

FOIA MARKER

This is not a textual record. This is used as an administrative marker by the Clinton Presidential Library Staff.

Folder Title: Jackson-Vanik (Vietnam) [2]				
Staff Office-Individual: Legal Advisor-Derosa, Mary				
Original OA/ID Number: 3507				
Row: 39	Section: 6	Shelf: 2	Position: 2	Stack: V

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. agenda	Deputies Committee Meeting Agenda (1 page)	10/13/1995	P1/b(1)
002a. report	Vietnam: Treatment Under Jackson-Vanik Amendment (20 pages)	ca. 09/29/1995	P1/b(1)
002b. report	Addendum: Assurances in Connection with Jackson-Vanik Waiver (4 pages)	ca. 09/29/1995	P1/b(1)
002c. report	Examples of Past Jackson-Vanik Assurances (4 pages)	ca. 09/29/1995	P1/b(1)
003. report	Vietnam: Worker Rights (2 pages)	09/25/1995	P1/b(1)
004. memo	Strobe Talbott to President William J. Clinton re: Granting a Waiver of the Jackson-Vanik Amendment for Vietnam (3 pages)	02/03/1998	P1/b(1)
005. memo	Strobe Talbott to President William J. Clinton re: Granting a Waiver of the Jackson-Vanik Amendment for Vietnam; duplicate of 004 (3 pages)	02/03/1998	P1/b(1)
006. memo	Stanley Roth to Secretary of State Madeleine Albright re: Removal of Prohibition on Import-Export Bank Programs in Vietnam (3 pages)	01/12/1998	P1/b(1)
007. memo	Secretary of State Madeleine Albright to President William J. Clinton re: Vietnam's Eligibility for U.S. Export-Import Bank Programs (2 pages)	01/20/1998	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Legal Advisor (Mary Derosa)
OA/Box Number: 3507

FOLDER TITLE:

Jackson-Vanik (Vietnam) [2]

2014-1060-F

kh1413

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

~~SECRET~~
NSC/RMO PROFILE

RECORD ID: 9521188
RECEIVED: 12 OCT 95 14

TO: AGENCIES

FROM: SENS

DOC DATE: 12 OCT 95
SOURCE REF:

KEYWORDS: VIETNAM
DC

AGENDA

PERSONS:

SUBJECT: NOTIFICATION OF 13 OCT DC MTG ON VIETNAM

1. ~~IA~~ - interest
legal discussion
on warms.
⇒ 2. File - Vietnam
- Jackson-Vanik

ACTION: SENS SGD MEMO TO AGENCIES

DUE DATE: 16 OCT 95 STATUS: C

STAFF OFFICER: ROTH

LOGREF:

FILES: IFM

NSCP:

CODES:

D O C U M E N T D I S T R I B U T I O N

FOR ACTION

FOR CONCURRENCE

FOR INFO

BAKER JANE
BASS
BERGER
~~KRECZKO~~
KYLE
LAKE
NSC CHRON
ROTH
SODERBERG

COMMENTS: _____

DISPATCHED BY _____ DATE _____ BY HAND W/ATTCH

OPENED BY: NSMEC

CLOSED BY: NSMEC

DOC 2 OF 2

~~SECRET~~

DECLASSIFIED
E.O. 13526
White House Guidelines, September 11, 2006
By KRM NARA, Date 8-27-2014
2014-1060-F

~~SECRET~~

RECORD ID: 9521188

ACTION DATA SUMMARY REPORT

DOC ACTION OFFICER

CAO ASSIGNED ACTION REQUIRED

001 SODERBERG
002

Z 95101219 FOR DECISION
X 95101220 SENS SGD MEMO TO AGENCIES

DISPATCH DATA SUMMARY REPORT

DOC DATE DISPATCH FOR ACTION

DISPATCH FOR INFO

002 951012 FUERTH, L
002 951012 BRILL, K
002 951012 NYE, J
002 951012 SCHNOOR, K
002 951012 BACA, B
002 951012 KERR, M
002 951012 MONTGOMERY, F
002 951012 CUTTER, W
002 951012 BRODY, K
002 951012 HARKIN, R

~~SECRET~~

National Security Council
The White House

PROOFED BY: _____

LOG # 21188

URGENT NOT PROOFED: _____

SYSTEM PRS NSC INT

BYPASSED WW DESK: _____

DOCLOG MC A/O _____

JB

Harmon

SEQUENCE TO

INITIAL/DATE

DISPOSITION

Dohse

1

D

Sens

Soderberg

2

NS

Berger

JB

Lake

Situation Room

West Wing Desk

3

MC 10/88

D

Records Mgt.

A = Action I = Information D = Dispatch R = Retain N = No Further Action

cc:

COMMENTS:

Exec Sec Office has diskette *YJB*

~~SECRET~~

~~SECRET~~

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

21188

October 12, 1995

MEMORANDUM FOR

MR. LEON FUERTH
Assistant to the Vice
President for National
Security Affairs

MR. KENNETH C. BRILL
Executive Secretary
Department of State

MR. J. BENJAMIN NYE
Executive Secretary
Department of Treasury

MS. KIM SCHNOOR
Executive Assistant to the
Secretary
Department of Agriculture

MS. BETTIE BACA
Executive Secretary
Department of Commerce

MR. MICHAEL KERR
Executive Secretary
Department of Labor

MR. FRED MONTGOMERY
Assistant USTR for Policy
Coordination
U.S. Trade Representative

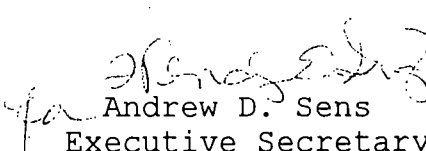
MR. W. BOWMAN CUTTER
Deputy Assistant to the
President for Economic Policy

MR. KENNETH D. BRODY
Chairman and President
Export-Import Bank

MRS. RUTH HARKIN
President & CEO
Overseas Private Investment
Corporation

SUBJECT: Deputies Committee Meeting (U)

A Deputies Committee Meeting on Vietnam has been scheduled for Friday, September 13, 1995, from 10:00 to 11:00 a.m., in the White House Situation Room. Agenda is attached at Tab A. At Tabs B and C are two additional papers for discussion during the meeting. (S)

for 
Andrew D. Sens

Executive Secretary

Attachments

Tab A Agenda
Tab B Vietnam: Treatment Under Jackson-Vanik Amendment
Tab C Vietnam: Workers' Rights

~~SECRET~~

Declassify on: OADR

~~SECRET~~

DECLASSIFIED

E.O. 13526

White House Guidelines, September 11, 2006

By KRM NARA, Date 8-27-2014

20PM-1060-F

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. agenda	Deputies Committee Meeting Agenda (1 page)	10/13/1995	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Legal Advisor (Mary Derosa)
OA/Box Number: 3507

FOLDER TITLE:

Jackson-Vanik (Vietnam) [2]

2014-1060-F
kh1413

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]



7222
United States Department of State

Washington, D.C. 20520 9518284

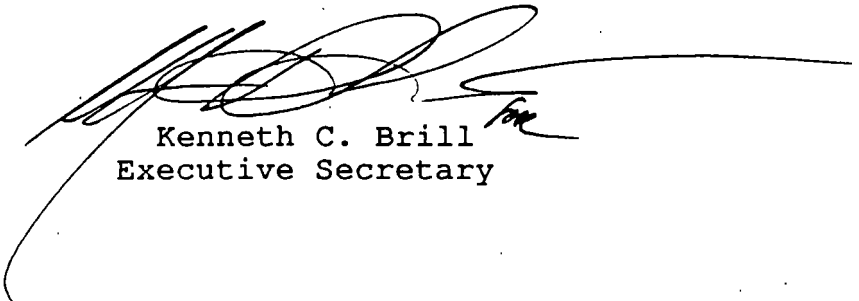
September 29, 1995

UNCLASSIFIED
(with ~~CONFIDENTIAL~~ attachment)

MEMORANDUM FOR ANDREW D. CENS
EXECUTIVE SECRETARY
NATIONAL SECURITY COUNCIL

SUBJECT: TREATMENT OF VIETNAM UNDER JACKSON-VANIK AMENDMENT

The National Security Council requested the Department of State to prepare the attached report on Vietnam and the Jackson-Vanik Amendment.



Kenneth C. Brill
Executive Secretary

Attachment:
As stated.

UNCLASSIFIED
(with ~~CONFIDENTIAL~~ attachment)

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
002a. report	Vietnam: Treatment Under Jackson-Vanik Amendment (20 pages)	ca. 09/29/1995	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Legal Advisor (Mary Derosa)
OA/Box Number: 3507

FOLDER TITLE:

Jackson-Vanik (Vietnam) [2]

2014-1060-F
kh1413

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
002b. report	Addendum: Assurances in Connection with Jackson-Vanik Waiver (4 pages)	ca. 09/29/1995	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Legal Advisor (Mary Derosa)
OA/Box Number: 3507

FOLDER TITLE:

Jackson-Vanik (Vietnam) [2]

2014-1060-F
kh1413

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
002c. report	Examples of Past Jackson-Vanik Assurances (4 pages)	ca. 09/29/1995	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Legal Advisor (Mary Derosa)
OA/Box Number: 3507

FOLDER TITLE:

Jackson-Vanik (Vietnam) [2]

2014-1060-F
kh1413

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]



S/S # 9518249
United States Department of State

Washington, D.C. 20520

September 28, 1995

UNCLASSIFIED
(WITH ~~CONFIDENTIAL~~ ATTACHMENT)

MEMORANDUM FOR ANDREW D. SENS
EXECUTIVE SECRETARY
NATIONAL SECURITY COUNCIL

Subject: Vietnam's Performance on Worker Rights Issues

In the context of the Administration's ongoing review of economic relations with Vietnam, the NSC verbally requested the Department and OPIC prepare the attached report on Vietnam's performance on worker rights issues.

Kenneth C. Brill
Executive Secretary

UNCLASSIFIED
(WITH CLASSIFIED ATTACHEMENT)

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
003. report	Vietnam: Worker Rights (2 pages)	09/25/1995	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Legal Advisor (Mary Derosa)
OA/Box Number: 3507

FOLDER TITLE:

Jackson-Vanik (Vietnam) [2]

2014-1060-F
kh1413

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

APPENDIX

PRELIMINARY REPORT ON INTERNATIONALLY RECOGNIZED WORKER RIGHTS AND IMPLICATIONS FOR OPIC PROGRAMS IN

VIETNAM

EXECUTIVE SUMMARY

With the recent resumption of diplomatic ties with Vietnam, the USG is considering initiating trade and economic programs to stimulate the country's emerging private sector. OPIC has been cited as a candidate for providing such assistance. This paper explores Vietnam's eligibility for OPIC programs in the context of OPIC's worker rights mandate.

Section 231A (a)(1) of the Foreign Assistance Act of 1968, as amended, prohibits the Corporation from operating in any country that is not "taking steps to adopt and implement internationally recognized worker rights." This determination includes, among other things, consideration of five fundamental rights as enumerated in the Trade Act of 1974, particularly the rights of association and to organize and bargain collectively.

The evaluation reveals that, under Vietnam labor laws, the right of association and, potentially, the right to organize and bargain collectively are severely limited by restrictions on trade union autonomy and pluralism. However, other fundamental worker rights are explicitly protected in Vietnam's labor law. The extent to which these rights and restrictions are implemented in Vietnam has not been determined, since this evaluation is based largely on current information regarding Vietnam's labor laws; considerably less information is available regarding labor practices.

Vietnam's eligibility for OPIC programs on worker rights grounds cannot be definitively determined by OPIC absent: (1) better information regarding Vietnam's implementation of its labor laws; (2) engagement with the SRV on freedom of association issues; and (3) some indication of responsiveness on the part of the SRV with respect to enhancing the freedom of association and the right to organize and bargain collectively. USG

engagement with the SRV on these issues can be pursued simultaneously with the negotiation of an OPIC bilateral with the SRV.

I. BACKGROUND

The statutory determinant for country eligibility for OPIC programs on worker rights grounds is that the country is "taking steps to adopt and implement laws that extend internationally recognized worker rights to workers in that country."¹ The criteria for determining whether or not a country is "taking steps" is stipulated in the legislative history of OPIC's statute and summarized as follows:²

1. Membership in the ILO and signatory of the International Labor Organization's (ILO) conventions pertaining to internationally recognized worker rights (most importantly, according to the ILO, freedom of association and collective bargaining);
2. Laws and practices that conform to at least one of five fundamental rights (see below) specified in the Trade Act of 1974, as amended; and
3. Continue to make progress in the adoption and implementation of such laws and practices.

The Trade Act of 1974, as amended, lists the five fundamental rights which must be considered when making an internationally recognized worker rights determination. The five rights are: 1) freedom of association, 2) freedom to organize and bargain collectively,

¹ U.S. Foreign Assistance Act, Section 231A(a)(1).

² "Taking steps to adopt and implement laws" to extend internationally recognized worker rights is open to some interpretation. . . . The conferees stress that the mere ratification of International Labor Organization conventions which deal with the specific rights enumerated in this section is not sufficient evidence that a country is "taking steps to adopt and implement internationally recognized worker rights," if that country fails to take measures domestically to meet its obligations pursuant to these conventions." James Michael Zimmerman, Extraterritorial Employment Standards of the United States: The Regulation of the Overseas Workplace, 62 (1992) (emphasis original) (quoting Committee on Foreign Affairs Report).

3) prohibition of forced labor, 4) prohibition of child labor, and 5) acceptable working conditions. These rights are reviewed collectively on a case-by-case basis. However, freedom of association and collective bargaining are considered by the International Labor Organization (ILO) to "form part of the basic human rights which the ILO has assumed a solemn obligation to further among the nations of the world"³ and deserve particular consideration.

The following is a preliminary analysis of Vietnam's worker rights situation in the context of OPIC's country eligibility review mandate.

II. ILO MEMBERSHIP AND CONVENTIONS RECOGNIZED

Vietnam has been a member of the International Labor Organization (ILO) from 1950 to 1976, from 1980 to 1985, and since 1992. Between 1953 and 1970, ratifications of 22 ILO Conventions were registered on behalf of Vietnam. It is unclear which of these ratifications are recognized by the SRV. The conventions include:

- Convention 4: Night Work (Women)
- Convention 5: **Minimum Age**
- Convention 6: Night Work of Young Persons (Industry)
- Convention 13: **White Lead Painting**
- Convention 14: **Weekly Rest (Industry)**
- Convention 26: **Minimum Wage-Fixing Machinery**
- Convention 27: Marking of Weight (Packages)
- Convention 29: **Forced Labor**
- Convention 45: Underground Work (Women)
- Convention 52: **Holidays with Pay**
- Convention 80: Final Articles Revision, 1946
- Convention 81: Labor Inspection
- Convention 89: Night Work (Women) (REVISED)
- Convention 98: **Right to Organize and Bargain Collectively**
- Convention 111: **Discrimination (Employment and Occupation)**;
- Convention 116: Final Articles Revision, 1961
- Convention 117: Social Policy (Basic Aims and Standards)

³ Freedom of Association and Collective Bargaining, p.15, para. 47. International Labor Office, Geneva, 1983.

Convention 118: Equality of Treatment (Social Security)
Convention 120: Hygiene (Commerce and Offices)
Convention 122: Employment Policy
Convention 123: **Minimum Age (Underground Work)**
Convention 124: Medical Examination of Young Persons (Underground Work)

The bolded conventions are those that apply to the five fundamental rights of the Trade Act of 1974, as amended. With the exception of the right of association, each fundamental right is represented by one or more registered conventions.

III. CONFORMITY OF VIETNAM'S LAWS AND PRACTICES TO U.S. TRADE ACT OF 1974 (FIVE FUNDAMENTAL RIGHTS)

On June 23, 1994, the Government of Vietnam adopted a new Labor Code,⁴ incorporating in varying degrees various standards of internationally recognized of worker rights. Earlier versions of Vietnam's Labor Code are not available for comparison. The Labor Code followed and expanded upon the Trade Union Law of 1990.

The following is a summary and evaluation of Vietnam's body of labor law and practices. The evaluation considers the five fundamental areas worker rights and applies associated ILO standards and criteria.

A. Freedom of Association

1. Vietnam Labor Law and Practice

While Vietnam is not a signatory to ILO Convention 87, Freedom of Association and Protection of the Right to Organize, the country is required as a member of the ILO to adhere to the ILO's basic principles on freedom of association and collective bargaining.

However, the right of association is limited by two factors: (1) Communist Party control of union activities at what appears to be all organizational levels and (2) the imposition by

⁴ Vietnam Labor Code, June 23, 1994.

law of a unitary confederation. According to the State Department Human Rights Report, "workers are not free to form or join unions of their own choosing unless they have obtained prior approval from the trade union federation office" (at the provincial level).⁵ Under the Trade Union Law of 1990, a union is defined as an organization of the working class "voluntarily established under the leadership of the Vietnam Communist Party" and all unions are required to inform relevant government organizations at the time of their formation of their intention "to establish formal relations."⁶ In addition, Section 153 of the 1994 Labor Code requires that the scope of union activities be determined by the Government in conjunction with the party-affiliated Vietnam General Confederation of Labor,⁷ the official umbrella organization under which all local trade unions must operate.⁸

The Labor Code also states that "workers shall have the right to strike in accordance in with the provisions of the law." Sections 157 through 179 under "Labor Disputes Settlement" of the 1994 Labor Code provide for the right to strike under certain circumstances. The law calls for management and labor to attempt to resolve labor disputes initially by two-party negotiation and then through the enterprise's own labor conciliation council. If that fails, the matter goes to the provincial labor arbitration council. If the council's decision is unsatisfactory, unions have the right to appeal to the provincial people's court or to strike. However, the law prohibits strikes at enterprises that serve the public and at those that are important to the national economy or to national security and defense, as defined by the Government. It also grants the Prime Minister the right to suspend a strike considered detrimental to the national economy or to public safety.

According to the State Department Human Rights Report, a number of strikes occurred in 1994, which were primarily against foreign-owned companies, but also involved state-owned and private firms. Human Rights Watch Asia reported that the strikes were mainly

⁵ U.S. State Department, Country Reports on Human Rights Practices, February 1995

⁶ Trade Union Law of 1990, Article 1 and 2.

⁷ Vietnam Labor Code, *supra* p. 117.

⁸ Country Reports on Human Rights Practices, *supra*

cause by disputes over low wages and, in some cases, maltreatment of workers by foreign managers.⁹ The State Department reports that the Government tolerated the strikes, even though some occurred before the new Labor Code made them legal. Section 178 of the 1994 Labor Code strictly prohibits retribution against strikers, and provides for stiff penalties for violations. The State Department asserts that there have been no credible reports of such retribution.

The right of association, as well as other fundamental rights and provisions in the law applies indiscriminately to workers and organizations. Section 2 under "General Provisions" of the Labor Code states that "the code shall apply to all workers, and to all organizations or individuals employing workers under an employment contract, in all economic sectors and all forms of ownership." Section 3 further defines the application of the law to Vietnamese enterprises, enterprises established in accordance with the Law on Foreign Investment in Vietnam, foreign or international bodies or organizations operating in Vietnam, and for Vietnamese and foreign nationals working in Vietnam. Further, Section 131 adds to the list, enterprises in export processing zones.

The State Department Human Rights Report asserts that unions are not legally free to join, affiliate with, or participate in international labor bodies. However, the Trade Union Law states that the "General Federation of Labor of Vietnam and Vietnamese trade union associations are entitled to join international trade union organizations which have like objectives."¹⁰ No information is available as to the interpretation of this requirement and definition of "objectives."

2. Consistency with ILO Standards and Criteria

A report by the ILO Committee of Experts on the Application of Conventions and Recommendations states that "[f]reedom of association and protection of the right to organize form part of the basic human rights which the ILO has assumed a solemn

⁹ Human Rights Watch Asia, Bulletin, Vol.7 No. 12, August 1995.

¹⁰ Trade Union Law, *supra* Article 1 No. 3.

obligation to further among the nations of the world.”¹¹ “The free exercise of this right, depends on three things, namely 1) the *absence of any distinction*, in law or in practice, among those entitled to the right of association,¹² 2) the *absence of the need for previous authorization* to establish organizations,¹³ and 3) *freedom of choice* with regard to membership of such organizations.”¹⁴

Vietnam’s labor laws appear to satisfy the first condition: no group of employees is excluded from union membership activity. However, the apparent requirement for Government involvement at all organizational levels, violates the standard of the absence of the need for previous authorization. ILO Convention 87 Article 2 provides that workers have the right “to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization.”¹⁵ The third condition is also violated by the requirement that workers must affiliate with a single confederation.

B. Right to Organize and Bargain Collectively

1. Vietnam Labor Law and Practice

Vietnam is a signatory to Convention 98 (The Right to Organize and Bargain Collectively), and, accordingly, is held to the ILO standard of this fundamental right. The “Labor Dispute Settlement” section of the Labor Code, referred to previously, provides a mechanism for collective bargaining.¹⁶ Section 157 of the Labor Code

¹¹ Freedom of Association and Collective Bargaining, 15, para. 47, International Labor Office, Geneva, 1983. The name International Labor Office is synonymous with International Labor Organization. ILO branches in the U.S. prefer to use International Labor Office while European branches use International Labor Organization.

¹² Freedom of Association and Collective Bargaining, 23, para. 44, International Labor Office, Geneva, 1994. In adopting this terminology the ILO “emphasized that the right to organize should be guaranteed without distinction or discrimination of any kind as to occupation, sex, color, race, creed, nationality or political opinion.” *Id.* at 23, para. 45.

¹³ *Id.* at 23, para. 44.

¹⁴ *Id.* “Workers and employers have the right to establish organizations and to join them, subject only to the rules of the organization concerned.” *Id.* at 38, para. 79.

¹⁵ Freedom of Association and Collective Bargaining, *supra* Appendix I

¹⁶ Vietnam Labor Code, *supra*

establishes dispute resolution for both “rights” (procedural considerations) and “interests” (wages, benefits, etc.). In addition, Section 158 of the Labor Code defines the essential collective bargaining principles of autonomy of the parties and voluntary nature of negotiation, stating the necessity for “direct negotiation and arrangement on their own of the two parties at the place where the dispute arises.” Section 159 also states that labor dispute settlement bodies will be utilized only after one of the parties refuses to negotiate or both parties have negotiated but fail to reach agreement. In that event, other dispute resolution bodies, as described above, are brought into the process.

The Trade Union Law of 1990 ¹⁷ further establishes a collective bargaining mechanism providing in Article 11 that “trade unions at local levels shall represent workers in signing collective labor agreements with directors of enterprises... and shall control the signing and performance of labor contracts.” In addition, the Article 11 states that “trade unions shall represent worker negotiations with heads of bodies, units and organizations in order to resolve labor disputes...”¹⁸

The State Department Human Rights Report indicates that, while workers have the right to organize unions in their enterprises, in practice they must be approved by the local union leadership.¹⁹ Anti-union discrimination on the part of employers against employees seeking to organize is forbidden in the labor code.²⁰

In the past, the Government generally set wages, since most people worked for state companies. With the growth of the private sector and the increased autonomy of state firms, the State Department asserts that a growing percentage of companies are setting wages through collective bargaining with the relevant unions and market forces play a much more important role in determining wages.²¹

¹⁷ Trade Union Law. *supra*

¹⁸ Id.

¹⁹ Country Reports on Human Rights Practices. *supra*

²⁰ Id.

²¹ Id.

The Government has approved formation of a number of export processing zones and new industrial zones, which are governed by the same labor laws as apply to the rest of the country.²²

2. Consistency with ILO Standards and Criteria

The Right to Organize and Collective Bargaining Convention, 1949 (No. 98), deals with various aspects of freedom of association and the right to organize and bargain collectively. First, it seeks to *protect workers' exercise of their right to organize* vis-à-vis employers and to protect workers' and employers' organizations against interference by each other (Articles 1 to 3). Secondly, to *ensure the promotion of collective bargaining*, the Convention emphasizes the autonomy of the parties and the voluntary nature of negotiation (Article 4).²³ Article 4 of Convention No. 98 provides that 'Measures appropriate to national conditions shall be taken, where necessary, to *encourage and promote the full development and utilization of machinery for voluntary negotiation* between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements. This provision contains *two essential elements: action by the public authorities to promote collective bargaining*, and the *voluntary nature of negotiation*, which implies autonomy of the parties.²⁴

Again, Vietnam has, under an earlier government, ratified Convention 98 (The Right to Organize and Bargain Collectively) and has historically been held to the ILO standard. While the right to organize is presently limited due to the need for prior authorization at the enterprise level and higher (discussed earlier), the autonomy of the parties and voluntary nature of negotiation set out in Section 158 of the Labor Code suggests that the Vietnamese Government is incorporating some ILO principles of collective bargaining in

²² *Id.*

²³ Freedom of Association and Collective Bargaining, 91, para. 199, International Labor Office, Geneva, 1994.

²⁴ *Id.* at 107, para. 235. "Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the development and utilization of voluntary collective bargaining to regulate terms and conditions of employment." Summaries of International Labor Standards, International Labor Office, Geneva, second edition, 1990 (hereinafter International Labor Standards).

the law. Further, the Government demonstrates interest in promoting collective bargaining through the Trade Union Law mandate to represent workers in the development of collective agreements and in negotiating trade disputes with management.

These provisions, if fully implemented, would meet ILO standards for collective bargaining. Important to this determination is the ILO requirement for autonomy of collective bargaining. There is the potential for conflict in Vietnam's labor law between the requirement for Government to authorize unions and determine the scope of activities (discussed previously regarding the right of association), and the right of direct negotiation between workers and management. A situation, for example, in which the Government provides broad, policy guidance at the initial stages of union formation, but does not interfere with operations at the bargaining unit level could be consistent with the right of collective bargaining. While systematic information is not available as to the extent to which collective bargaining autonomy is exercised in practice, the State Department's observation that a growing percentage of companies are setting wages through collective bargaining is indicative of a nascent collective bargaining capability.

C. Prohibition of Forced or Compulsory Labor

Section 5 under the "General Provisions" of the Labor Code states that "maltreatment of workers and the use of forced labor in any form shall be prohibited." In addition, the section states that "all persons shall have right to ... freely choose an employment and occupation."

The State Department Human Rights Report confirms that there have been no reports of forced or compulsory labor practices, except in some detention facilities. No further information regarding practices at detention facilities is available for this evaluation.

D. Minimum Age for Employment ²⁵

Section 6 of the Labor Code sets the minimum age for employment at 15. Section 22 under "Vocational Training" of the Code states that children as young as 13 can register at trade training centers, a form of vocational training. Also Vietnam imposes a number of "young worker" (18 years and younger) limitations, including restrictions from working in hazardous operations (see later discussion in "IV. Other Indications of Progress in Adopting and Implementing Worker Rights").

Vietnam also has compulsory education laws. These laws are not effectively enforced, especially in rural areas where children are needed to farm. However, the Vietnamese culture's strong emphasis on education leads most people to send their children to school, rather than to work.²⁶ The relative progressiveness of Vietnam in this area is supported by State Department data on minimum age statistics of other countries in the Southeast Asian region²⁷ and anecdotal information provided by a U.S. Labor Department study highlighting abuses of neighboring countries.²⁸

Vietnam's minimum age requirements are even more restrictive than ILO standards. The ILO minimum age standard for less developed countries is 14 years for most occupations and 16 years for hazardous work.²⁹

E. Acceptable Conditions of Work with Respect to Wages, Hours of Work, and Occupational Health and Safety ³⁰

Wages

Sections 55 through 67 of the Labor Code are devoted to wage considerations. The Labor Code requires the Government to set a minimum wage, which changes with inflation and other economic changes, and to periodically publish this information.

²⁵ Country Reports on Human Rights Practices, *supra*

²⁶ Id.

²⁷ Id.

²⁸ U.S. Labor Department, Bureau of International Labor Affairs, By the Sweat and Toil of Children: The Use of Child Labor in American Imports, July 15, 1994.

²⁹ ILO, Summary of International Labor Standards, Geneva, 1991

³⁰ Vietnam Labor Code, *supra*

However, according to the State Department report, the Government does not publicize minimum wage rates. The minimum wage, including for those working for joint ventures, is, by itself, insufficient to provide a worker and his family with a decent standard of living. However, many workers receive subsidized housing, bonuses, and also supplement their incomes by engaging in entrepreneurial activities. The Government enforces the minimum wage at foreign and major Vietnamese firms, but it has little control over other wages.

Hours of Work

Sections 68 through 81 of the Labor Code sets working hours at a maximum of 8 per day and 48 per week, with a mandatory 24-hour rest period each week (the ILO target goal is 40 hours per week, but anything in excess of 48 hours per week is considered excessive).³¹ Any additional hours require overtime pay, and the law limits compulsory overtime to four hours per day or 200 hours per year. Annual leave with full pay for various types of work is also prescribed in the law. The State Department indicates that it is not clear how well the Government enforces these provisions.

Occupational Safety and Health

Sections 95 through 108 under "Occupational Safety and Health" of the Labor Code calls on the Government to promulgate rules and regulations to ensure worker safety. The Ministry of Labor, in coordination with local people's committees and labor unions, is charged with enforcing the regulations. Section 96 states that "in the event of new construction, the enterprise must prepare feasibility studies on measures to ensure occupational safety and health at the workplace and for the surrounding environment." It also indicates that health and safety requirements shall be determined by the Ministry of Labor. Section 97 further states that the "employer shall ensure that the workplace meets the prescribed standards." Finally, Section 99 warrants that "workers have the right to refuse to perform work or to leave the workplace that clearly resents an imminent and serious threat to life or health and have the obligation to immediately report to persons

³¹ Summary of International Labor Standards, *supra*

directly in charge. The employer shall not require workers to resume or return to the workplace in question if such danger is not eliminated.”

The State Department writes that, in practice, enforcement of health and safety factors is inadequate because of the Ministry's insufficient resources. Anecdotal evidence indicates that workers, through labor unions, have been more effective in forcing changes in working conditions than has the Government.³²

Deficiencies in workplace health and safety issues can be addressed by way of careful drafting of language requiring adherence to international standards for individual OPIC contracts.

IV. Other Indications of Progress in Adopting and Implementing Worker Rights³³

In addition to fundamental areas of worker rights discussed above, Vietnam's Labor Code of 1994 contains a number of progressive provisions including protections for female, young, older, and disabled workers.

Sections 109 through 118 pertain to “Special Provisions for Female Workers.” The law provides that “the State shall ensure the right to work of women on the basis of equality in every respect with men.” In doing so, the State is required to adopt policies to encourage employers to create conditions conducive to female employment including the development of flexible hours, part-time work, and work at home. The State is also required to “adopt policies and measures to expand employment opportunities, improve conditions of work, raise levels of skill and health care, and strengthen the material and spiritual welfare of female workers...” The law further provides for training and for preferential treatment of women, including the areas of recruitment preference and tax reductions for enterprises which employ a high number of female workers. Finally, it

³² Country Reports on Human Rights Practices, *supra*

³³ Vietnam Labor Code, *supra*

prohibits any discrimination of female employees, such as dismissal because of marriage, pregnancy, and maternity leave.

While Vietnam's minimum age standard of 15 years exceeds the ILO standard, as discussed earlier, the Labor Code goes even further to place additional strictures on the employment of workers under the age of 18. These workers are referred to as "young workers." Section 119 explicitly prohibits the exploitation of young workers. Sections 120 through 122 provide further restrictions including the employment of young workers in suitable, non-hazardous occupations and work, for a period not to exceed 7 hours per day and 42 hours per week, and with overtime and night work only in occupations as determined by the Ministry of Labor.

Older workers, men over 60 years and women over 55 years, are entitled in Section 123 of the Labor Code to reduced daily hours of work or part-time work in accordance with Vietnamese Government regulations. The employment of disabled workers is covered in Sections 125 through 128. It provides for the right to work of disabled persons and encourages their admission to the workforce through vocational training, employer tax deductions, low interest loans and other preferential treatment. The law also prescribes suitable work conditions including health and safety considerations and limited hours of employment.

V. CONCLUSION

(To be completed as additional information becomes available)

TIME OF TRANSMISSION

TIME OF RECEIPT

WHITE HOUSE
SITUATION ROOM

PRECEDENCE: IMMEDIATE
PRIORITY
ROUTINE

RELEASER: _____

DTG: _____

MESSAGE NO.: _____ CLASSIFICATION: ~~SECRET~~ TOTAL: 49
(PAGES INCLUDING COVER)

FROM: NSC WEST WING DESK (202) 456-9425 WH SITROOM
(NAME) (PHONE NUMBER) (ROOM NO.)

MESSAGE DESCRIPTION: Deputies Committee Meeting Notification

NSC LOG # 21188

<u>TO (AGENCY)</u>	<u>DELIVER TO</u>	<u>DEPT/ROOM NO.</u>	<u>PHONE NUMBE</u>
State	Executive Secretary		
Treasury	Executive Secretary		
Commerce	Executive Secretary		

REMARKS:

DECLASSIFIED
E.O. 13526

White House Guidelines, September 11, 2006

By KRM NARA, Date 8-27-2014

2014-1060-F

~~CONFIDENTIAL~~

~~CONFIDENTIAL~~ *Secret*

21188

NATIONAL SECURITY COUNCIL

WASHINGTON, D.C. 20506

October 12, 1995

ACTION

MEMORANDUM FOR *Nancy Soderberg*
~~SAMUEL BERGER~~
W. BOWMAN CUTTER

FROM: STANLEY ROTH *SR*
ROBERT KYLE *RK*

SUBJECT: D.C. Meeting on Vietnam

Attached at Tab I is a Memorandum for signature forwarding the agenda for the Deputies meeting to be held on Friday, October 13, 10:00 - 11:00 a.m., Situation Room. *Memorandum at Tab I also forwards two State-prepared papers for review and discussion at the Deputies meeting.*

That you authorize Andrew Sens to sign the Memorandum to Agencies at Tab ~~A~~ *and authorize sending the State-prepared papers at Tabs B and C.*

Approve _____ Disapprove _____

Attachments

Tab I Memorandum to Agencies

Tab A Agenda

Tab B Vietnam: Treatment of under Jackson - Vanik
Amendment

Tab C: Vietnam: Worker Rights

DECLASSIFIED

E.O. 13526

White House Guidelines, September 11, 2006

By *KBH* NARA, Date *8-27-2014*

2014-1060-F

CONFIDENTIAL

Declassify on: OADR

~~CONFIDENTIAL~~

Secret

NATIONAL SECURITY COUNCIL
DISTRIBUTION RECEIPT

LOG 9521188
DATE 12 OCT 95

SUBJECT: NOTIFICATION OF 13 OCT DC MTG ON VIETNAM
DOCUMENT CLASSIFICATION: ~~SECRET~~

EXTERNAL DISTRIBUTION:	DATE	TIME	SIGNATURE
MR. LEON FUERTH OFFICE OF THE VICE PRESIDENT VIA NOELLE JENSEN ROOM 292, OEOB WASHINGTON, DC 20506	_____	_____	_____ PRINT LAST NAME: _____ COPY: <u>1</u>
MR. KENNETH C. BRILL DEPARTMENT OF STATE ROOM 7224, MAIN STATE 2201 C STREET, N.W. WASHINGTON, D.C. 20520	_____	_____	_____ PRINT LAST NAME: _____ COPY: <u>VIA FAX+1</u>
MR. J. BENJAMIN NYE DEPARTMENT OF THE TREASURY ROOM 3408, MAIN TREASURY BLDG 1500 PENNSYLVANIA AVE, NW WASHINGTON, DC 20220	_____	_____	_____ PRINT LAST NAME: _____ COPY: <u>VIA FAX</u>
MS. KIM SCHNOOR DEPARTMENT OF AGRICULTURE VIA EXECUTIVE SECRETARIAT ROOM 200-A 14TH ST & INDEPENDENCE AVE, SW WASHINGTON, DC 20250	_____	_____	_____ PRINT LAST NAME: _____ COPY: <u>1</u>
MS. BETTIE BACA DEPARTMENT OF COMMERCE EXECUTIVE SECRETARIAT ROOM 5854 14TH & CONSTITUTION AVE, NW WASHINGTON, DC 20230	_____	_____	_____ PRINT LAST NAME: _____ COPY: <u>VIA FAX</u>
MR. MICHAEL KERR DEPARTMENT OF LABOR ROOM S-2018 200 CONSTITUTION AVE, NW WASHINGTON, DC 20210	_____	_____	_____ PRINT LAST NAME: _____ COPY: <u>1</u>

DATE, TIME, SIGN THE RECEIPT AND RETURN TO: NSC RECORDS MGNT, ROOM 379 OEOB

PAGE 01 OF 02 PAGES

DECLASSIFIED

E.O. 13526

White House Guidelines, September 11, 2006

By KBM NARA, Date 8-27-2014

2014-1060-F

NATIONAL SECURITY COUNCIL
DISTRIBUTION RECEIPT

LOG 9521188
DATE 12 OCT 95

SUBJECT: NOTIFICATION OF 13 OCT DC MTG ON VIETNAM
DOCUMENT CLASSIFICATION: ~~SECRET~~

EXTERNAL DISTRIBUTION:	DATE	TIME	SIGNATURE
MR. FRED MONTGOMERY U.S. TRADE REPRESENTATIVE ROOM 416, WINDER BUILDING 600 17TH STREET, NW WASHINGTON, DC 20506	_____	_____	_____ PRINT LAST NAME: _____ COPY: <u>1</u> _____
MR. BOWMAN CUTTER NATL ECONOMIC COUNCIL ROOM 231 OLD EXECUTIVE OFC BLDG	_____	_____	_____ PRINT LAST NAME: _____ COPY: <u>1</u> _____
MR. KENNETH D. BRODY EXPORT-IMPORT BANK VIA EXECUTIVE SECRETARY LAFAYETTE BUILDING 811 VERMONT AVE, NW WASHINGTON, DC 20571	_____	_____	_____ PRINT LAST NAME: _____ COPY: <u>1</u> _____
MS. RUTH R. HARKIN OVERSEAS PRIVATE INVESTMENT CORPORATION 1100 NEW YORK AVE, NW WASHINGTON, D.C. 20527	_____	_____	_____ PRINT LAST NAME: _____ COPY: <u>1</u> _____

DATE, TIME, SIGN THE RECEIPT AND RETURN TO: NSC RECORDS MGMT, ROOM 379 OECD

PAGE 02 OF 02 PAGES

~~CONFIDENTIAL~~ Attachment

NATIONAL SECURITY COUNCIL

WASHINGTON, D.C. 20504

February 11, 1998

ACTION

MEMORANDUM FOR SAMUEL R. BERGER
GENE SPERLING
DANIEL K. TARULLO

THROUGH: SANDRA J. KRISTOFF *SK*FROM: JAMES M. GAGNON *V*

SUBJECT: Granting a Waiver of Jackson-Vanik Amendment to
Vietnam; Removal of Prohibition on Export-Import
Bank Programs in Vietnam

The Department of State has recommended, with the approval of the NSC Deputies Committee, that the President grant a waiver of the Jackson-Vanik Amendment to Vietnam. Based on our review of Vietnamese emigration policies, we believe Vietnam now meets the requirements for such a waiver and that United States interests, including the emigration objectives of Title IV of the Act, would be best served by issuing the Presidential determination attached at Tab I-A.

The U.S. Export-Import Bank (EX-IM) is prohibited by law from supporting U.S. exports to Marxist-Leninist states including the Socialist Republic of Vietnam. The Department of State has recommended, with the approval of the NSC Deputies Committee, that the President determine it is in the national interest to allow EX-IM programs for exports to Vietnam. A Presidential determination to this effect (Tab I-C), combined with a waiver of the Jackson-Vanik Amendment, will enable EX-IM to extend its loan, guarantee and insurance programs to Vietnam.

Concurrences by: James Baker, Eric Schwartz, Mara Rudman,
Malcolm Lee

RECOMMENDATION

That you sign the memorandum to the President at Tab I.

That you authorize Glyn T. Davies to sign the memorandum to Robert Damus at Tab II.

Approve _____ Disapprove _____

Attachments

Tab I Memorandum to the President
 Tab A Presidential Determination Jackson-Vanik
 Tab B Message to the Congress
 Tab C Presidential Determination Export-Import Bank
Tab II Memorandum to Robert Damus
 Tab A Proposed Executive Order
Tab III Incoming Correspondence

THE WHITE HOUSE
WASHINGTON

ACTION

MEMORANDUM FOR THE PRESIDENT

THROUGH: THE EXECUTIVE CLERK

FROM: SAMUEL BERGER
GENE SPERLING
DANIEL K. TARULLO
LARRY STEIN

SUBJECT: Granting a Waiver of the Jackson-Vanik Amendment to Vietnam; Removal of Prohibition on Export-Import Bank Programs in Vietnam

Purpose

To execute the Determination at Tab A granting a waiver of the Jackson-Vanik Amendment to Vietnam; and to sign the Message to Congress at Tab B conveying this Determination.

To execute the Determination at Tab C that it is in the national interest to allow Export-Import (EX-IM) Bank programs to support U.S. exports to Vietnam.

Background

The Jackson-Vanik Amendment (section 402 and 409 of the Trade Act of 1974, as amended) provides that certain U.S. economic benefits cannot be extended to countries that: (1) deny their citizens the right or opportunity to emigrate; (2) impose more than a nominal tax on emigration, visas or other documents required to emigrate; or (3) impose more than a nominal charge on any citizen who desires to emigrate. Vietnam does not meet these requirements, but the statute authorizes you to waive them if you report to Congress that: (1) such a waiver will substantially promote the Amendment's freedom of emigration objectives; and (2) you have received assurances that Vietnam's emigration practices will henceforth lead substantially to the achievement of these objectives.

cc: Vice President
Chief of Staff

Vietnam has liberalized its emigration policies considerably since the 1980's. The Vietnamese authorities have established a solid record in cooperating with us on the Orderly Departure Program (ODP), under which 450,000 Vietnamese have emigrated legally to the United States. While corruption, administrative burdens, and politically motivated harassment have hampered the processing of some legal emigrants, Vietnam has demonstrated a willingness to respond to our complaints. A recent example of progress toward freer emigration has been the significant improvement we have seen in Vietnam's implementation of the Resettlement Opportunity for Vietnamese Returnees (ROVR) program.

The U.S. EX-IM Bank is prohibited by law from supporting U.S. exports to Marxist-Leninist states, including the Socialist Republic of Vietnam (section 2(b)(2) of the Export-Import Bank Act of 1945). However, the Act gives you the authority to determine that it is in the national interest to allow EX-IM Bank programs to support exports to Vietnam. This determination combined with the waiver of the Jackson-Vanik Amendment will enable the EX-IM Bank to extend its loan, guarantee, and insurance programs to Vietnam.

Granting a waiver of the Jackson-Vanik Amendment to Vietnam and allowing the Vietnamese to participate in EX-IM Bank programs builds on our strategy of promoting stability in the region through Vietnam's integration into world markets and international organizations such as ASEAN and APEC. The availability of EX-IM Bank facilities for exports to Vietnam also provides significant benefits for American firms competing in the Vietnamese market.

The granting of MFN cannot occur until we have concluded a comprehensive trade agreement with Vietnam and will require the approval of both the House and Senate. Discussions with the Vietnamese are underway but progress has been slow, and it is difficult to predict when these negotiations might be completed. However, we believe the granting of these waivers will provide Vietnam with the incentive to renew its efforts to implement the economic reforms needed to conclude a bilateral trade agreement.

The initiation of Overseas Private Investment Corporation (OPIC) programs will require a signed bilateral accord; currently we have an initialed accord which will require some changes.

(Secretary Albright is expected to use her delegated authority to waive two other prohibitions in the Foreign Assistance Act, but it is arguable that OPIC activities are not blocked by these

prohibitions in any event.) In addition, OPIC will be circulating shortly a report which states that Vietnam meets the worker rights criteria of OPIC participation by virtue of the steps it is taking to implement internationally recognized worker rights.

In Congress, although we have obtained support from a wide spectrum of Members, we can expect strong and vocal opposition from some Members in both houses. It is unlikely that either the House and Senate would take action to block this waiver package, but we should anticipate a legislative battle when we get to the granting of MFN.

Although not a statutory prerequisite for the waivers proposed in this memorandum, it should be noted that Vietnam's cooperation in helping us to achieve the fullest possible accounting for our prisoners of war and missing in action has been excellent.

RECOMMENDATION

That you sign the Presidential Determinations at Tabs A and C.

That you sign the Message to the Congress at Tab B.

Attachments

Tab A	Presidential Determination for Jackson-Vanik
Tab B	Message to the Congress
Tab C	Presidential Determination for Export Import Bank

Presidential Determination
No. _____

MEMORANDUM FOR THE SECRETARY OF STATE

SUBJECT: Presidential Determination on Section 402(c)(2)(A)
of the Trade Act of 1974 -- Vietnam

Pursuant to section 402(c)(2)(A) of the Trade Act of 1974 (Public Law 93-618, January 3, 1975; 88 Stat. 1978) as amended (the "Act"), I determine that a waiver by Executive Order of the application of subsections (a) and (b) of section 402 of the Act with respect to Vietnam will substantially promote the objectives of section 402.

This Determination shall be published in the Federal Register.

TO THE CONGRESS OF THE UNITED STATES:

Pursuant to section 402(c)(2) of the Trade Act of 1974, as amended ("the Act"), I have determined that a waiver of the application of subsections 402(a) and (b) with respect to Vietnam will substantially promote the objectives of section 402. A copy of that determination is attached. I also have received assurances with respect to the emigration practices of Vietnam required by section 402(c)(2)(B) of the Act. This message constitutes the report to Congress required by section 402(c)(2).

Pursuant to subsection 402(c)(2) of the Act, I shall issue an Executive Order waiving the application of subsections (a) and (b) of section 402 of the Act with respect to Vietnam.

THE WHITE HOUSE,

Presidential Determination
No. _____

MEMORANDUM FOR THE SECRETARY OF STATE

SUBJECT: Presidential Determination under Subsection
2(b)(2)(D) of the Export-Import Bank Act of 1945,
as Amended--Vietnam

Pursuant to subsection 2(b)(2)(D) of the Export-Import Bank Act of 1945, as amended, I determine that it is in the national interest for the Export-Import Bank of the United States to guarantee, insure, extend credit and participate in the extension of credit in connection with the purchase or lease of any product or service by, for use in, or for sale or lease to Vietnam.

On my behalf, please transmit this Determination to the Speaker of the House and to the President of the Senate.

This Determination shall be published in the Federal Register.

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20504

ACTION

MEMORANDUM FOR ROBERT G. DAMUS

FROM: GLYN T. DAVIES

SUBJECT: Proposed Executive Order on Jackson-Vanik
Amendment to Vietnam

We are providing the enclosed draft Executive Order, "Waiver Under the Trade Act of 1974 with Respect to Vietnam," for your coordination. The Order has been cleared with the Department of State. We request that OMB complete its processing as soon as possible.

Attachment

Tab A Proposed Executive Order

EXECUTIVE ORDER

- - - - -

WAIVER UNDER THE TRADE ACT OF 1974 WITH RESPECT TO VIETNAM

By virtue of the authority vested in me as President of the United States of America by subsection 402(c)(2) of the Trade Act of 1974 (Public Law 93-618, January 3, 1975; 88 Stat. 1978), as amended, which continues to apply to Vietnam pursuant to subsection 402(d), and having made the report to the Congress required by subsection 402(c)(2), I hereby waive the application of subsections (a) and (b) of section 402 of said Act with respect to Vietnam.

THE WHITE HOUSE,

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
004. memo	Strobe Talbott to President William J. Clinton re: Granting a Waiver of the Jackson-Vanik Amendment for Vietnam (3 pages)	02/03/1998	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Legal Advisor (Mary Derosa)
OA/Box Number: 3507

FOLDER TITLE:

Jackson-Vanik (Vietnam) [2]

2014-1060-F
kh1413

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
005. memo	Strobe Talbott to President William J. Clinton re: Granting a Waiver of the Jackson-Vanik Amendment for Vietnam; duplicate of 004 (3 pages)	02/03/1998	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Legal Advisor (Mary Derosa)
OA/Box Number: 3507

FOLDER TITLE:

Jackson-Vanik (Vietnam) [2]

2014-1060-F
kh1413

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Presidential Determination
No. _____

MEMORANDUM FOR THE SECRETARY OF STATE

SUBJECT: Determination under Section 402(c) (2) (A) of
the Trade Act of 1974 -- Vietnam

Pursuant to section 402(c) (2) (A) of the Trade Act of 1974 (Public Law 93-618, January 3, 1975; 88 Stat. 1978) as amended (the "Act"), I determine that a waiver by Executive Order of the application of subsections (a) and (b) of section 402 of the Act with respect to Vietnam will substantially promote the objectives of section 402.

On my behalf, please transmit this Determination to the Speaker of the House and to the President of the Senate.

This Determination shall be published in the Federal Register.

The White House,

To the Congress of the United States:

I hereby transmit the document referred to in subsection 402 (c) (2) of the Trade Act of 1974, as amended, with respect to a waiver of the application of subsections 402(a) and (b) of that Act to Vietnam.

I report in that document my Determination that such a waiver will substantially promote the objectives of section 402. I have instructed the Secretary of State to provide a copy of that Determination to the Speaker of the House and the President of the Senate. The report also indicates that I have received the assurances with respect to the emigration practices of Vietnam required by section 402(c) (2) (B) of the Act.

The White House,

EXECUTIVE ORDER

WAIVER UNDER THE TRADE ACT OF 1974 WITH RESPECT TO
VIETNAM

By virtue of the authority vested in me as President of the United States of America by subsection 402(c)(2) of the Trade Act of 1974 (Public Law 93-618, January 3, 1975; 88 Stat. 1978), as amended, which continues to apply to Vietnam pursuant to subsection 402(d), and having made the report to the Congress required by subsection 402(c)(2), I hereby waive the application of subsections (a) and (b) of section 402 of said Act with respect to Vietnam.

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
006. memo	Stanley Roth to Secretary of State Madeleine Albright re: Removal of Prohibition on Import-Export Bank Programs in Vietnam (3 pages)	01/12/1998	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Legal Advisor (Mary Derosa)
OA/Box Number: 3507

FOLDER TITLE:

Jackson-Vanik (Vietnam) [2]

2014-1060-F
kh1413

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
007. memo	Secretary of State Madeleine Albright to President William J. Clinton re: Vietnam's Eligibility for U.S. Export-Import Bank Programs (2 pages)	01/20/1998	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Legal Advisor (Mary Derosa)
OA/Box Number: 3507

FOLDER TITLE:

Jackson-Vanik (Vietnam) [2]

2014-1060-F
kh1413

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]