

~ AMCHAM VIETNAM LETTERHEAD ~

September 24, 2004

The Honorable Josette S. Shiner  
Deputy United States Trade Representative  
Office of the U.S. Trade Representative  
Washington, D.C.

Ambassador Shiner:

On behalf of the membership of the American Chamber of Commerce in Vietnam, I send my regards to you and your colleagues at the Office of the U.S. Trade Representative. I am pleased to submit a position paper titled, "**Concerns of U.S. Business Regarding Vietnam's Accession to the WTO,**" that AmCham has developed in cooperation with the U.S. - ASEAN Business Council.

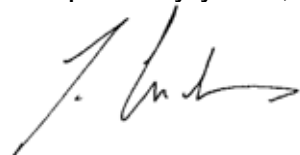
AmCham and the USABC represent the interests of America's leading companies doing business with Vietnam and we support Vietnam's accession to the World Trade Organization at the earliest possible date.

However, AmCham and the USABC strongly believe that several commercial concerns should be addressed during the accession process to make future trade more free and fair for Americans doing business in and with Vietnam.

AmCham and the USABC therefore hope that your Trade Policy Staff Committee will consider the concerns outlined in the attached position paper when developing the U.S. positions and objectives for its bilateral negotiations for Vietnam's accession. Successful resolution of these concerns will greatly benefit American business in Vietnam, as well as the Vietnamese economy and its growing consumer base.

I thank you in advance for your consideration of this paper and for your continued leadership in developing the growing trade relationship between the United States and Vietnam.

Respectfully yours,



Terence Anderson  
Chairman

Cc: Ms. Elena Bryan, Senior Director, USTR

**THE AMERICAN CHAMBER OF COMMERCE IN VIETNAM  
&  
THE U.S. - ASEAN BUSINESS COUNCIL**

**POSITION PAPER**

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**Concerns of US Business Regarding Vietnam's Accession to the WTO**

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**The Issue**

The American Chamber of Commerce in Vietnam (Ho Chi Minh City and Hanoi Chapters, "AmCham") and the U.S. - ASEAN Business Council ("USABC") support Vietnam's accession to the World Trade Organization ("WTO") at the earliest possible date. At the same time, AmCham and the USABC strongly believe that several commercial concerns should be addressed during the accession process to make future trade more free and fair for Americans doing business in and with Vietnam. AmCham and the USABC therefore hope that the US Trade Representative's ("USTR's") Trade Policy Staff Committee ("TPSC") will consider these concerns when developing the US positions and objectives for its bilateral negotiations for Vietnam's accession.

**Positions**

The US commercial concerns addressed below are organized under the headings which the TPSC has suggested in the past when soliciting comments related to WTO accession, as follows:

- (1) current trade policies and practices which affect market access for US exports (e.g., tariffs and non-tariff measures) and trade and investment in services;
- (2) other aspects of the trade regime affecting US trade interests subject to WTO provisions; and
- (3) other conditions or practices that might impair the ability of Vietnam to grant the benefit of WTO provisions to its trading partners.

**I. Current trade policies and practices which affect market access for US exports (e.g., tariffs and non-tariff measures) and trade and investment in services.**

**Pharmaceuticals:** Vietnam should accelerate access to its pharmaceuticals market, since US pharmaceutical companies are now faced with unreasonable phase-ins under the US-Vietnam Bilateral Trade Agreement (the "BTA") (see comments at the end of this paragraph). Furthermore, the Vietnamese Government should change its policies to allow all foreign pharmaceutical companies to register (or re-register) drugs that are virtually the same as drugs that have already been registered by Vietnamese companies. Moreover, Vietnam must curb the practice of allowing unregistered and substandard drugs to be freely traded by

Vietnamese pharmaceutical companies, while denying foreign manufacturers from registering similar but superior products, or simply failing to provide protection for pharmaceutical patents already registered in Vietnam. Furthermore, Vietnam should guarantee the quality of Government-authorized parallel imports (allowed by a few selected State-owned companies). Further still, Vietnam should provide clear guidelines regarding whether or not new products need to undergo local clinical trials before being registered, so as to preclude difficulties in planning/launching new products, but in any event, foreign pharmaceutical companies should be allowed to “self certify” compliance with such local standards as well as international standards (subject to civil penalties for false representation). (We note that under Annex D of the BTA with respect to “pharmaceutical goods,” Import Trading Rights will not commence for US companies until December 10, 2010, and the Distribution Rights are “unbound,” meaning that the Vietnamese Government is free to control the distribution of US manufactured drugs as its policies dictate.)

Fertilizers/Pesticides: Vietnam should accelerate access to its fertilizer/pesticides markets, since US companies producing such goods are now faced with unreasonable phase-ins under the BTA. (We note that under Annex D of the BTA for both “fertilizers” and “pesticides,” Import Trading Rights will not commence for US companies until December 10, 2009, and Distribution Rights under the BTA are “unbound.”).

Petroleum Products (Downstream): Vietnam should allow US oil companies greater access to the downstream petroleum products markets than are otherwise agreed under the BTA. Although the Vietnamese Government has allowed US oil companies limited access to upstream oil/gas markets (on a case-by-case basis), downstream access has been blocked pending long phase-in periods. (We note that under Annex D of the BTA for “petroleum gases” and “oil (not crude)” products, Import Trading Rights will not commence for US companies until December 10, 2010 and December 10, 2011, respectively. Moreover, Distribution Rights under the BTA for such products are “unbound.” Furthermore, the “franchising services” in Annex G preclude the sale of “oil and oil derivatives [and] gas.”)

Express Delivery (Courier) Services: Vietnam should liberalize its market for express delivery (aka, “courier”) services to help make the business environment more competitive and accessible to foreign investment. Express delivery services are taken for granted as a basic form of business infrastructure support in most countries, and Vietnam’s closed market adds an element of uncertainty and higher costs for all cross-border businesses, whether it is garment exporters that need to ship samples out on time, or banks that need secure and expeditious delivery of financial documents. US express delivery service operators should be allowed to establish 100% owned subsidiary operations in parcels, post and freight as soon as possible. Furthermore, as discussed more fully herein regarding to “customs procedures,” such procedures should be automated and streamlined to facilitate the flow of de minimus value and fast-moving express parcels. (We note that there is no special mention of express delivery services under Annex G of the BTA, and although under Annex H of the BTA the Vietnamese Government is allowed to make exceptions to “national treatment” in several sectors, including “cargo and passenger transportation by railway, airway, road, sea and inland water-way transportation,” express delivery or courier parcels are not specifically included in such exception. We further note that thus far in the US-Vietnam bilateral negotiations on Vietnam’s WTO accession, express delivery services have not been addressed.)

Distribution Services (incl. Wholesale/Retail): Vietnam should accelerate the BTA phase-ins to allow US companies greater access to Vietnam's distribution-services sectors (including "wholesale and retail sales services") in key product markets (see comments at the end of this paragraph). Furthermore, once allowed access, US companies should be permitted to have direct contact and engage in direct sales to Vietnamese and third-country consumers of their goods and services, and with the agencies and organizations whose decisions will affect potential sales. Moreover, investors in Vietnam should be able to distribute through a single distribution system, even if they have more than one project. (We note that as of December 10, 2004 under the BTA, US companies will be able to own up to 49% of joint ventures with authorized Vietnamese companies to perform "Distribution Services" (which includes "wholesale and retail sales services," "agent services" and "franchising services"). As of December 10, 2007, majority ownership by a US company will be allowed, and as of December 10, 2008, 100% US ownership of distribution-services companies will be permitted. However, the foregoing entities will be subject to the BTA Annex D limitations related to Import Trading and Distribution Rights which govern many products (many of which are discussed separately herein.))

Franchising: Vietnam should accelerate the BTA phase-ins to allow US franchises greater access to Vietnam's markets (see comments at the end of this paragraph). Furthermore, Vietnam should amend the laws/regulations that govern franchising (in particular, Decree No. 45/1998/ND-CP, which also governs technology transfer -- addressed separately herein). The Vietnamese Government currently restricts the amounts of royalties that can be paid to foreign franchisers by establishing an unreasonably low royalty cap (maximum 5%, but often only lower rates are approved), and an overly restrictive definition of "net sales price" to which the aforementioned restrictive royalty rate is applied. This precludes US franchisers from realistically doing business in Vietnam. Furthermore, although the Vietnamese Government contends that the foregoing restrictions will only be applied in the case where a franchise license is transferred to an SOE or an SOE joint venture, in practise, the Vietnamese Government applies these restrictions to ALL franchisees, regardless of whether an SOE is involved. (Under Annex G of the BTA, franchising services (which fall under "Distribution Services") are "subject to the development of [Vietnamese] laws and regulations on franchising services," but exclude "oil and oil derivatives, gas, fertilizer, pesticide and insecticide, alcoholic drinks and spirits, cigarettes and cigars, medicine, precious metals and stones, explosives, rice and wheat flour." The BTA phase-ins and Annex D restrictions are the same as for other "Distribution Services" (see separate discussion herein). Moreover, under Annex H (Sub-Para. 4.3), Vietnam is allowed to continue exceptions to "national treatment" regarding US investments in Vietnam related to "prices and fees of some goods and services," some of which would affect franchise sales operations.)

Financial Services: Vietnam should liberalize its current laws and regulations governing financial services to create a more "level playing field" on which foreign banks and local banks operate. In this regard, the current Vietnamese laws and regulations discriminate against foreign banks in the following ways: (1) foreign-invested banks have licenses with only a 20-30 year validities, and extensions (if any) are subject to the approval of the State Bank of Vietnam ("SBV") (the validity of domestic commercial banks is unlimited); (2) 100% foreign-owned "finance companies" have not been permitted; (3) the authorized capital level of foreign branches is US\$15 million/branch, while authorized capital level of a State-owned commercial banks, joint-stock commercial banks, investment banks and joint venture bank are all at more advantageous levels; (4) foreign branches cannot be opened in both

Hanoi and HCMC (with full branch status) to operate as one entity thereby causing inefficiencies; (5) unless a foreign branch license otherwise permits, there seems to be no automatic right to perform services allowed under Decree 13/1999/ND-CP dated 17 March 1999; (6) US bank branches should not have to apply to amend their licenses to do something which is otherwise allowed under the BTA (e.g., taking USD demand and fixed deposits from non-borrowing local clients); (7) Vietnamese Dong deposits are still subject to a cap which can only be removed after December 10, 2008 (BTA, Annex G); (8) foreign banks cannot take mortgages of land use rights, and foreign-bank branches have a limited ability to do so; (9) there has been no clarification from the Vietnamese Government, Ministry of Finance or General Department of Taxation on taxes that might be applicable to revenues earned from providing interest rate swaps and other derivative transactions; (10) under the BTA, only US-invested financial institutions can issue credit cards based on national treatment after 10 December 2008; (11) foreign banks cannot open other transaction points while domestic banks are allowed to open branches wherever they want; (12) the current single-borrower lending limit is 15% of the credit institution's capital (Article 79 of the Law on Credit Institutions), but State-owned commercial banks have been enjoying special approvals of the Prime Minister to exceed this limit for certain customers; (13) banking services/products which have not been regulated by the SBV are considered to be prohibited; and (14) the SBV has still not provided guidelines for the rolling over loans. (Under Annex G of the BTA, "Financial Services" include a "Insurance Services" as well as separate section on "Banking and Other Financial Services" with 12 subparts. All of the latter are subject to multiple restrictions, of which some of the key ones have been mentioned above. We further note that Annex H of the BTA does allow the Vietnamese Government to make exceptions to "national treatment" in several sectors, including "banking, brokerage, dealership in securities and currency values ...".)

Internet Services: Vietnam needs clear, specific and continued liberalization of its internet industry/market for foreign direct investment and participation -- e.g., Internet Connection Service Provider (IXP), Internet Access Service Provider (ISP) and Internet Applications Service Provider (OSP). (We note that after December 10, 2004 under Annex G of the BTA, US companies will be allowed to contribute up to 50% of the legal capital in joint ventures with authorized Vietnamese companies for "value-added" internet services, but compared to services like IXP, ISP and OSP, they are relatively limited -- e.g., e-mail, on-line information and data base retrieval, etc.)

Advertising: Vietnam should accelerate the BTA phase-ins to allow US advertisers greater access to Vietnam's advertising markets, and to change its laws/regulations to allow all foreign advertising companies access to such lucrative sectors as "media buying." (We note that under Annex G of the BTA, a US company is presently allowed to enter into a joint venture with an authorized Vietnamese company for "advertising services," but the US company is limited to 49% equity (51% as of December 10, 2006, but no equity restriction as of December 10, 2008).)

Insurance: Vietnam should accelerate the BTA phase-ins and grant US insurance companies licenses ahead of the current BTA schedule (see comments at the end of this paragraph), without restriction on ownership, products or services. Granting market access to US insurance companies would properly reflect the growing trade relationship between the two countries and the expanding insurance needs of both foreign and domestic enterprises. Notwithstanding this, although the Vietnamese Government has allowed foreign investment in both the "life" and "non-life" insurance markets, such markets have been accessed by non-

US insurers (with the exception of one “life” insurer). Moreover, these markets have been unreasonably restrictive (e.g., some initial joint ventures with authorized Vietnamese companies were subsequently allowed to convert to 100% foreign-ownership, but the terms were often arbitrary and subject to “ad hoc” Vietnamese Government approvals). Furthermore, such restrictions on the primary insurance markets have precluded the development of related insurance services, such as insurance brokerage services. (We note that under Annex G of the BTA with respect to “financial services” (which fall under “Financial Services” section), as of December 10, 2004, US companies will be allowed to enter into joint ventures with authorized Vietnamese companies for certain types of insurance, but US companies will be limited to 50% equity. This equity restriction will drop away as of December 10, 2006, but 100% US-equity companies will be unable to offer many forms of insurance until December 10, 2007.)

Discriminatory Trade Policies (Imports): Vietnam should accelerate the BTA phase-ins related to trade related investment measures (“TRIMs”) by amending its current tax and investment laws/regulations so that goods imported from foreign countries (e.g., the US) are not taxed simply because a foreign-invested company in Vietnam (e.g., a US joint venture or 100% US-owned company) chose not to procure similar goods produced domestically. Such “import substitution” policies are arcane protectionist measures that preclude free and fair trade, and are inconsistent with the WTO’s Agreement on TRIMs. (We note that under Art. 11 of Chapter IV of the BTA, Vietnam agreed to eliminate all TRIMs related to “trade balancing requirements” and “foreign exchange controls on imports” when the BTA entered into force, and all other TRIMs within 5 years thereof (i.e., December 10, 2006), “or the date required under the terms and conditions of Vietnam’s accession to the WTO, whichever occurs first.” Furthermore, Annex I of the BTA provides an “Illustrative List” of TRIMs that “will be considered inconsistent” with Art. 11 no matter how they are imposed, and specifically includes in sub-paragraph 1(A) TRIMs “which require ... the purchase or use by an enterprise of products of domestic origin or from any domestic source... .”)

Customs Duties and Procedures: Vietnam should redouble its efforts to enforce existing laws related to customs assessment reforms that were to have taken effect upon the ratification of the BTA (see comments at the end of this paragraph). Import duties on at least some US-origin products continue to be taxed at pre-existing minimum-declared value rates, and some US companies have complained that products from other countries (e.g., China) receive more favorable treatment. Furthermore, although import procedures in Vietnam have improved, uncertainty over which rates to apply has created opportunities for corruption. The Vietnamese Government’s excuse that it has been unable to provide adequate “training” of its customs officials in order to enforce the reforms cannot continue to be a pretext for inadequate enforcement. As to customs procedures, Vietnam should seek to automate its system whereby shippers would be allowed to submit shipment declarations/information electronically before arrival (esp. for fast-moving shipments like air cargo). Duty and tax assessments should also be performed electronically, but in the meantime, manual inspections should realistically account for security risks and loss of revenue due to delay. Finally, Vietnam should apply de minimus values for some shipments in order to expedite the flow of low-value document shipments or similar goods. (We note that Chapter 1, Art. 1 (A) and (C) of the BTA provides that effective upon ratification (i.e., December 10, 2004) that: “[e]ach Party shall accord immediately and unconditionally to products originating or exported to the territory of the other Party treatment no less favorably than that accorded to like products originating in or exported to the territory of any third country in all matters related to: (A) customs duties and charges any kind imposed on or in connection with importation or

exportation, including the method of levying such duties and charges; ... (C) rules and formalities in connection with importation and exportation, including those relating to customs clearance, transit, warehouses and transshipment.”)

Biotechnology: Vietnam should develop a science-based regulatory system to take full advantage of the benefits of agricultural biotechnology that are currently being enjoyed by farmers and consumers in such countries as China, the Philippines and India (e.g., enhanced productivity of essential food crops, such as corn). Until such a system is implemented, the development of agricultural biotechnology in Vietnam through investment and R&D cannot take place. In September 2003, officials from the Vietnamese Ministry of Natural Resource & Environment indicated that bio-safety guidelines would be approved by the end of 2003, but to date, they have not been approved.

Audiovisual Services: Vietnam should follow through on what is perceived by the audiovisual services industry as a sincere desire to increase foreign investment in such areas as film, video and television production and exhibiting. However, presently, the Vietnamese Government continues to limit imports of foreign film, video and television products, and although the industry believes a few projects are underway, to date, a decree permitting foreign cinema construction has yet to be realized in practice. Moreover, under a decree issued in 2000, foreign-invested cinemas will be permitted to import films directly without going through a Government agency (FAFILM), but this is still too restrictive, since the right to import films should not be undertaken solely by exhibitors. Furthermore, numerous licensing, pricing and remittance restrictions also exist, and the few revisions being considered by the Vietnamese Government will still discriminate against foreign imports. Moreover, the intellectual property protections of audiovisual products are virtually nonexistent in Vietnam (see further discussions herein regarding “intellectual property rights”), and censorship continues to be unreasonably restrictive. (We note that under Annex H of the BTA, the Vietnamese Government is allowed to make exceptions to “national treatment” in several sectors, including “broadcasting [and] television; production, publication and distribution of cultural products.” However, such outright restrictions seem unreasonable and unprecedented given the current global audiovisual services industry, and the Vietnamese Government should be encouraged to allow for greater market access and national treatment with respect to internationally recognized modes of audiovisual services, including motion picture and home video entertainment promotion, advertising, production, distribution and cinema projection, as well as related services such as film dubbing, title printing, editing and cutting. Similarly, radio and television production and broadcasting services need to be expanded to allow foreign investment.)

Tobacco Products: Vietnam should allow access to imported tobacco products (esp. cigarettes), which with appropriate dialoguing and coordination between the interested domestic and foreign parties, could be undertaken reasonably and responsibly. (We note that under Annex B3 of the BTA, the Vietnamese Government has prohibited “cigarettes (except for those as personal effects in prescribed quantity).” Furthermore, as noted herein regarding “franchising,” under Annex G of the BTA, franchising services (which fall under “Distribution Services”) are “subject to the development of [Vietnamese] laws and regulations on franchising services,” but exclude “cigarettes and cigars” (among other products). Such an outright ban on tobacco products violates the principle of trade liberalization embodied in the WTO Agreements and it should therefore be lifted as a condition to accession.)

## **II. Other aspects of the trade regime affecting US trade interests subject to WTO provisions.**

Technology Transfer (TT)/Licensing: Vietnam should revise its laws/regulations governing TT and the licensing thereof to allow TT to flow freely (without prior approvals or registrations) from US companies to Vietnamese (and third-country) companies via contract on a non-discriminatory basis and in the exercise of their independent commercial judgment. The principal law on TT in Vietnam (Decree No. 45/1998/ND-CP) provides unreasonable restrictions on the royalties that can be paid to US licensors under TT agreements on the goods produced by the technology transferred (i.e., a maximum of 5%, but often rates no higher than 1-3% are approved). Furthermore, Decree No. 45 provides a very narrow definition of “net sales price” (NSP) to which the already restrictive royalty rate is applied (i.e., the NSP is calculated by subtracting from the sales invoice: turnover tax, special sale tax and value-added tax; commercial discounts; full costs for the purchase of semi-finished products, elements, parts [and/or] components from any suppliers whatsoever; [and] sheathing, packaging, transport and advertising costs).

Intellectual Property Rights (IPR): Vietnam should adopt laws/regulations providing for clear rights to damage awards from the infringing party, and victims of infringement and breaches of contractual duty of confidentiality, and to allow prompt and effective access to injunctive relief. Furthermore, Vietnam should clarify the boundaries of administrative authority with respect to IPR enforcement to eliminate existing overlapping authority (e.g., between the National Office of Intellectual Property and four different ministries), or where such overlapping authority may be continued, to provide well-delineated lines of authority so that enforcement efforts are effectively coordinated/harmonized. Moreover, Vietnam should adopt effective copyright protection for foreign works, including cultural works and software. We note that the Civil Code, which took effect in July 1996, contains copyright provisions, however, it is only by virtue of a bilateral copyright treaty between the US and Vietnam that US works are now protected, since Vietnam has only just recently acceded to the Berne Convention, but it will not enter into force until October 26, 2004, and in any event, implementation will likely take some time. (As to the BTA, we note that Chapter II is specifically dedicated to IPR issues, and Art. 2 thereof provides a commitment of each Party to “ensure that measures to protect and enforce intellectual property rights do not themselves become barriers to legitimate trade. Moreover, the Parties are required by Art. 1, Para. 3 to -- “at a minimum” -- recognize various international conventions on IPR, and by Art. 11, Para. 1, to “provide procedures in its domestic law that permit effective action against infringement of intellectual property rights” that include “expeditious remedies to prevent infringement and remedies substantial enough to deter future infringement.”)

Transparency on Laws/Regulations (Tax Circulars): Vietnam should make available publicly and on a timely basis all proposed laws and regulations related to commercial activity, including trade, investment, banking, insurance, taxes and employment. The public should be allowed to submit comments on all proposed laws/regulations, and the publication of laws/regulations that are adopted should take place at least six months before they become effective. We note that this is particularly true with respect to tax laws/regulations, and the Vietnamese Government should discontinue its current practice of issuing “tax circulars” that it claims “clarify” previously enacted laws (some of which are issued six months or longer after such laws are passed), but in fact interpret such laws in ways that are totally unanticipated and unreasonable, and have an effectiveness that reverts back to the effective



date of the laws they supposedly “clarify.” Through this process, the Vietnamese Government can technically claim that its tax regulations are not “retroactive,” but in fact, the opposite is true. (Chapter VI of the BTA is dedicated to “transparency-related” issues, and Art.1 contains a commitment of each Party to “publish on a regular and prompt basis all laws, regulations and administrative procedures,” so as to allow “persons engaged in commercial activity to become acquainted with them before they come into effect and to apply them in accordance to their terms.” Furthermore, Art. 3 states: “Each Party shall allow, to the extent possible, the other Party and its nationals the opportunity to comment on the formulation of laws, regulations and administrative procedures of general application that may affect the conduct of business activities covered by this Agreement.”)

Tendering/Procurement/Money Laundering: Vietnam should continue its efforts to eliminate unethical tendering/procurement by passing laws/regulations that provide far greater transparency in this area. Furthermore, laws/regulations precluding money-laundering practices need to be passed. In this regard, the Vietnamese Government should adhere to (as much as possible) the WTO’s Government Procurement Agreement (“GPA”), which entered into force on January 1, 1996 as a "plurilateral" agreement located in Annex 4 to the WTO Agreement (the US and several of its major trading partners are members of the GPA). Although Vietnam’s procurement reform efforts are generally consistent with the terms of the GPA, and Vietnam has consistently proclaimed its support for transparency in the tendering and procurement processes, Vietnam should actually implement and enforce such reforms.

Land Use Rights: Vietnam should enforce its current land laws/regulations so that foreigners (including Americans) are no longer discriminated against (even though, technically speaking, many restrictions to national treatment exist as to real estate investments under the BTA -- please see the comments at the end of this paragraph). More specifically, Vietnam’s should enforce the new Land Law which treats foreign investors and local investors equally with respect to real estate investments and the mortgaging of land use rights. (So Vietnam has effectively waived its exceptions under the BTA to national treatment with respect to such matters, which are: (1) under Section 1 of Annex H of the BTA, Vietnam is allowed to adopt or maintain exceptions to the obligation to accord national treatment to covered investment in, among others, "real estate business"; (2) under Section 4.5(b) of Annex H, US entities are not allowed to mortgage land use rights at foreign credit institutions operating in Vietnam or to transfer land use rights (except for transfers of invested assets associated with land within the land lease period); and (3) under Section 4.5 (a) of Annex H, US entities are NOT allowed to own land or residences.)

### **III. Other conditions or practices that might impair the ability of Vietnam to grant the benefit of WTO provisions to its trading partners.**

ASEAN Free Trade Agreement (AFTA)/ Most Favored Nation (MFN): Vietnam and its fellow ASEAN members have declared AFTA a restricted-access “Free Trade Agreement” (FTA) (similar to NAFTA), so that US companies, which can otherwise take advantage of the preferred terms found under other trade agreements via the US’s MFN status presently granted under the BTA, are precluded from doing so with respect to AFTA. However, we note that Vietnam (along with its fellow ASEAN members, except the Philippines) has negotiated so-called “Early Harvest” provisions with respect to certain goods (mostly agricultural) in the November 4, 2002 “Framework Agreement on Comprehensive Economic Cooperation Between ASEAN and the People’s Republic of China” (the “Framework Agreement”). Technically speaking, such “Early Harvest” provisions of the Framework

Agreement nullify ASEAN's position that AFTA is a bona-fide restricted-access FTA. We therefore request that the USTR challenge the position of Vietnam (and its fellow ASEAN members) on the status of AFTA as a bone-fide FTA.

### **Conclusion**

AmCham and the USABC request the TPSC to consider the commercial concerns discussed above when developing the US positions and objectives for the bilateral negotiations for Vietnam's accession. If such concerns can be addressed during the negotiations, then American businesses in Vietnam -- as well as the Vietnamese economy and its growing consumer base -- will benefit greatly from the freer and fairer trade that will result therefrom.

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