



## Southern Shrimp Alliance

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The Honorable Gina M. Raimondo  
Secretary of Commerce  
Attn: Enforcement and Compliance  
APO/Dockets Unit, Room 18022  
U.S. Department of Commerce  
14th Street and Constitution Avenue, NW  
Washington, DC 20230

**Re: Raw Honey From the Socialist Republic of Vietnam (Case No. A- 552-833):  
Comments on the Treatment of the Socialist Republic of Vietnam as a Non-  
Market Economy Country**

Dear Secretary Raimondo:

The Southern Shrimp Alliance (“SSA”) is making this submission in response to the request by the U.S. Department of Commerce (the “Department”) for comments regarding whether the Socialist Republic of Vietnam (“Vietnam”) should continue to be treated as a non-

market economy (“NME”) country under the antidumping duty law.<sup>1</sup> Consistent with the Department’s notice of an extension of the submission deadline in the changed circumstances review (“CCR”) of raw honey from Vietnam, these comments are timely filed.<sup>2</sup>

SSA is a non-profit alliance of shrimpers, dockside facilities, processors, retailers, distributors, and other industry participants committed to supporting America’s warmwater shrimp industry and to ensuring the industry’s future viability. SSA’s membership spans the coast of the South Atlantic and the Gulf of Mexico, encompassing communities throughout North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas.

As explained below, SSA believes that a consideration of the statutory factors demonstrates that the Department should continue to treat Vietnam as an NME country under section 771(18)(B) of the Tariff Act of 1930, as amended (the “Act”).<sup>3</sup> Vietnam is one of the world’s largest seafood producers and a top exporter of shrimp and prawns to the U.S. Its seafood exports to the world have continued to grow, and the U.S. remains one of its top destinations for seafood exports. Moreover, the Department has repeatedly found that Vietnamese producers and exporters sell their seafood products into the U.S. market at dumped and subsidized prices. This pattern of unfair trade hurts American workers and communities.

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<sup>1</sup> Raw Honey From the Socialist Republic of Vietnam: Initiation of Antidumping Duty Changed Circumstances Review, 88 Fed. Reg. 74,152 (Dep’t Commerce Oct. 30, 2023) (“Initiation Notice”).

<sup>2</sup> See Department Memorandum, “Changed Circumstances Review of the Socialist Republic of Vietnam’s Status as a Non-market Economy Country: Extension of Time to File Comments,” A-552-833 (Nov. 13, 2023).

<sup>3</sup> See 19 U.S.C. § 1677(18)(B).

Accordingly, the presence and behavior of the Vietnam shrimp industry in the global marketplace remains a substantial concern of SSA and to the U.S. shrimp industry.

Although we recognize that the Department's inquiry as to whether Vietnam should continue to be treated as an NME country under section 771(18) of the Act encompasses a review the entire economy, rather than focusing on individual firms or industries within Vietnam, these comments are necessarily informed by SSA's experience with the seafood sector of Vietnam's economy. Further, as demonstrated below, the Government of Vietnam's ("GOV") efforts to intervene in the seafood industry provide a perfect case study of the various ways in which the GOV maintains control over the larger economy. Thus, while these comments are not comprehensive, they are intended to provide background on Vietnam's seafood industry and to touch upon several of the factors to be considered by the Department pursuant to section 771(18)(B) of the Act. In addition, SSA adopts and incorporates by reference the comments submitted by Wiley Rein LLP and Kelley Drye & Warren LLP on behalf of other domestic industries.<sup>4</sup> Finally, SSA respectfully requests that the Department hold a hearing on this matter.<sup>5</sup>

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<sup>4</sup> See Letter from Wiley Rein LLP, "Raw Honey from the Socialist Republic of Vietnam – Comments on Changed Circumstances Review of the Socialist Republic of Vietnam's Status as a Non-market Economy Country," A-552-833 (Dec. 21, 2023); Letter from Kelley Drye & Warren LLP, "Raw Honey from the Socialist Republic of Vietnam – Changed Circumstances Review of the Socialist Republic of Vietnam's Status as a Non-market Economy Country, ITA-2023-0010," A-552-833 (Dec. 21, 2023).

<sup>5</sup> See Initiation Notice, 88 Fed. Reg. at 74,153 ("Parties may request a hearing in their comments.").

**I. BACKGROUND AND LAW**

In accordance with U.S. law, the Department has authority to determine whether a foreign country should be considered a market or non-market economy for antidumping duty purposes.<sup>6</sup> Per section 771(18)(A) of the Act, an NME is defined as “any foreign country that the administering authority determines does not operate on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise.”<sup>7</sup> In assessing whether Vietnam (or any other country) is a market or non-market economy, section 771(18)(B) of the Act requires the Department to examine, on an economy-wide basis:

- (i) the extent to which the currency of the foreign country is convertible into the currency of other countries;
- (ii) the extent to which wage rates in the foreign country are determined by free bargaining between labor and management,
- (iii) the extent to which joint ventures or other investments by firms of other foreign countries are permitted in the foreign country,
- (iv) the extent of government ownership or control of the means of production,
- (v) the extent of government control over the allocation of resources and over the price and output decisions of enterprises, and
- (vi) such other factors as the administering authority considers appropriate.

The Department last considered Vietnam’s status as an NME country in the 2002 antidumping duty investigation on certain frozen fish fillets from Vietnam,<sup>8</sup> and has not revisited

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<sup>6</sup> 19 U.S.C. § 1677(18).

<sup>7</sup> Id. § 1677(18)(A).

<sup>8</sup> Department Memorandum, “Certain Frozen Fish Fillets from the Socialist Republic of Vietnam - Determination of Market Economy Status,” A-552-801 (Nov. 8, 2002) (“Fish Fillets Memorandum”). See also Notice of Final Antidumping Duty Determination of Sales at Less

that determination until this CCR proceeding. In its earlier determination, the Department explained how it examines the statutory factors:

In evaluating the six factors listed above, the Department has recognized that it is not sufficient that a country's economy is no longer controlled by the state to treat the country as a market economy. See Notice of Final Determinations of Sales at Less Than Fair Value: Pure Magnesium and Alloy Magnesium From the Russian Federation (60 FR 16440, 16443, March 30, 1995). Rather, the Department considers whether the facts, as applied to the statutory factors, demonstrate that the economy is generally operating under market principles. To this end, Congress has provided the above listed factors which the Department must evaluate to determine whether, in the judgment of the Department, market forces in the country are sufficiently developed to permit the use of prices and costs in that country for purposes of the Department's dumping analysis.

The reason for this analysis is that prices and costs are central to the Department's dumping analysis and calculation of normal value. Therefore, the prices and costs that the Department uses must be meaningful measures of value. NME prices are not, as a general rule, meaningful measures of value because they do not sufficiently reflect demand conditions or the relative scarcity of resources used in production. The problem with NMEs is not one of distorted prices, per se, since few, if any, market economy prices are perfect measures of value, free of all distortions (e.g., taxes, subsidies, or other government regulatory measures). The problem, instead, is the price generation process in NMEs (i.e., the absence of the demand and supply elements that individually and collectively make a market-based price system work).

The Department's evaluation of the statutory criteria does not require that countries be judged against a theoretical model or a perfectly competitive laissez-faire economy. Instead, the Department's determination is based on comparing the economic characteristics of the country in question to how other market economies operate, recognizing that market economies around the world have many different forms and features. Although it is not necessary that the country fully meet every statutory factor relative to other market economies, the Department must determine that the factors, taken together, indicate that reforms have reached a threshold level such that the country can be considered to have a functioning market economy.<sup>9</sup>

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Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 68 Fed. Reg. 37,116 (Dep't Commerce June 23, 2003).

<sup>9</sup> Fish Fillets Memorandum at 7 (emphasis in the original).

Based on its in-depth review, the Department concluded that, despite considerable reforms, Vietnam remained an NME distorted by government intervention and control:

{T}he level of government intervention in the economy is still such that prices and costs are not a meaningful measure of value. The Vietnamese currency, the *dong*, is not fully convertible, with significant restrictions on its use, transfer, and exchange rate. Foreign direct investment is encouraged, but the government still seeks to direct and control it through regulation. Likewise, although prices have been liberalized for the most part, the Government Pricing Committee continues to maintain discretionary control over prices in sectors that extend beyond those typically viewed as natural monopolies. Privatization of SOEs and the state dominated banking sector has been slow, thereby excluding the private sector from access to resources and insulating the state sector from competition. Finally, private land ownership is not allowed and the government is not initiating a land privatization program.<sup>10</sup>

Thus, the Department concluded that “market forces in Vietnam {were} not yet sufficiently developed to permit the use of prices and costs in that country for purposes of the Department’s dumping analysis.”<sup>11</sup>

As detailed below, and contrary to the position of the GOV,<sup>12</sup> in the years since the Department’s last evaluation of its NME status, circumstances in Vietnam have not undergone material changes conducive to a transition to a market economy. Rather, the GOV continues to maintain significant control over the country’s economic structure, resulting in price distortions and a non-market-based pricing system. This state of affairs is particularly evident with respect to Vietnam’s seafood industry. Developments within that industry demonstrate that the GOV’s

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<sup>10</sup> Id. at 2.

<sup>11</sup> Id. at 43.

<sup>12</sup> See Letter from the Ministry of Industry and Trade for the Socialist Republic of Vietnam, “Request for the U.S. Department of Commerce to Initiate a Changed Circumstances Review on Behalf of the Socialist Republic of Viet Nam,” A-552-833 (Sept. 8, 2023) (“GOV CCR Request”).

continuing intervention and control with respect to significant segments of its economy not only distorts Vietnam's internal market but also creates disruptive externalities for global markets.

These distortions and disruptions will be exacerbated should the Department reach a finding that Vietnam operates as a market economy. Because this issue is of particular concern to SSA, we provide a brief overview of Vietnam's seafood industry and the GOV's specific interventions pertaining to that industry, followed by a discussion of several of the factors to be considered by the Department pursuant to section 771(18)(B) of the Act.

## **II. VIETNAM IS ONE OF THE WORLD'S LARGEST PRODUCERS OF SEAFOOD PRODUCTS**

Over the past thirty years, seafood production in Vietnam has been significant in shaping the economic landscape of Vietnam, and has seen astonishing growth both in terms of sheer numbers and in its economic importance to the country.<sup>13</sup> Notably, a 2021 study administered by the World Bank found that from 2009 to 2019,

{seafood} production increased sharply; with output increasing from 4.9 million tons in 2009 to 8.15 million tons in 2019, an average annual growth rate of five percent. During the same period, aquaculture production increased significantly; from 2.6 million tons in 2009 to 4.4 million tons in 2019, resulting in an average annual growth rate of six percent. The most important farming species in Vietnam are pangasius (catfish) and shrimp.<sup>14</sup>

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<sup>13</sup> Vietnam Institute of Fisheries Economics and Planning, "Current Fisheries and Aquaculture Policies Relevant to RFLP in Vietnam," at 7 (Jan. 2010) (**Exhibit 1**).

<sup>14</sup> The World Bank, "A Trade-Based Analysis of the Economic Impact of Non-Compliance with Illegal, Unreported and Unregulated Fishing: The Case of Vietnam," at 1-2 (2021) ("World Bank Analysis") (**Exhibit 2**).

Similarly, the Food and Agriculture Organization of the United Nations (“FAO”) reports that Vietnam’s seafood production experienced a significant 71 percent increase from 2010 to 2020.<sup>15</sup> Vietnam’s seafood production is also expected to continue to grow in the years ahead. In particular, the FAO projects Vietnam’s seafood production to increase by 13.7 percent between 2020 and 2030.<sup>16</sup>

Because of this growth, Vietnam is considered one of the largest producers of fishery products in the world. According to the National Oceanic and Atmospheric Administration’s National Marine Fisheries Service (“NMFS”), in 2018, Vietnam was the world’s fourth leading producer, accounting for 4.2 percent of the global fishery landings and aquaculture production and preceded only by China (35 percent), Indonesia (7.1 percent), and India (6.9 percent).<sup>17</sup>

Vietnam’s growth in seafood production has corresponded with its overall increase in seafood exports to the world. The below chart summarizes the value of Vietnam’s seafood exports for seven fishery commodity groups over the five-year period of 2013 through 2018:<sup>18</sup>

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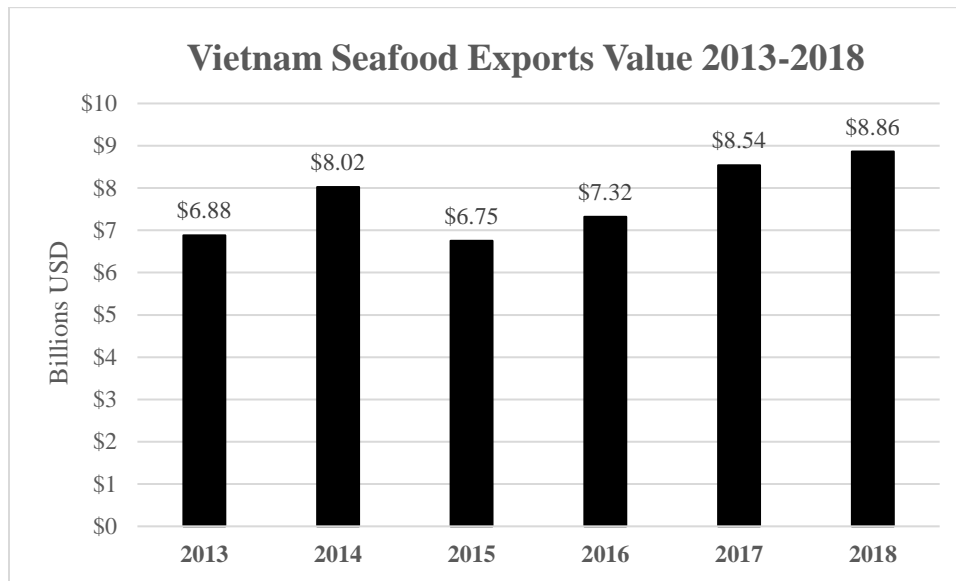
<sup>15</sup> See FAO, “The State of World Fisheries and Aquaculture (2022),” at 30 (2022) (“FAO Report”) (**Exhibit 3**) (excerpt).

<sup>16</sup> See *id.* at 213 (**Exhibit 3**) (excerpt).

<sup>17</sup> See NMFS, “Fisheries of the United States, 2019,” at viii (May 2021) (“Fisheries 2019 Report”) (**Exhibit 4**) (excerpt).

<sup>18</sup> See *id.* at 63 (**Exhibit 4**) (excerpt); NMFS, “Fisheries of the United States, 2018,” at 63 (Feb. 2020) (**Exhibit 5**) (excerpt). The seven fishery commodity groups covered in these data are: (1) fish (fresh, chilled, or frozen); (2) fish (dried, salted, or smoked); (3) crustaceans and mollusks (fresh, dried, salted, etc.); (4) fish products and preparations (whether or not in airtight containers); (5) crustacean and mollusk products preparations (whether or not in airtight containers); (6) oils and fats, crude or refined, of aquatic animal origin; and (7) meals, solubles, and similar animal foodstuffs of aquatic animal origin.





In more recent years, Vietnam continues to assert itself as a key player in global seafood production and trade, with the value of exported seafood “increas {ing} from USD 1.8 billion in 2000 to nearly USD 8.6 billion in 2019.”<sup>19</sup> According to the FAO:

Viet Nam has been the third largest exporter of aquatic products since 2014 and has become by far the world’s leading producer and exporter of farmed pangasius, supplemented by a large farmed shrimp industry and a significant processing sector. In 2020, Viet Nam exported USD 8.5 billion worth of aquatic products, accounting for 5.6 percent of the global total.<sup>20</sup>

Further, as of 2019, Vietnam was the fourth largest exporter of edible fishery products by volume to the United States, making up 8 percent of U.S. imports.<sup>21</sup>

An illustration of Vietnam’s expansion in seafood exports is particularly evident in the shrimp sector. As shown in the table below, official U.S. import data obtained from the U.S. International Trade Commission’s DataWeb demonstrates that the value of shrimp from Vietnam

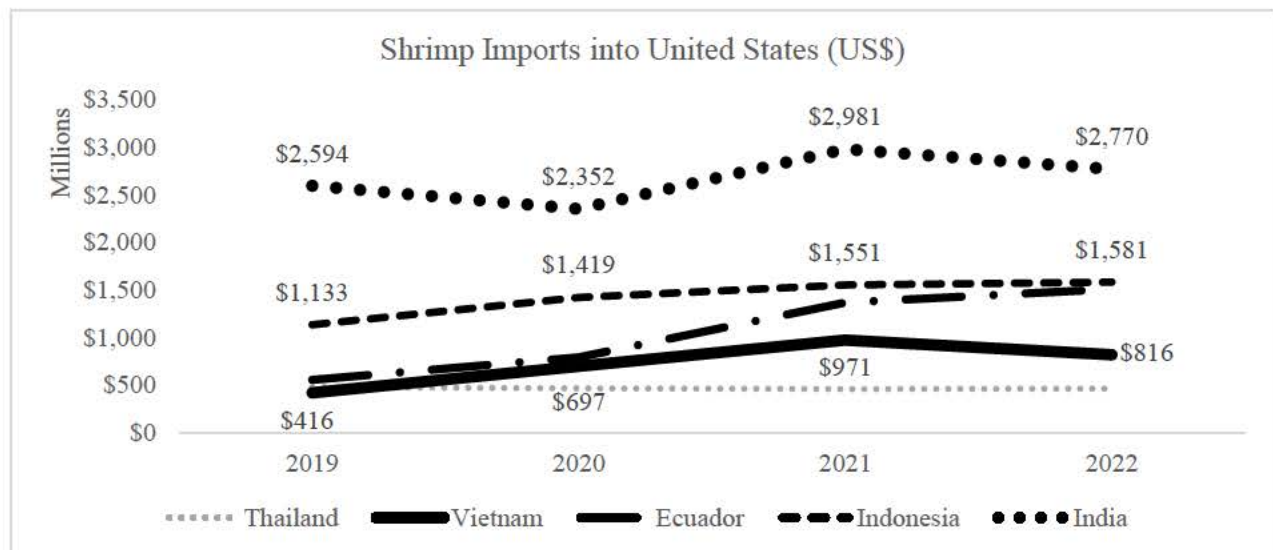
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<sup>19</sup> World Bank Analysis at 1 (**Exhibit 2**).

<sup>20</sup> FAO Report at 100 (**Exhibit 3**) (excerpt).

<sup>21</sup> See Fisheries 2019 Report at 80 (**Exhibit 4**) (excerpt).

imported into the country has increased over 96 percent since 2019, making Vietnam one of the four largest exporters of shrimp to the United States.<sup>22</sup> The value of Vietnamese shrimp shipments to the United States increased well beyond the performance of other shrimp suppliers to this market, as total shrimp import value increased by 30 percent (from US\$6.0 billion to US\$7.8 billion) and Thailand, which was a larger supplier of shrimp to the U.S. market in 2019 than Vietnam, saw its market presence decline over the same time period.



Importantly, as production and exports of fishery products have grown, employment in the sector has also increased substantially:

The industry provides about 4.7 million direct and indirect jobs across all production chains of the country (VINAFIS). In particular, the processing and seafood export sector currently creates about 300,000 direct jobs.

Overall, between 1995 and 2016, employment in the seafood sector more than tripled. The aquaculture subsector alone saw the number of jobs more than quadruple over the same time period. . . . In 2016, the seafood sector accounted for about 5 percent of the total labor force in Vietnam, considerably more than the

<sup>22</sup> The parameters for the data pull were HTSUS codes 0306.13; 0306.16; 0306.17; 0306.23; 0306.26; 0306.27; 0306.35; 0306.36; 0306.95; 1605.20; 1605.21; and 1605.29.

average of 0.5 percent for countries in the Organisation for Economic Co-operation and Development (OECD).<sup>23</sup>

Additionally, the fisheries and aquaculture industries have a sustained yearly export value of approximately 9 billion USD, “contributing 9-10 percent of total export turnover, ranking fifth in export value (behind telephone, textiles, electronics, and footwear) and representing 4-5 percent of GDP,”<sup>24</sup> making the fisheries industry one of the largest export-oriented industries and widely recognized as “a key national economic sector for Vietnam.”<sup>25</sup> In 2005, fishery products constituted 4.7 percent of the GDP in terms of goods export and import, indicating a robust presence in Vietnam’s economy.<sup>26</sup> Over the years, the industry’s proportion of GDP has experienced a gradual decline, reaching a preliminary estimate of 2.7 percent in 2022.<sup>27</sup> However, the increase in the 2022 figure indicates a rebound of its fishery industry in the global fishery market.

In sum, given Vietnam’s status as a major exporter of seafood, the fisheries sector remains a critical component of the national economy.

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<sup>23</sup> World Bank Analysis at 6 (footnotes omitted) (**Exhibit 2**).

<sup>24</sup> Id. (**Exhibit 2**).

<sup>25</sup> Id. (**Exhibit 2**).

<sup>26</sup> See General Statistics Office of Vietnam, Statistical Yearbook of Vietnam (Various Years) at *Exports and Imports of Goods* and *Exports and Imports of Services*, “Percentage of goods export, goods import over GDP by Group and Year,” available at <https://pxweb.gso.gov.vn:443/sq/24db8279-bfc6-4f74-859d-4e76b8a44d7c> (last visited Dec. 19, 2023) (**Exhibit 6**).

<sup>27</sup> Id. (**Exhibit 6**).

### III. GOV INTERVENTION IN THE SEAFOOD INDUSTRY

Importantly, and as discussed below, there is one key factor propelling the remarkable growth of Vietnam’s seafood industry—the GOV’s significant control over the economy and numerous interventions in the seafood industry. For purposes of its NME status analysis, the Department may consider this information pursuant to section 771(18)(B)(vi) of the Act, as an “other factor” relevant to its determination.

In light of the outsized importance of Vietnam’s seafood industry to the economy, the GOV has set a number of policy priorities and undertaken numerous interventions for purposes of guiding the development and expansion of Vietnam’s seafood capacity. Indeed, it is precisely because of the GOV’s involvement that the Vietnamese seafood industry has been able to achieve such growth.

For instance, in 2007 the GOV passed Resolution 09-NQ/TW, marking the country’s first comprehensive maritime strategy titled “Vietnam’s Maritime Strategy Toward the Year 2020” (“Maritime Strategy”).<sup>28</sup> This comprehensive strategy set a goal for Vietnam to evolve into “a strong, prosperous maritime nation by 2020, at which point the maritime and coastal economy will contribute 53 to 55 per cent of GDP.”<sup>29</sup> Additionally, the Maritime Strategy marked a significant shift in the fishing industry, transitioning from traditional artisanal and family fishing to industrial offshore fishing.<sup>30</sup> The GOV also pushed for increased aquaculture production to

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<sup>28</sup> See Anh Duc Ton, “Vietnam’s Maritime Security Challenges and Regional Defence and Security Cooperation,” Vietnamese Naval Academy, at 7 (2018) (citation omitted) (**Exhibit 7**).

<sup>29</sup> *Id.* (citation omitted) (**Exhibit 7**).

<sup>30</sup> See Brianna Dasilva, “Freedoms and (Un)freedoms: Migrant Worker Experiences in the Thai and Vietnamese Fishing Industries,” at 13 (2020), available at

position Vietnam as a leader in the sector.<sup>31</sup> Between 2007 and 2017, offshore fishing and aquaculture production in Vietnam surged by 50 percent, indicating the effective implementation of the Maritime Strategy.<sup>32</sup> The Maritime Strategy, spanning from 2007 to 2020, in conjunction with the “Strategy for Sustainable Development of Marine Economy” covering 1993 to 2022, have been pivotal over the past three decades in fulfilling the broader objectives of Vietnam’s socio-economic development policies.<sup>33</sup>

Building on the foundations established by these earlier strategies, in March 2021, the GOV adopted the “Strategy for the Growth of Vietnam’s Fisheries to 2030, with a Vision to 2045” (the “Fisheries Strategy”) for the purpose of “{d}eveloping the fishery industry into an important national economic sector” by reaching domestic fishery product growth of 9.8 million tons and export turnover of \$14-16 billion USD by 2030, as well as creating over 3.5 million jobs.<sup>34</sup> Among other directives, the Fisheries Strategy specifically calls for investment in infrastructure and services for the production, farming, and processing of fishery products, with

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[https://ruor.uottawa.ca/bitstream/10393/41499/1/Dasilva\\_Brianna\\_2020\\_thesis.pdf](https://ruor.uottawa.ca/bitstream/10393/41499/1/Dasilva_Brianna_2020_thesis.pdf) (last visited Dec. 20, 2023) (**Exhibit 8**).

<sup>31</sup> See id. (**Exhibit 8**).

<sup>32</sup> See id. (**Exhibit 8**).

<sup>33</sup> See Nguyen Hong Thao, “Thirty years’ implementation of Vietnam Marine Strategy: a long stride in realizing the strategic vision,” Vietnam Law and Legal Forum Magazine (Sep. 20, 2022) (**Exhibit 9**).

<sup>34</sup> Decision No. 339/QD-TTg, “Approving the Strategy for Development of Vietnam’s Fisheries by 2030 with Vision Towards 2045,” at Art. 1.II.1-2 (Mar. 11, 2021) (“Fisheries Strategy”) (**Exhibit 10**). See also Ministry of Agricultural and Rural Development, “Action Plan for the Implementation of the Vietnam Fisheries Development Strategy,” (May 6, 2021) (**Exhibit 11**).

an explicit focus on major fishing centers and aquaculture regions.<sup>35</sup> In the same year, the GOV approved a development scheme for Vietnam’s seafood processing industry for 2021 to 2030.<sup>36</sup> The initiative seeks to elevate Vietnam into the ranks of the top five global seafood processing nations by 2030.<sup>37</sup> Key objectives include increasing the volume of processed seafood by over 6 percent annually, enhancing the added value of processed seafood exports, and equipping over 70 percent of seafood processing facilities for export with modern technology.<sup>38</sup>

Subsequently, in August 2022 the GOV approved the “National Aquaculture Development Program for the Period of 2021 – 2030”<sup>39</sup> (the “Aquaculture Program”) with the general objectives of:

Develop{ing} aquaculture in a manner that is effective, sustainable, and adapting to climate change; improv{ing} efficiency, quality, value, and competitiveness of aquaculture products; satisfy domestic and export market requirements. By 2030, aquaculture productivity reaches 7.0 million tonne/year, creates jobs, and increases income for employees.<sup>40</sup>

In addition, by 2025, the Aquaculture Program seeks the following achievements:

-{T}otal aquaculture productivity reaches 5,6 million tonne/year, export turnover reaches 7,8 billion USD/year, aquaculture value growth rate reaches 4,0 %/year on average.

-Actively produce and supply more than 50% of giant tiger prawns parents, more than 25% of whiteleg shrimps parents, and more than 70% of selectively bred

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<sup>35</sup> Fisheries Strategy at Art. 1.III.1.dd (**Exhibit 10**).

<sup>36</sup> See Bich Thuy, “Vietnam approves development scheme for seafood processing in 2021-2030,” Vietnam Investment Review (Aug. 18, 2021) (**Exhibit 12**).

<sup>37</sup> See id. (**Exhibit 12**).

<sup>38</sup> See id. (**Exhibit 12**).

<sup>39</sup> Decision No. 985/QD-TTg, “The National Aquaculture Development Program for the Period 2021-2030,” (Aug. 16, 2022) (“Aquaculture Program”) (**Exhibit 13**).

<sup>40</sup> Id. at Art. 1.I.1 (**Exhibit 13**).

pangasius fish parents; actively produce and supply sufficient breeders of high economic value and great commodity quantity.

-Invest, upgrade infrastructures essential for production of more than 30 centralized aquaculture zones and centralized seed production zones.

-Develop connection chains for producing, processing, consuming, ensuring stable outlets for more than 30% of aquaculture products.<sup>41</sup>

The Aquaculture Program expands on these goals for the period between 2026 to 2030, for instance, by seeking total aquaculture productivity of 7 million tons per year and export turnover of \$12 billion USD per year by 2030.<sup>42</sup>

Further, the GOV has identified the United States as one of its largest import markets for fishery products, as well as its third largest export market for shrimp, while recognizing the need “to create favourable conditions for the exportation of agricultural and fishery products.”<sup>43</sup>

More recently, the GOV has doubled-down on its support for the fisheries industry. For instance, in comments earlier this year the Prime Minister “emphasized the need for practical and timely support for businesses to export {in order for seafood exports to reach a target of} 10 billion USD . . . in 2023.”<sup>44</sup> Further, the GOV stated its intent to build on previous government interventions which resulted in “{s}eafood export turnover in 2022 reach{ing} 11 billion USD, up 23.8% over the same period in 2021 and up 22.2% compared to {the government’s goal of} 9

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<sup>41</sup> Id. at Art. 1.I.2.a (**Exhibit 13**).

<sup>42</sup> Id. at Art. 1.I.2.b (**Exhibit 13**).

<sup>43</sup> See Ministry of Agriculture and Rural Development, “Vietnam: Total export value of agricultural, forest and fishery products in the first eight months of 2020 reached USD 26.15 billion,” (Sept. 7, 2020) (**Exhibit 14**); see also Ministry of Agriculture and Rural Development, “Vietnam shrimp exports started to reverse,” (Aug. 22, 2019) (**Exhibit 15**).

<sup>44</sup> Tien Dung, “The Prime Minister requested ‘substantive and timely’ support to help seafood and forestry products reach the export target of 27.5 billion USD,” VnEconomy (Apr. 13, 2023) (**Exhibit 16**).

billion USD.”<sup>45</sup> The Prime Minister further announced that all levels of government, including ministries, branches, localities, would undertake greater efforts to realize the GOV’s 2023 export goals by “removing difficulties and obstacles, especially in markets, institutions, and credit capital for the production, processing and export of ... fishery products to promote production and business.”<sup>46</sup> In short, the Prime Minister emphasized that fisheries industry can rely on “the State {to} create{} the most favorable business environment, {with the} support{} and share{} {of} practical{} monetary and fiscal policies.”<sup>47</sup>

To accomplish these goals and policy priorities in support of the fisheries industry, the GOV has utilized all means of control over the economy, as detailed below.

#### **IV. GOV CURRENCY POLICIES**

In examining the first factor under section 771(18)(b) of the Act (the extent to which the foreign country currency is convertible into other countries’ currency), the Department has previously stated:

A country’s integration into world markets is dependent upon the convertibility of its currency. The greater the extent of currency convertibility, for both trade and investment purposes, the greater are the supply and demand forces linking domestic market prices in the country to world market prices. The greater this linkage, the more market-based domestic prices tend to be.<sup>48</sup>

With respect to Vietnam, the Department previously found:

Despite positive advances in currency convertibility that evidence a gradual movement toward liberalization, overall, the {foreign exchange} regime remains shielded from exogenous market forces. Vietnam’s current currency polices do not

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<sup>45</sup> Id. (Exhibit 16).

<sup>46</sup> Id. (Exhibit 16).

<sup>47</sup> Id. (Exhibit 16).

<sup>48</sup> Fish Fillets Memorandum at 8.



meet the necessary requirements of a market-based foreign exchange. The dong is not fully convertible for current or capital account transactions and the exchange rate remains effectively set by the government.<sup>49</sup>

A key factor in the Department's determination was the GOV's direct control of the foreign exchange market through the State Bank of Vietnam ("SBV"). Specifically, "{t}he SBV is not an autonomous entity but rather a body of the central government, supervised by the National Assembly, which is authorized to formulate and oversee the implementation of the national monetary policy."<sup>50</sup> With this authority:

The SBV establishes the foreign exchange rates of Vietnamese dong, . . . creating a state-regulated market. The SBV is also authorized under law to inject and withdraw money from circulation according to market signals and to use refinancing instruments, interest rates, exchange rates, reserve requirement, open market operations and other instruments as decided by the central government.<sup>51</sup>

These facts have not changed since the Department's 2002 determination, as the SBV is still responsible for "supervising and inspecting foreign exchange," as well as "{p}erforming the State management on foreign currencies, foreign exchange, and gold trading operations."<sup>52</sup> Thus, while many central banks play a role in the foreign exchange market, the SBV is unique in that it carries out the policy priorities of the GOV, specifically by "manag{ing} its exchange rate based on its interest in achieving certain economic goals."<sup>53</sup> As has been found by the Department and other USG agencies in various contexts, the GOV, through the SBV, manages

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<sup>49</sup> Id. at 11.

<sup>50</sup> Id. at 8.

<sup>51</sup> Id. at 9.

<sup>52</sup> State Bank of Vietnam, "Major Responsibilities," (**Exhibit 17**).

<sup>53</sup> The Office of the U.S. Trade Representative, "Section 301 Investigation: Report on Vietnam's Acts, Policies, and Practices Related to Currency Valuation," at 1 (June 15, 2021) ("USTR Section 301 Report") (**Exhibit 18**).

its exchange rate for purposes of gaining an unfair competitive advantage for Vietnam's export-oriented industries. These findings demonstrate that, contrary to the GOV's position in this CCR proceeding,<sup>54</sup> Vietnam's currency is not fully convertible.

For example, the Department investigated Vietnam's currency undervaluation practices in the investigation and first administrative review of the countervailing duty order on passenger vehicle and light truck tires from Vietnam. In that investigation, the Department reached several findings relevant to the free convertibility of the Vietnamese dong:

- Through various decrees and laws, the government sets forth certain guidelines and procedural requirements that credit institutions, including private Vietnamese banks and foreign-owned banks, must follow. The SBV operates under a central rate mechanism that follows the State's monetary goals and foreign exchange market situation. The GOV states that credit institutions determine the USD/VND exchange rate within a three percent band.<sup>55</sup>
- In this case, the Vietnamese government has supported domestic manufacturers through an exchange rate policy that is directed by various laws and provisions. The Ordinance on Foreign Exchange Control: Article 3 of General Provisions: Policy of Vietnam on Foreign Exchange Control states:

The State of Socialist Republic of Vietnam shall implement its policy on foreign exchange control in order to facilitate the participation of organizations and individuals in foreign exchange activities and in order to protect the legitimate interest of such participants, contributing to further economic development, achieving the objectives of the national monetary policy, raising the convertibility of the Vietnam dong, achieving the objective of using only Vietnamese dong in the territory of Vietnam, fulfilling the commitments of the Socialist Republic of Vietnam in the schedule for international economic integrations, enhancing the

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<sup>54</sup> See GOV CCR Request at 3-7.

<sup>55</sup> Passenger Vehicle and Light Truck Tires From the Socialist Republic of Vietnam: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination, 85 Fed. Reg. 71,607 (Dep't Commerce Nov. 10, 2020) and accompanying Preliminary Decision Memorandum at 20 (footnotes omitted) ("PVLTV CVD Investigation PDM"), unchanged in Passenger Vehicle and Light Truck Tires From the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination, 86 Fed. Reg. 28,566 (Dep't Commerce May 27, 2021) ("PVLTV CVD Final Determination").

effectiveness of the State management of the foreign exchange and perfecting of foreign exchange control system in VN.<sup>56</sup>

- Pursuant to Ordinance No. 28/2005/PL-UBTVQH11, of December 13th, 2005, the State Bank of Vietnam’s objective is to “carry out the purchase and sale of foreign currency on the domestic foreign currency market in order to achieve the objectives of the national monetary policy.” Article 30 of this law defines the SBV involvement to be applicable to the Vietnam dong supply and demand. Specifically, Article 30 states “{t}he exchange rate mechanism applicable to the Vietnamese dong shall be determined on the basis of supply and demand for the foreign currency market as regulated by the State. The State Bank of Vietnam shall determine the exchange rate applicable to the Vietnamese dong in accordance with specific macro-economic objectives ...” Through the government’s legislation, private banks, like GOV state-owned banks, must exchange USD for dong for any party wishing to do so, and the rates for that exchange must be within the SBV established rate of  $+/- 3$  percent to  $+/-1$  percent.<sup>57</sup>
- Vietnamese law itself recognizes that the supply and demand for foreign currency is heavily influenced by a state-controlled market. The SBV regulates the exchange rate through the use of monetary policy and takes measures to control transactions on the foreign currency market. In conjunction with the above laws, Ordinance No. 28/2005/PLUBTVQH11, of December 13th, 2005 again restates that the credit institutions are responsible for satisfying the foreign currency demand for overseas payments of residents.<sup>58</sup>
- Treasury reported that the VND was undervalued during 2019, because there was a gap between Vietnam’s REER and its equilibrium REER. Treasury also reported its finding that “on a bilateral basis, {it} assesses that the Government of Vietnam’s actions on the exchange rate had the effect of undervaluing the dong vis-à-vis the U.S. dollar by 4.7%.”<sup>59</sup>

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<sup>56</sup> PVLTV CVD Investigation PDM at 21 (quoting Ordinance No. 28/2008/PL-UBTVQH11, “Ordinance on Foreign Exchange Control,” at Art. 3 (Dec. 13, 2005) (“Ordinance on Foreign Exchange Control”) (**Exhibit 19**)) (footnote omitted).

<sup>57</sup> Id. at 21-22 (citing Ordinance on Foreign Exchange Control at Arts. 29-30 (**Exhibit 19**)) (footnotes omitted).

<sup>58</sup> Id. at 22 (citing Ordinance on Foreign Exchange Control at Art. 39.3 (**Exhibit 19**)) (footnotes omitted).

<sup>59</sup> Id. at 24 (citing Letter from the U.S. Department of Treasury, C-552-829 (Aug. 24, 2020) (**Exhibit 20**)) (footnotes omitted).

The Department and Treasury reached similar findings in the first administrative review with respect to Vietnam’s currency practices during 2020, though not during 2021.<sup>60</sup> More recently, the Department’s Country Commercial Guide for Vietnam reports that “Vietnam has imposed exchange control mechanisms designed to limit foreign currency outflows,” and that “{t}he availability of foreign exchange has been an intermittent problem since mid-2008, because of persistent balance of trade deficits.”<sup>61</sup>

USTR has also examined these issues in its 2020 investigation under Section 301 of the Trade Act of 1974, as amended, of Vietnam’s currency valuation practices.<sup>62</sup> USTR’s determination addresses a number of considerations regarding the convertibility of Vietnam’s currency:

Vietnam manages its exchange rate based on its interest in achieving certain economic goals; that the acts, policies, and practices it has chosen with respect to the exchange rate have contributed to undervaluation of the exchange rate; that Vietnam uses {foreign exchange} market interventions as a key tool to manage the exchange rate in a manner that has contributed to persistent undervaluation; and that this undervalued exchange rate is accompanied by substantial current account and trade imbalances (including with the United States).<sup>63</sup>

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<sup>60</sup> See Passenger Vehicle and Light Truck Tires From the Socialist Republic of Vietnam: Preliminary Results of Countervailing Duty Administrative Review and Partial Rescission of Administrative Review; 2020-2021, 88 Fed. Reg. 47,107 (Dep’t Commerce July 21, 2023) and accompanying Preliminary Decision Memorandum at 11-12, unchanged in Passenger Vehicle and Light Truck Tires From the Socialist Republic of Vietnam: Final Results of Countervailing Duty Administrative Review; 2020-2021, 88 Fed. Reg. 67,242 (Dep’t Commerce Sept. 29, 2023).

<sup>61</sup> The International Trade Administration, “Vietnam – Country Commercial Guide,” (Dec. 15, 2022) (**Exhibit 21**).

<sup>62</sup> See USTR Section 301 Report at 1 (**Exhibit 18**).

<sup>63</sup> See id. (**Exhibit 18**).

Importantly, USTR found that Vietnam’s “currency undervaluation effectively lowers the price of exported products from Vietnam into the United States,” and “undermines the competitive position of firms in the United States that are competing with lower-priced Vietnamese imports.”<sup>64</sup>

Vietnam contends that it has undertaken certain reforms,<sup>65</sup> however, such actions are insufficient to overcome the fact that its exchange rate still “is not responsive to the forces of supply and demand.”<sup>66</sup> Moreover, despite being temporarily removed from Treasury’s currency manipulation Monitoring List in 2022, Vietnam was recently added back to the list in the November 2023 report, due to two criteria: (1) “Vietnam continues to have the third largest goods surplus with the United States,” and (2) Vietnam’s “current account has swung back into substantial surplus” as its “goods trade balance has widened.”<sup>67</sup>

In sum, the GOV has both means and incentives to promote exports, and specifically, seafood exports, by artificially undervaluing its currency.

## **V. GOV FAILURE TO MEANINGFULLY ADDRESS LABOR ISSUES**

Another factor under section 771(18)(B) of the Act is the extent to which wage rates in the foreign country are determined by free bargaining between labor and management.

According to the Department:

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<sup>64</sup> Id. at 2 (**Exhibit 18**).

<sup>65</sup> See GOV CCR Request at 3-7.

<sup>66</sup> Fish Fillets Memorandum at 10.

<sup>67</sup> See U.S. Department of the Treasury, “Report to Congress: Macroeconomic and Foreign Exchange Policies of Major Trading Partners of the United States,” at 4, 34-36 (Nov. 2023) (**Exhibit 22**).

This factor focuses on the manner in which wages are set because they are an important component of a producers' costs and prices and, in turn, are an important indicator of a country's overall approach to setting prices and costs in the economy. The reference to "free bargaining between labor and management" reflects concerns about the extent to which wages are market-based, i.e., about the existence of a market for labor in which workers and employers are free to bargain over the terms and conditions of employment.<sup>68</sup>

The Department observed in 2002 that 85 to 90 percent of the country's workforce operated in the informal sector, outside of government control.<sup>69</sup> The same is true today, with some sources estimating that approximately 70 percent of Vietnamese workers operate in the informal employment sector.<sup>70</sup> In other words, a large majority of the country's workforce remains outside the bounds of Vietnam's claimed regulatory labor reforms.

Accordingly, Vietnam's economy, particularly as it relates to the fisheries industry, is largely characterized by low wages, lax labor standards, and weak governance, with the prevalence of forced labor and other types of serious labor violations widely reported. For example, the Vietnamese fisheries industry continues to be included on the U.S. Department of Labor's List of Goods Produced by Child Labor or Forced Labor, published every two years.<sup>71</sup> In addition, an in-depth report by the Environmental Justice Foundation ("EJF") found that "Vietnam has become an infamous and archetypal example" of the global problem of illegal,

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<sup>68</sup> Fish Fillets Memorandum at 11.

<sup>69</sup> See id. at 15.

<sup>70</sup> See U.S. Department of State, "2023 Investment Climate Statements: Vietnam," at Section 11 (**Exhibit 23**).

<sup>71</sup> See U.S. Department of Labor, "2022 List of Goods Produced by Child Labor or Forced Labor," at 28 (2022) (**Exhibit 24**) (excerpt).

unreported, and unregulated (“IUU”) fishing.<sup>72</sup> Despite the GOV’s public statements regarding labor and wage reforms,<sup>73</sup> the EJF’s investigation “uncovered several incidences of child labour on board Vietnamese vessels,”<sup>74</sup> as well as the prevalence of “consistently harsh work environments with often low-quality food and water, gruelling working hours for little pay, and squalid, cramped sleeping quarters.”<sup>75</sup> These examples are indicative of larger, systemic issues with the GOV’s lack of oversight and failure to enforce meaningful labor and wage standards, as reported by the EJF:

Many of the boats observed by EJF and documented in surveys were flagless, had partially obscured names and registration numbers, and did not carry any form of crew identity documents, crew list or logbook. This exemplifies an almost complete lack of transparency mechanisms that would at least begin to shed some light on these opaque fishing practices. Interviewees also stated that portside inspections were rare and/or cursory, meaning that catches were not being properly documented or verified.

Such a lack of transparency or accountability for fishing practices has allowed Vietnamese fishing boats to proliferate across the Asia-Pacific region. Between the start of 2018 and mid 2019 there have been reports of at least 250 Vietnamese vessel detentions and arrests of over 640 crew across at least 11 countries across the Asia-Pacific region. Throughout this rise of ubiquitous illegal fishing, the Vietnamese authorities have resisted conceding that they are facing a crisis in one of the country’s most economically important industries. Growth in the sector has propelled Vietnam to become the world’s fourth largest seafood exporter with seafood products flowing to over 170 countries and territories.

Far from looking to better control the sector, Vietnam is aiming for \$10.5 billion in exports from seafood products in 2019, up by 23% compared to 2017 figures. The country also has one of the fastest growing fishing fleets in the world - increasing in size from just 41,000 vessels in 1990 to around 108,500 in 2018 (an increase of

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<sup>72</sup> See Environmental Justice Foundation, “Caught in the Net: Illegal Fishing and Child Labour in Vietnam’s Fishing Fleet,” at 4 (2019) (“EJF Report”) (**Exhibit 25**).

<sup>73</sup> See GOV CCR Request at 7-10.

<sup>74</sup> EJF Report at 4 (**Exhibit 25**).

<sup>75</sup> Id. (**Exhibit 25**).

over 160%). Interviewees that EJF has spoken to have also reported that portside inspections of fishing vessels are infrequent and cursory, comprising of a basic vessel documentation check and a crew count – unlikely to detect either illegal labourers, child labour or illegally caught fish.

Outright denial of the scale of the problem – some government ministers have declared the country free from IUU fishing as recently as May 2018 – has exacerbated many of the industry’s afflictions and aggravated Vietnam’s neighbours who are now forced to arrest Vietnamese vessels en masse, often at great expense to their own enforcement agencies.<sup>76</sup>

Vietnam’s failure to combat IUU and maintain effective oversight of its fisheries industry led to the European Commission’s 2017 issuance of a “yellow card,” which subjects Vietnam’s seafood exports to the EU to enhanced screening measures.<sup>77</sup> To date, “Vietnam’s efforts have yet to meet the expectations of the EC, and in November 2019, the commission issued four groups of recommendations that Vietnam needed to implement regarding the legal framework, the monitoring, inspection, and control of fishing activities, the certification of seafood volume and traceability, and law enforcement.”<sup>78</sup> In addition, the EU has identified “limited and inconsistent sanctioning of violations among localities{, and found} no evidence to prove competent authorities are in place to ensure sufficient and accurate traceability mechanisms in fishery processing plants.”<sup>79</sup>

Given that fisheries is one of the largest export-oriented industries in Vietnam, the Department cannot conduct an analysis of “the extent to which wage rates in the foreign country

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<sup>76</sup> Id. (Exhibit 25).

<sup>77</sup> Id. at 6 (Exhibit 25).

<sup>78</sup> Center For WTO and International Trade, Vietnam Chamber Of Commerce and Industry, “Removing IUU yellow card - Opportunity Vietnam should not miss,” (Oct. 2, 2023) (Exhibit 26).

<sup>79</sup> See World Bank Analysis at 20 (Exhibit 2).



are determined by free bargaining between labor and management” under section 771(18)(B) of the Act without serious consideration of Vietnam’s rampant wage and labor issues. As the discussion above demonstrates, the GOV’s legal requirements and prohibitions with respect to these issues are largely impractical to enforce and otherwise meaningless, and therefore should be taken with a grain of salt.

## **VI. GOV LAND OWNERSHIP IN VIETNAM**

In examining the extent to which the government owns or controls the means of production under section 771(18)(B) of the Act, the Department has previously found that “{t}he right to own private property is fundamental to the operation of a market economy.”<sup>80</sup> With respect to Vietnam, the Department determined that the GOV “does not permit private land ownership of any kind, only limited land use rights. The Vietnamese model of State administration of interests in land-use rights precludes the creation of a free market in land rights supported by a legal framework that protects the rights of market participants.”<sup>81</sup> The situation remains true today, as private land ownership is not permitted in Vietnam.<sup>82</sup>

The lack of private land ownership has significantly impacted the ability of individuals within Vietnam to create and propagate private industry. One recent study attempted to explain the insignificant impact of the GOV’s land reform efforts in 1993 as follows:

The main explanations of the modest impact of private land tenure on economic development across rural communes can be found in the limited nature of private land tenure in Vietnam. To be more specific, land is still officially owned by the state and land-use certificates can be revoked (normally with compensation not based on market values) when the usage periods are ended. As a result, this

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<sup>80</sup> Fish Fillets Memorandum at 22.

<sup>81</sup> Id. at 27.

<sup>82</sup> Constitution of the Socialist Republic of Vietnam at Art. 53 (**Exhibit 27**) (excerpt).

discretion of the state brings about a lingering insecurity of private land tenure. For example, Markussen and Tarp (2014) have estimated that around 4% of households were expelled from their land by the state in the period of 2006–2012. In addition, transfers and exchanges of land with land-use certificates still have to be approved by the authorities and all land transactions had to pay taxes, all impose a high cost of time and money on land transactions. For example, it is reported that both the cost of time and taxes in land transactions were relatively higher in Vietnam compared to other countries in the East Asian region (Childress, 2004).<sup>83</sup>

While the lack of ability to own land means that land use is insecure by private individuals, it also empowers the GOV to bestow security on favored actors. In other words, by virtue of the GOV's total ownership and control of land and land-use rights, the GOV has unfettered ability to boost certain industries, such as the fisheries industry, by offering exemptions and reductions from rent fees and taxes for land and surface water use. For example, under Decree No. 142/2005/ND-CP on Collection of Land Rents and Water Surface Rents, the GOV offers rent exemptions and reductions when land is used for “projects in the domains entitled to investment encouragement or special investment encouragement,” with land rents and water surface rents exempted in cases of “investment projects in the domains where investment is specially encourage, which are executed in geographical areas facing exceptional socio-economic difficulties.”<sup>84</sup> The lack of private land ownership is another demonstration of “the absence of the demand and supply elements that individually and collectively make a market-based price system work” in Vietnam.<sup>85</sup>

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<sup>83</sup> Hoang-Anh Ho, “Land Tenure and Economic Development: Evidence from Vietnam,” World Development (2021) (**Exhibit 28**).

<sup>84</sup> Decree No. 142/2005/ND-CP, “Decree on Collection of Land Rents and Water Surface Rents,” at Arts. 4.3 and 14.1 (Nov. 14, 2005) (**Exhibit 29**).

<sup>85</sup> Fish Fillets Memorandum at 7.

## VII. GOV CONTROL OF THE FINANCIAL SECTOR

In evaluating the extent of government control over the allocation of resources under section 771(18)(B) of the Act, the Department previously recognized that:

Decentralized economic decision-making is a hallmark of market economies, where the independent investment, input-sourcing, output and pricing actions of individuals and firms in pursuit of private gain collectively ensure that economic resources are allocated to their best (most efficient) use. Prices in such economies tend to reflect both demand conditions and the relative scarcity of the resources used in production.

An important measure of government control over production decisions and the allocation of resources is the degree to which the government is involved in the allocation of capital. Given that banks are important allocators of capital, the degree to which the State exercises control over the commercial banking sector is an important consideration.<sup>86</sup>

The Department further highlighted two issues which resulted in a determination that Vietnam's banking sector, as of 2002, "{had} not yet reached the level of development required to function as a true financial intermediary in market economy...1) insufficient independence...from State control regarding interest rates and lending to SOEs, and 2) the exclusion of sufficient competition in the banking sector via state regulation."<sup>87</sup> As discussed below, the banking sector in Vietnam continues to operate as an arm of the GOV.

Since 2002, the Department has extensively analyzed Vietnam's financial sector over the course of several countervailing duty proceedings<sup>88</sup> and found that, "for all intents and purposes, that Vietnam's financial sector was the banking sector, and that it played a key role in the

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<sup>86</sup> Id. at 30.

<sup>87</sup> Id. at 33.

<sup>88</sup> See, e.g., PVLT CVD Final Determination, 86 Fed. Reg. at 28,566; Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination, 78 Fed. Reg. 50,387 (Dep't Commerce Aug. 12, 2013).

allocation of capital in Vietnam’s economy.”<sup>89</sup> In other words, “the Vietnamese financial sector – in which non-bank financial institutions, the bond market, and informal lenders only play a minor role – is dominated by banks.”<sup>90</sup> As recently as 2020, the Department determined:

Many of the GOVN directives on deposit and lending interest rate ceilings mentioned in the 2013 Review, as well as regulations mandating state allocation of credit to certain priority sectors, were still in effect as of 2019. These de jure controls are directly and actively enforced by the State Bank of Vietnam (SBV), which, as mandated by Vietnam’s 2013 Constitution, is a ministerial agency under the management of the Prime Minister of Vietnam. Over the past five years, interest rates and capital flows have continued to fluctuate in accordance with the imposed controls and the GOVN’s credit policy, indicating persistent levels of state influence in the sector and compliance by banks with the GOVN-imposed credit restrictions.

Although the GOVN announced reforms in the banking sector at the time of the 2013 Review, efforts have focused on banking sector stability and meeting the GOVN’s macro-economic growth targets, not on institutional change and reducing the chronic and systemic state intervention in the banking sector or making the sector more market-determined. In addition, despite recent and ongoing government efforts, SOCB equitizations have not made significant progress, the ratio of non-performing loans in the banking sector remains high, and capital adequacy ratios at many of the largest banks remain lower than internationally accepted norms. The GOVN’s recently issued roadmap laying out its plans for the banking sector through 2025 calls for the continued domination of SOCBs in the financial system and makes no mention of reducing state intervention or involvement in the lending market.<sup>91</sup>

With respect to the GOV’s interventions in Vietnam’s seafood industry, both the Fisheries Strategy and the Aquaculture Program, detailed above, incorporate the SBV into their plans. For instance, the Fisheries Strategy states that “the State Bank of Vietnam shall,

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<sup>89</sup> Department Memorandum, “Analysis of Vietnam’s Financial System,” C-552-829, at Attachment 1, p. 3 (Oct. 12, 2022) (“2020 Financial Sector Analysis”) (citing Department Memorandum, “Countervailing Duty Investigation of Frozen Warmwater Shrimp from the Socialist Republic of Vietnam-Banking Sector Update,” C-552-815 (May 28, 2013)).

<sup>90</sup> 2020 Financial Sector Analysis at 1-2.

<sup>91</sup> Id. at 2 (emphasis added).

according to their assigned functions and tasks, complete investment, finance and credit policies in order to effectively meet the objectives and tasks of the Strategy,” and identifies among the strategy’s funding sources “{p}referential funds and loans.”<sup>92</sup> The Aquaculture Program further requires that the “State bank of Vietnam shall {t}ake charge . . . in researching and proposing incentive policies regarding loan capital, interest, and loan term for organizations, individuals engaging in investment, production in aquaculture.”<sup>93</sup>

In 2023, the GOV mandated the SBV to “effectively manage credit operations to ensure the suitable provision of credit capital, and continue to reduce interest rates to support businesses, especially those in aquatic export.”<sup>94</sup> This includes a significant intervention in the form of a credit package worth 10,000 billion VND (over 425.4 million USD) to “support businesses operating in forestry and aquatic production and processing industries.”<sup>95</sup> In addition, the GOV is focusing on enhancing trade promotion and forging new trade agreements to broaden the export markets for the country’s aquatic product, as well as developing land policies to support specialized and large-scale production.<sup>96</sup> These supportive and preferential policies demonstrate the GOV’s continuing substantial control and influence in the business and financial sector.

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<sup>92</sup> Fisheries Strategy at Arts. 1.VI.3 and 2.2 (**Exhibit 10**).

<sup>93</sup> Aquaculture Program at Art. 2.7 (**Exhibit 13**).

<sup>94</sup> “Government support helps aquaculture industry weather difficulties,” Vietnam Plus (Jun. 5, 2023) (**Exhibit 30**).

<sup>95</sup> Id. (**Exhibit 30**).

<sup>96</sup> See id. (**Exhibit 30**).

By virtue of its control of the financing and banking sector, the GOV remains a non-market economy.

### **VIII. VIETNAM REMAINS A NON-MARKET ECONOMY**

As discussed above, the GOV's numerous interventions in the seafood industry, its ability to undervalue its currency for purposes of propping up its economy and boosting exports, its failure to meaningfully enforce labor and wage standards, its total control and ownership of land and the allocation of capital in Vietnam, are all hallmarks of a non-market economy. The combined impact of these factors on the fisheries industry may be exemplified by this passage from the EJF Report:

Low vessel construction costs and generous government support for boat building and renovation have contributed to extremely rapid fleet expansion and overcapacity. Low initial financial investment for vessel owners means that the risk of vessel seizures, sinkings and demolitions do not provide the necessary disincentive to prevent IUU fishing. Small 'blue boats' (carrying 10-13 crew) can cost as little as \$12,000 to purchase, while larger boats (with on average 17 crew) may cost \$24,000. Labour costs for a crew of 10 might be between \$1,200-\$3,200 for an entire fishing trip, meaning that even several failed fishing trips are easily absorbed in pursuit of highly prized sea cucumbers and other high-value seafood. The potential returns from one successful overseas trip far outweigh the financial risks of having one's vessels seized. One kilo of sea cucumbers normally fetches between \$10-\$350 depending on the species. Some of the most expensive and rare species can reach up to \$3,500 per kilogram.

This imbalance between financial risk and reward, coupled with uncontrolled expansion of the fishing fleet and decline of domestic fish populations has contributed to the proliferation of illegal fishing by Vietnamese vessels across the Asia-Pacific region.<sup>97</sup>

It is precisely this issue—"the imbalance between financial risk and reward"—that undermines Vietnam's requested treatment as a market economy. In functioning market economies, the government does not have its finger on the scale to lessen financial risk for

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<sup>97</sup> EJF Report at 10 (**Exhibit 25**).

businesses thereby allowing them to increase the reward. As demonstrated above, given the GOV's significant involvement in all aspects of the economy, from currency policy, to land ownership, to control of the financial sector, the same cannot be said for Vietnam. In sum, prices and costs in Vietnam "do not sufficiently reflect demand conditions or the relative scarcity of resources used in production."<sup>98</sup> Across the economy, the GOV's intervention has led to "the absence of the demand and supply elements that individually and collectively make a market-based price system work."<sup>99</sup>

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For all of the foregoing reasons, the Department should continue to find that Vietnam is an NME for the purposes of its antidumping duty proceedings.

Thank you for any consideration you are able to give to these comments.

Sincerely,



John Williams  
Executive Director

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<sup>98</sup> Fish Fillets Memorandum at 7.

<sup>99</sup> Id.

**List of Exhibits**

<b>Exhibit #</b>	<b>Title</b>
1	Vietnam Institute of Fisheries Economics and Planning, “Current Fisheries and Aquaculture Policies Relevant to RFLP in Vietnam,” (Jan. 2010)
2	The World Bank, “A Trade-Based Analysis of the Economic Impact of Non-Compliance with Illegal, Unreported and Unregulated Fishing: The Case of Vietnam,” (2021)
3	Food and Agriculture Organization of the United Nations, “The State of World Fisheries and Aquaculture (2022),” (2022) (excerpt)
4	National Oceanic and Atmospheric Administration’s National Marine Fisheries Service, “Fisheries of the United States, 2019,” (May 2021) (excerpt)
5	National Oceanic and Atmospheric Administration’s National Marine Fisheries Service, “Fisheries of the United States, 2018,” (Feb. 2020) (excerpt)
6	General Statistics Office of Vietnam, Statistical Yearbook of Vietnam (Various Years) at Exports and Imports of Goods and Exports and Imports of Services, “Percentage of goods export, goods import over GDP by Group and Year”
7	Anh Duc Ton, “Vietnam’s Maritime Security Challenges and Regional Defence and Security Cooperation,” Vietnamese Naval Academy (2018)
8	Brianna Dasilva, “Freedoms and (Un)freedoms: Migrant Worker Experiences in the Thai and Vietnamese Fishing Industries,” (2020)
9	Nguyen Hong Thao, “Thirty years’ implementation of Vietnam Marine Strategy: a long stride in realizing the strategic vision,” Vietnam Law and Legal Forum Magazine (Sept. 20, 2022)
10	Decision No. 339/QD-TTg, “Approving the Strategy for Development of Vietnam’s Fisheries by 2030 with Vision Towards 2045,” (Mar. 11, 2021)
11	Ministry of Agricultural and Rural Development, “Action Plan for the Implementation of the Vietnam Fisheries Development Strategy,” (May 6, 2021)
12	Bich Thuy, “Vietnam approves development scheme for seafood processing in 2021-2030,” Vietnam Investment Review (Aug. 18, 2021)
13	Decision No. 985/QD-TTg, “The National Aquaculture Development Program for the Period 2021-2030,” (Aug. 16, 2022)
14	Ministry of Agriculture and Rural Development, “Vietnam: Total export value of agricultural, forest and fishery products in the first eight months of 2020 reached USD 26.15 billion,” (Sept. 7, 2020)
15	Ministry of Agriculture and Rural Development, “Vietnam shrimp exports started to reverse,” (Aug. 22, 2019)
16	Tien Dung, “The Prime Minister requested ‘substantive and timely’ support to help seafood and forestry products reach the export target of 27.5 billion USD,” VnEconomy (Apr. 13, 2023)
17	State Bank of Vietnam, “Major Responsibilities”



18	The Office of the U.S. Trade Representative, “Section 301 Investigation: Report on Vietnam’s Acts, Policies, and Practices Related to Currency Valuation,” (Jan. 15, 2021)
19	Ordinance No. 28/2008/PL-UBTVQH11, “Ordinance on Foreign Exchange Control,” (Dec. 13, 2005)
20	Letter from the U.S. Department of Treasury, C-552-829 (Aug. 24, 2020)
21	The International Trade Administration, “Vietnam – Country Commercial Guide”
22	U.S. Department of the Treasury, “Report to Congress: Macroeconomic and Foreign Exchange Policies of Major Trading Partners of the United States,” (Nov. 2023)
23	U.S. Department of State, “2023 Investment Climate Statements: Vietnam”
24	U.S. Department of Labor, “2022 List of Goods Produced by Child Labor or Forced Labor,” (2022) (excerpt)
25	Environmental Justice Foundation, “Caught in the Net: Illegal Fishing and Child Labour in Vietnam’s Fishing Fleet,” (2019)
26	Center For WTO and International Trade, Vietnam Chamber Of Commerce and Industry, “Removing IUU yellow card - Opportunity Vietnam should not miss,” (Oct. 2, 2023)
27	Constitution of the Socialist Republic of Vietnam at Art. 53 (excerpt)
28	Hoang-Anh Ho, “Land Tenure and Economic Development: Evidence from Vietnam,” World Development (2021)
29	Decree No. 142/2005/ND-CP, “Decree on Collection of Land Rents and Water Surface Rents,” (Nov. 14, 2005)
30	“Government support helps aquaculture industry weather difficulties,” Vietnam Plus (June 5, 2023)