used to provide scholarships to high-ranking government officials. Vietnam Airlines purchased engines designed for short-distance airplanes to install on the long-distance ones. Moreover, it was found that the rental of Boeing-777s lacked transparency.

Two other widespread forms of corruption in Vietnam are graft and cronyism. No effort has been made to measure their size and effect on the economy, since they are harder to detect. It is believed that these kinds of corruption are most serious ones.

The government has not shown political will to fight corruption. The “criticism and self-criticism” campaign of the Communist Party of Vietnam (CPV) did not bring about any concrete results. The Planned Property Declaration Campaign applied to government officials was abandoned. The 2006 report of Transparency International ranks Vietnam 111th among 163 surveyed countries based on its corruption index, which shows slight improvement compared to 2003. Corruption is a serious concern of foreign investors and a major barrier to economic development, social justice and stability. In 2009, the corrupt officials were set free while the two reporters behind the exposé were sentenced to imprisonment for “divulging state secret.”

Vietnam should be urged to fight corruption by adopting the UN Convention Against Corruption and setting rules to prevent conflicts of interest; promoting integrity through transparency and accountability; and enhancing resistance to corruption in risk areas such as state-owned enterprises, public procurement, and contract management. Anti-corruption efforts should be linked to the Official Development Assistance (ODA). Vietnam should allow the formation of independent watchdog organizations that monitor, document and report high-level graft and cronyism in the government and state-owned enterprises.

CONCLUSION

BPSOS believes in Vietnam’s fair treatment of all workers, respect of the workers’ right to form independent labor unions, fair trade policies in intellectual products, due protection for intellectual property rights, compliance with US court rulings, and demonstrated political will to fight high-level corruption should be part of the TPP negotiations objectives with Vietnam.

Thank you for the opportunity to submit comments on the proposed TPP free trade agreement. Please do not hesitate to contact us if there are any questions or additional information needed.